U.S. Department of Transportation
Federal Highway Administration

Arkansas Division

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September 8, 2011

In Reply Refer To:
HDA-AR

Mr. Scott Bennett
Acting Director
Arkansas State Highway and Transportation Department
P. O. Box 2261
Little Rock, AR 72203

Dear Mr. Bennett:

Arkansas State Highway and Transportation Department's revised Disadvantaged Business Enterprise (DBE) Program manual, transmitted to my office on September 1, has been reviewed and is approved.

Please be aware there are two additional new regulations that must be addressed in your Program by January 1, 2012 and February 28, 2012. The January revision involves Interstate Certification (see 49 CFR Part 26.85) and the February revision involves Small Business Provisions (see 49 CFR Part 26.39). Information on these regulations was sent to your staff early this year and they are aware of the deadlines.

We expect that guidance on both of these new regulations will be coming soon from our Headquarters Office of Civil Rights; Valera McDaniel of my staff will inform your EEO office when that guidance is available and provide any assistance you may need to address them in your Program manual.

If you have any questions or concerns, please feel free to call me at 501-324-5625..

Sincerely,

Sandra L. Otto
Division Administrator

ARKANSAS STATE HIGHWAY

AND TRANSPORTATION DEPARTMENT

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PURSUANT TO

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 26

Nondiscrimination Statement

The Arkansas State Highway and Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in the Department programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to James B. Moore, Jr., Section Head - EEO/DBE Program (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711) or the following email address: james.moore@arkansashighways.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, audiotape or as an electronic audio file, and Braille.

Revised August 2011

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

INTRODUCTION

1. **TITLE 49, CODE OF FEDERAL REGULATIONS, PART 23 (49 CFR 23)**
   a. On March 17, 1980, the Secretary of the U.S. Department of Transportation issued a regulation pertaining to Minority Business Enterprise (MBE) participation in all federally assisted programs of that agency. This regulation was issued as Title 49, Code of Federal Regulations, Part 23 (49 CFR 23), published in the Federal Register, dated March 31, 1980, and effective April 30, 1980.
   b. The regulation prescribes uniform procedures by which state transportation agencies utilizing federal financial assistance in the form of federal-aid funds and various federal grants must carry out their contract administration and, in the process, increase the participation of small businesses who previously had not taken part.
   c. Stated simply, the requirements of 49 CFR 23 are that each state will set and seek to attain a certain dollar level of MBE participation in contracts awarded during each fiscal year. Each state is to review its anticipated contract expenditures for the coming year and set as its goal an overall dollar value of contracts and subcontracts to be awarded MBEs during the period. Awarding of subcontracts to MBEs is then accomplished and assured by bidding and contract award procedures. The successful bidder, in order to be awarded the contract, will assure the state transportation agency that a predetermined portion of the contract will be subcontracted to identified MBEs. Effective procedures to monitor fulfillment of goals and assure compliance must also exist.

2. **THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA '82)**
   a. This Act, sometimes referred to as the "nickel-a-gallon gasoline tax," was enacted by Congress to increase and accelerate the appropriation and expenditure of federal funds for the highway and mass transportation systems of the nation. The STAA '82 became effective on January 6, 1983, and, in one manner or another, applied to a very large segment of the total federal funds programs administered by the U.S. Department of Transportation, in particular, those funds administered through the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA).
   b. In addition to its concern for the quality, efficiency, and safety of the country's transportation systems, Congress was aware of the potential impact the increased expenditures could have on the depressed economy by reducing the high rate of unemployment and creating business opportunities. Therefore, Congress wrote into the Act the following: "Sec. 105(f). Except to the extent that the Secretary determines otherwise, no less than 10 per centum of the amounts authorized to be appropriated under this Act shall be expended with small business concerns owned and controlled

by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act (15 U.S.C. Section 637 (d)) and relevant subcontracting regulations promulgated pursuant thereto."

c. The Secretary referred to is the Secretary of the U.S. Department of Transportation (DOT). The Act referred to is the Surface Transportation Assistance Act of 1982.

d. The DOT chose to implement Section 105(f) by amendment of the existing MBE regulations through the addition of a new Subpart D to 49 CFR 23. The new Subpart D did not rescind any of the previous requirements of 49 CFR 23, but rather added to or modified them. Where requirements of Subpart D are at variance with other parts of 49 CFR 23, the DOT is required to comply with both sets of requirements simultaneously.

e. Under this Act, the eligibility criteria shifted from "minority" status to "disadvantaged" status; thereby, the term "disadvantaged business enterprise" (DBE) became the accepted descriptor for the FHWA program.

3. THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987 (STURAA)

a. Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) required amendments in the DOT's Disadvantaged Business Enterprise (DBE) program affecting the highway and mass transit programs. The changes mandated by the STURAA were implemented by revision to 49 CFR 23, published October 21, 1987.

b. The STURAA made the following changes to the DBE Program:

   i. Women became a presumptively disadvantaged class for purposes of the program.

   ii. States shall have only one overall DBE goal per contract where a goal is required. However, for reporting purposes, states continue to report contract awards to DBEs and WBEs separately.

   iii. Portuguese Americans were included within the definition of Hispanic.

   iv. The rule provides for "graduation" from the program for DBEs that exceed average annual receipts of $14 million over a previous three-year period.

   v. The percentage of credit allowed toward DBE goals for materials and supplies obtained from DBE "regular dealers" was raised from 20 percent to 60 percent. The rule also defines a "regular dealer." Instances in which credit may be allowed for expenditures to DBEs that are not manufacturers or regular dealers are provided in the rule.

   vi. The rule requires that, at a minimum, and along with other steps, the DOT in determining whether a business is an eligible DBE, perform an on-site visit to the offices of the business and to any job sites on which the business is working at the time of the eligibility investigation.

4. INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991 (ISTEA)

a. The size limitation for qualifying as a small business for purposes of the DBE Program was modified by raising the threshold to $16.6 million average annual gross

receipts over three years. This is the same size standard established by the U.S. Department of Transportation (DOT) in the June 20, 1990, Federal Register notice.

b. A requirement was added that the states annually report to the Secretary a detailed percentage breakdown of the socially and economically disadvantaged businesses participating in the DBE program. The annual report shall show the percentage and number of the following:
   i. White Women Business Enterprises (WWBEs)
   ii. Minority Women Business Enterprises (MWBEs)
   iii. Minority Business Enterprises (MBEs)

c. Funds expended for contracts under Title V (Intermodal Transportation) and Title VI (Research) are now subject to the DBE requirement that not less than 10 percent of funds be expended with DBE firms. Consistent with current policy, the DBE Program requirements are applicable to all funds expended in contracts (e.g., technical, professional, and management services) awarded by the FHWA, the states, or other federally funded recipients under these programs.

d. A requirement was added that the General Accounting Office (GAO) conduct a study of 10 areas of FHWA's DBE Program. These areas are described in Section 1003(b)(5).

5. TITLE 49, CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR 26)

a. On January 29, 1999, President Clinton announced a significant new rule pertaining to Disadvantaged Business Enterprise (DBE) participation in all federally assisted programs of the U. S. Department of Transportation (DOT). This regulation was issued as Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), published in the Federal Register, dated February 2, 1999, and effective March 4, 1999. These new regulations repeal the previous regulations found at 49 CFR 23 and respond to the Supreme Court's requirement that affirmative action programs be narrowly tailored.

b. Based on a provision in the "Transportation Equity Act for the 21st Century" (TEA-21), the rule is intended to ensure a level playing field on which minority, women and other disadvantaged small businesses can compete for federally assisted highway, transit and airport contracts. The regulations use small business size standards and a cap on personal net worth of $750,000 to ensure those businesses that need assistance are the ones that receive it.

c. Under the new rule, recipients of federal-aid from DOT, must, by September 1, 1999, develop a DBE program consistent with 49 CFR 26. The program must include a determination of an overall goal based on the availability of ready, willing and able DBEs to perform in the relevant industries in the local market area, and include the use of race-neutral alternatives to achieve annual DBE goals to the extent possible and use of race-conscious methods only to the extent necessary.

d. Effective June 3, 2003, DOT issued its final rule that revises the regulation concerning uniform application and reporting forms; implements a Memorandum of Understanding with the Small Business Administration; makes substantive amendments to provisions concerning personal net worth, retainage, size standards, proof of economic disadvantage, DBE credit for trucking firms, and eligibility of firms owned by Alaska Native Corporations; and provides clarification concerning

multi-year project goals and the use of the North American Industrial Classification System.

e. As of February 28, 2011, the personal net worth ceiling was raised to $1.32 million based on the consumer price index to reflect the effects of inflation since the previous ceiling was established.

6. DEFINITIONS OF MAJOR IMPORTANCE IN THIS EDITION

a. AFFILIATION – when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

b. CONTRACTOR – an individual, partnership, corporation, or any combination thereof, or joint venture contracting with the Arkansas Highway Commission for performance of prescribed work.

c. CONTRACT – 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.

d. DEPARTMENT – the Arkansas State Highway and Transportation Department (AHTD) as constituted under the laws of the State of Arkansas for the administration of highway and transportation work.

e. DISADVANTAGED BUSINESS ENTERPRISE (DBE) – a for-profit small business concern that is:

   i. At least 51 percent owned by one or more individuals who are 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

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

f. GOOD FAITH EFFORTS – efforts to achieve a DBE goal or other requirement which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. IMMEDIATE FAMILY MEMBER – father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law.

h. JOINT VENTURE – 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.

i. PERSONAL NET WORTH – the net value of individual's assets 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.

j. PRIMARY INDUSTRY CLASSIFICATION – the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm.

k. PRINCIPAL PLACE OF BUSINESS – the location where the individuals who manage the firm's day-to-day operations spend most working hours and where business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the Department will determine the principal place of business for DBE program purposes.

l. RACE-CONSCIOUS – a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

m. RACE-NEUTRAL – a measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

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

o. SMALL BUSINESS CONCERN – with respect to firms seeking to participate as DBEs in federal assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing the Act (13 CFR 121), that also does not exceed the cap on average annual gross receipts for the firm and its affiliates as defined by SBA regulations (13 CFR 121.102), over the firm's previous three fiscal years, in excess of $22.41 million. The Secretary of Transportation adjusts this amount for inflation from time to time.

p. SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL – any individual who is a citizen (or lawfully admitted permanent resident) of the United States and is:

   i. found to be a socially and economically disadvantaged individual on a case-by-case basis.

   ii. in one of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

      1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa.

      2. "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.

      3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

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

5. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
6. "Women."
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

q. WOMAN BUSINESS ENTERPRISE (WBE) – a small business defined pursuant to Section 3 of the Small Business Act and:
   i. which is at least 51 percent owned by one or more woman, or, in the case of a corporation, at least 51 percent of the stock of which is owned by one or more woman; and
   ii. whose management and daily business operations are controlled by one or more of the women who own it. This separate designation is used for reporting purposes to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA).

7. APPLICABILITY OF THE DBE PROGRAM UNDER 49 CFR 26

a. 49 CFR 26.3(a) states: "If you are a recipient of any of the following types of funds, this part applies to you:
   i. 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;
   ii. 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;
   iii. Airport funds authorized by 49 U.S.C. 47101, et seq."

b. 49 CFR 26.3(c) states: "If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract."

c. 49 CFR 26.3(d) states: "If you are letting a contract in which United States Department of Transportation financial assistance does not participate, this part does not apply to the contract."

d. 49 CFR 26.21 sets forth the requirements for who must have a DBE program as follows:
   i. If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirement of this part:
      1. All FHWA recipients receiving funds authorized by a statute to which this part applies;
      2. FTA recipients receiving funds for planning, capital and/or operating assistance, and who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in a federal fiscal year;

3. FAA recipients receiving grants for airport planning or development, and who will award prime contracts exceeding $250,000 in a federal fiscal year.

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

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

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

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POLICY STATEMENT

It is the policy of the Arkansas State Highway and Transportation Department (Department) to ensure nondiscrimination on the basis of race, color, age, disability, national origin, and sex in the award and administration of contracts in the Department's highway and transit programs. In support of this policy, the Department encourages and assists those businesses owned and controlled by socially and economically disadvantaged individuals as determined in accordance with Title 49, Code of Federal Regulations, Part 26.

The Department has developed and implemented a Disadvantaged Business Enterprise (DBE) program to comply with 49 CFR 26, and requires contractors and other parties to contracts and agreements let and/or administered by the Department to abide and perform by this policy and program.

As Acting Director of Highways and Transportation, I support this policy and the program and procedures developed to achieve its objectives, which are:

- To ensure nondiscrimination in the award and administration of contracts;
- To create a level playing field on which DBEs can compete fairly;
- To ensure the Department's DBE program is narrowly-tailored in accordance with applicable law;
- To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs; and
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

The Programs and Contracts, Construction Divisions and the EEO/DBE Section are charged with the responsibility of developing, implementing and maintaining surveillance over the Department's DBE Program and keeping me informed directly or through the Assistant Chief Engineer - Operations of any significant development, change or problem occurring in the program.

Scott A. Bennett

Acting Director of Highways and Transportation

MGB Revised August 2011

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

CHAPTER I – DBE PROGRAM

1. PURPOSE OF THE PROGRAM

The purpose of this manual is to set forth the objectives and procedures for implementing a Disadvantaged Business Enterprise (DBE) Program for the Arkansas State Highway and Transportation Department (Department). The intent of the DBE Program is to provide reasonable opportunities for DBEs to compete for and perform on contracts financed in whole or part with federal financial assistance, in an effort to achieve the level of DBE participation that would be achieved absent discrimination.

2. AUTHORITY

The authority for this program is Title 49, Code of Federal Regulations, Part 26 (49 CFR 26).

3. OBJECTIVES OF THE DBE PROGRAM

The objectives of this program are:

a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway and transit programs;
b. To create a level playing field on which DBEs can compete fairly for contracts;
c. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
d. To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
e. To help remove barriers to the participation of DBE firms in contracts administered by the Department;
f. To assist in the development of firms that can compete successfully in the marketplace outside the DBE program;
g. To establish solicitation, award, and contract administration procedures that will ensure that DBEs are provided the fullest opportunities to participate;
h. To ensure that contractors and other parties to federally assisted contracts and agreements let and/or administered by the Department abide by this policy and the contract provisions that relate to the DBE Program.

4. DISSEMINATION OF DBE POLICIES AND PROCEDURES

a. The DBE Program Manual and policy statement are distributed to all District Engineers, District Construction Engineers, Resident Engineers, and other Department officials.
b. The DBE Program Manual will be available for review on the Department's website. DBE and non-DBE business communities will be informed that the manual is available for review on the website or a copy of the manual may be obtained by contacting the Section Head-EEO/DBE.

5. IMPLEMENTATION OF THE DBE PROGRAM

a. The program and procedures adopted to ensure effective implementation of this policy shall be developed and maintained by the Assistant Chief Engineer - Operations.

b. This program will be carried out until all funds from DOT financial assistance have been expended. Any significant changes in the program will be provided to the DOT.

c. The Department will not use quotas for DBE participation on DOT-assisted contracts. Quotas utilize rigid numerical requirements as a means of implementing a program. The Department's program uses aspirational goals.

d. Any person who believes that the Department has failed to comply with its obligations under 49 CFR 26 and this program may file a written complaint with FHWA's Office of Civil Rights. A complainant must do so no later than 180 days after the date of the alleged violation or the date on which he/she learned of a continuing course of conduct in violation of this part. In response to the request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of the complainant's identity as provided in 49 CFR 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

e. The concerned operating administration may review the Department's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct FHWA to initiate a compliance review based on complaints received.

CHAPTER II – DBE LIAISON OFFICER AND SUPPORT STAFF

1. DBE LIAISON OFFICER

a. The Assistant Chief Engineer - Operations has been designated as the DBE Liaison Officer for the Department and reports directly to the Director of Highways and Transportation concerning DBE matters. The DBE Liaison Officer may be contacted at 501-569-2221 or P. O. Box 2261, Little Rock, AR 72203.

b. The DBE Liaison Officer, by order of the Director, has overall responsibility for development, direction, and day-to-day operations of the DBE Program. This position oversees DBE supportive service activities and the dissemination of information to ensure that small, socially and economically disadvantaged businesses and women business enterprises are afforded an equal opportunity to bid on all DOT-assisted Department contracts and participate in other contracting activities. The DBE Liaison Officer also has full responsibility for implementation of the DBE policy, monitoring of resulting programs and procedures, and compliance with established goals.

c. The DBE Liaison Officer is assisted in carrying out the DBE Program responsibilities by members of the EEO/DBE Section, Programs and Contracts Division and Construction Division staffs. Additional support is provided by various other Department personnel as needed. Any information relating to DBE functions and activities is brought to the attention of the DBE Liaison Officer, who will review the information and initiate appropriate action through the responsible Department personnel.

2. EEO/DBE SECTION

The Assistant Chief Engineer - Operations is responsible for oversight of DBE Program activities within the EEO/DBE Section. The EEO/DBE Section Head is responsible for many functions of the DBE Program, including maintenance of certification files, performance of comprehensive compliance and on-site certification reviews, coordination of DBE Certification Committee and DBE Hearing Committee activities, maintenance of the DBE Directory, administration of the supportive services program, tracking DBE participation, and coordinating with the Programs and Contracts Division in setting the Department's overall goal. Assisting in these functions are the External Equal Employment Opportunity (EEO) Coordinator, DBE Program Specialist and Office Administrative Assistant III.

3. PROGRAMS AND CONTRACTS DIVISION

a. The Programs and Contracts Division coordinates with the EEO/DBE Section in setting the Department's overall goal. This Division is also responsible for reviewing all federally-assisted highway construction projects and, if needed to supplement race-neutral measures to achieve the Department's overall goal, establishing reasonable

DBE goals for participation in each specific project. The EEO/DBE Section Staff provides assistance in this process.

b. In establishing a project goal, Programs and Contracts Division Head, Assistant Division Head, and Staff Project Development Engineer, and EEO/DBE Section Head review the total estimated cost of the project, type of work to be accomplished, estimated dollar value of individual items of work with potential for DBE participation, location, and availability and capabilities of DBEs. The goal is then set as a percentage of the contract award amount expected to be committed to DBEs.

c. The Division is responsible for including appropriate DBE contract specifications in individual project bid proposal and contract documents. Specifications vary depending on whether the project has no goal or has a percentage goal. This Division provides assistance in revising DBE specifications as necessary.

4. CONSTRUCTION DIVISION

a. The State Construction Engineer is responsible for enforcing DBE contract requirements on federal-aid projects. District Engineers, District Construction Engineers, and Resident Engineers are advised of monitoring responsibilities in the Resident Engineer's Manual, Section 107.08, and Chapter XV of this Program.

b. The State Construction Engineer also monitors the accomplishment of contract goals by contractors and initiates the enforcement of contract sanctions against contractors failing to meet contract goals and not receiving a waiver or reduction in the goals. Data on the award of subcontracts and purchase orders is maintained by the Construction Division. This information is used in setting the overall goal and tracking of payments to subcontractors.

5. CERTIFICATION COMMITTEE

a. The Certification Committee is an established panel whose function is to review information furnished by applicants for DBE status and the On-Site Review report (furnished by the DBE Program Specialist or the applicant's home state DOT) to determine if the business meets eligibility criteria for participation in the DBE Program. The Committee is composed of five voting members appointed by the Director and meets monthly or as necessary. The current Committee consists of representatives from the Legal, Planning and Research, Internal Audit, Construction, and the EEO/DBE Section Head.

b. The Committee also reviews the firm's annual affidavit to determine if it meets the criteria to remain eligible for the program. If the Committee determines the firm does not meet the eligible standards or if the firm fails to submit its annual affidavit, the committee will submit to the firm an intent to decertify.

6. HEARING COMMITTEE

a. The Hearing Committee is an established panel whose function is to review DBE information furnished by the Certification Committee or the DBE firm to determine if the firm should remain eligible for the DBE program. The current Committee consists of representatives from Legal, Programs and Contracts, and Construction.

7. OTHERS WITH DBE PROGRAM RESPONSIBILITIES

c. The Assistant Chief Engineer - Design is responsible for reviewing each consultant contract for DBE subcontracting potential and for maintaining records on total participation.

b. The Planning and Research Division Head is responsible for monitoring and reporting requirements relative to DBE utilization for Federal Transit Administration projects.

c. Administrators, supervisors and other employees are responsible for effective implementation of the DBE policy within their respective jurisdictions.

d. The DBE Supportive Services Program (DBE/SSP) is outsourced. The purpose of the DBE/SSP is to seek, enhance and increase minority- and female-owned firms for participation in the highway construction industry in Arkansas. This is done by identifying, assisting and promoting DBEs capable of performing work on federal-aid highway construction projects as contractors, subcontractors and suppliers.

e. The DBE Advisory Committee discusses the experiences encountered by DBEs in complying with the DBE Special Provisions of the contract; makes recommendations designed to strengthen the DBE Program; reviews the proposed DBE goal and methodology and provides their comments prior to the goals being publicly announced; and investigates ways to improve opportunities for participation by DBEs. The committee consists of personnel from the Department, highway and DBE contractors, and a representative from the Arkansas-Mississippi Minority Business Council.

f. The DBE Good Faith Effort Committee assesses a contractor's documentation of good faith efforts to achieve DBE participation goals when the information is submitted to satisfy contract bid requirements. The committee consists of the Assistant to the Director, State Construction Engineer, Division Head of Programs and Contracts, Staff Attorney and Section Head-EEO/DBE.

CHAPTER III – CERTIFICATION PROCEDURES

1. PURPOSE OF CERTIFICATION

a. The purpose of certification is to ensure that only small businesses independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons participate in the Department's DBE Program. These businesses must meet all standards and eligibility requirements as set forth in 49 CFR 26.

b. The Arkansas Unified DBE Certification Program (ACP) Committee is responsible for determining and certifying eligibility of businesses seeking to participate as DBEs on DOT- assisted transportation related projects.

2. CERTIFICATION PROCESS

a. The Department's certification process consists of the following:

   i. An Arkansas Unified DBE Certification Application (UCA) package contains instructions for completion and furnishing necessary information and documentation of business size, ownership, and control requirements of a business desiring to participate as a DBE. (See Appendix B)

   ii. A precertification on-site review to the offices of new applicants, and a visit to at least one job site on which the firm is working at the time of the review.

   iii. An annual affidavit, sworn to by the firm's owners and executed under penalty of perjury, affirming there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in information provided in the UCA originally submitted, except for changes of which the Department has been notified. In addition, the firm must submit documentation of the firm's size, gross receipts, and the personal net worth of the socially and economically disadvantaged individual.

   iv Review by the DBE Certification Committee of information submitted by the applicant, the on-site review, and a report prepared by the DBE staff.

   v. Recertification every three years utilizing the annual affidavit and on-site review.

b. The certification application package is provided to any business seeking recognition as a DBE.

c. The DBE Certification Committee meets regularly, generally monthly, to examine and evaluate pending applications for certification. From information provided by the applicant and an on-site review, the Committee determines if the business meets the following criteria:

   i. Is a small business as defined in Small Business Administration regulations (13 CFR 121) and does not exceed the cap on average annual gross receipts of $22.41 million.

ii. Is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals as defined by 49 CFR 26.5.
iii. Is a for-profit small business.
iv. Is the management and daily business operations controlled by one or more of the socially and economically disadvantaged owners.

d. Guidelines for use in making the listed determinations are included in 49 CFR 26 and contained in this chapter in Part 4, Guidelines for Certification.

e. The Certification Committee reviews each applicant's file and determines if the business is to be approved, denied or deferred.
   i. If approved, the business is added to the ACP Disadvantaged Business Enterprise Directory of certified businesses.
   ii. If denied, the Certification Committee will document the reasons. The DBE Liaison Officer notifies the applicant in writing of the decision.
   iii. If deferred, the Certification Committee requests additional information before making a determination, or if the applicant has not responded to a request for information, the file is placed in pending status for six months.
   iv. Decisions on eligibility will be made within 90 days of receiving the required information.

f. Approximately four weeks prior to each letting, the DBE Program Specialist compiles and issues an updated list of certified DBEs that includes name, address, telephone number, contact person and types of work each business is certified to perform.

g. The DBE must certify annually by submitting an affidavit stating no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR 26 or any material changes in the information provided in its application, except for changes about which the firm has notified the Department previously, have occurred. If the DBE is based outside Arkansas, a copy of the home state DOT's certification must be submitted. If no changes in ownership have occurred, the average gross receipts for the most recent three years and owner's personal net worth are within the required limits, and no eligibility issues are raised, the DBE's certification remains in effect.

h. DBE firms must inform the Department, in writing, within 30 days of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements or of any material change in the information provided in the firm's application. The notification must be in the form of a sworn affidavit and include supporting documentation describing in detail the nature of such changes. The Certification Committee will review the information and the applicant's file and make a determination of eligibility.

i. Every three years, on or near the firm's anniversary date, an on-site review will be scheduled to determine if the firm should continue to be certified as a DBE. The Certification Committee reviews the firm's annual affidavit information, on-site review and makes a determination regarding the firm's continued eligibility. The firm's anniversary date will not change even, if it takes more than one month to determine the firm's eligibility.

j. Should a business fail to submit its annual affidavit information by the anniversary date, procedures will be initiated to remove the firm's eligibility as a DBE. To ensure

uninterrupted certification, a DBE's annual affidavit information should be received no later than its anniversary date. (See Chapter III, Part 5)

3. VERIFICATION OF ELIGIBILITY

a. It is the responsibility of the applicant for certification to submit the required information in a notarized statement under penalty of perjury. It is the Department's responsibility to certify that the applicant meets all the eligibility standards of 49 CFR 26.

b. In determining whether an applicant is an eligible disadvantaged business enterprise, a precertification review will be performed by the DBE Program staff. At a minimum, the pre-certification review will include a desk document review of the certification application and all attachments, and an on-site visit and review of the business. Visits will be made to at least one job site on which the business is working at the time of the eligibility investigation. If the applicant firm is not working within the state at the time of the review, a visit will be made when work begins. On-site visits are not normally made to out-of-state firms. A copy of the home state's on-site review must be submitted by the applicant or home state DOT, in lieu of a visit by the Department's staff.

c. A business whose domicile is in a state other than Arkansas is required to be certified by the home state's Department of Transportation, before being certified in Arkansas. The Department may contact the appropriate transportation or highway agency of any other state where the business is known to be certified. Information obtained from another state will be considered by the Department in acting upon applications.

4. GUIDELINES FOR CERTIFICATION

a. Burdens of Proof. In determining whether to certify a firm as eligible to participate as a DBE, the following standards apply:

   i. The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR 26 concerning group membership or individual disadvantage, business size, ownership, and control.

   ii. There is a rebuttable presumption that members of designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. This means that members of those groups do not have the burden of proving social and economic disadvantage. 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 listed in Section 26.67(a).

   iii. Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving, by a preponderance of the evidence, that they are socially and economically disadvantaged.

   iv. Determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an

individual basis) must be made by considering all the facts in the record, viewed as a whole.

v. Group membership determinations
   1. Those individuals for whom there is a question concerning membership in a presumed group must present evidence that he or she is a member of the group.
   2. To make such a determination, consideration will be given to whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The applicant may be required to produce appropriate documentation of group membership.
      a. An individual claiming to be a member of a presumed group who is determined not to be a member of a designated disadvantaged group, must demonstrate social and economic disadvantage on an individual basis.
      b. Determinations regarding group membership are subject to the Department's appeal procedures included in Chapter III, Parts 5 and 6.

b. Business Size
   i. The Certification Committee must determine whether an applicant firm is an existing small business as defined in the Small Business Administration (SBA) standards. If the applicant does not meet the small business standards, it is not eligible to participate as a DBE under 49 CFR 26, and no further determinations need be made.
   ii. In determining whether a business is considered small, the standards established by the Small Business Administration in 13 CFR 121 appropriate to the type(s) of work the firm seeks to perform in U.S. DOT-assisted contracts will be applied. Currently, the following business size factors apply:
      1. Construction: Average annual gross receipts for the three preceding fiscal years shall not exceed $22.41 million.
      2. Special Trade Contractor: Average annual gross receipts for the three preceding fiscal years shall not exceed $13 million.
      3. Land subdivision (Engineering, Architectural, and Surveying Services): Average annual gross receipts for the three preceding fiscal years shall not exceed seven million.
      4. Suppliers of Manufactured Goods: The business, including its affiliates, shall not have more than 500 employees.
   iii. A firm is not eligible if the firm (including affiliates) has had average annual gross receipts, as defined by SBA regulations (13 CFR 121.402), over the firm's previous three fiscal years, in excess of $22.41 million. This figure is adjusted by the Secretary of Transportation from time to time.
   iv. Necessary evidence to determine business size includes the gross receipts of the firm and its affiliates for the last three years.
   v. "Affiliates" is defined in 13 CFR 121.103 as: "Concerns are affiliates of each other when either directly or indirectly: (a) one concern controls or has the

power to control the other, (b) a third-party (or parties) controls or has the power to control both, or (c) an identity of interest between or among parties exists such that affiliation may be found." In determining whether affiliation exists, consideration shall be given to such factors as common ownership, common management and contractual relationships.

c. Social and Economic Disadvantage
   i. Presumption of Disadvantage
      1. Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities found to be disadvantaged by the SBA, may be presumed to be both socially and economically disadvantaged. Applicants must submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. Definitions of these groups can be found at 49 CFR 26.5 and in the introduction of this manual.
      2. Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must submit a signed statement of personal net worth, with appropriate supporting documentation (last three years personal tax returns).
         a. An individual's ownership interest in the applicant firm and equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm) is excluded in determining net worth.
         b. A contingent liability does not reduce an individual's net worth.
         c. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401 (k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
   ii. Rebuttal of presumption of disadvantage
      1. An individual's personal net worth cannot exceed $1.32 million or the individual's presumption of economic disadvantage is rebutted.
      2. Any time the Department has a reasonable basis to believe an individual claiming membership in a designated group is not socially and economically disadvantaged, a review will be conducted to determine whether the presumption should be rebutted. The review will follow the procedures for decertification of a firm as included in Chapter III, Part 6.
      3. When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage. If the rebuttal is based on excess net worth,

the individual is no longer eligible for participation and cannot regain eligibility by making an individual showing of disadvantage.

iii. SBA 8(a) and SDB Firms. If a firm applying for certification has a current, valid certification from or is recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), the Department may accept the firm's 8(a) or SDB certification in lieu of conducting the Department's certification proceeding, just as the Department may accept the certification of another DOT recipient for this purpose. However, the Department is not required to do so.

iv. Individual determinations of social and economic disadvantage. Eligibility of firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged will be determined on a case-by-case basis. The applicant firm has the burden of demonstrating, by a preponderance of the evidence, that the individuals who own and control the firm are socially and economically disadvantaged. An individual whose personal net worth exceeds $1.32 million shall not be considered economically disadvantaged. The following guidance will be considered in making individual determinations of social and economic disadvantage:

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

1. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
2. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
3. Negative impact on entry into or advancement in the business world because of the disadvantage. Education, employment and business history, where applicable, must be considered to determine if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
4. The Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities-especially persons with severe disabilities (e.g., significant mobility,

vision or hearing impairments)–may be socially and economically disadvantaged.

5. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, the Certification Committee will look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria.

vi. Economic Disadvantage: Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

1. A description of the conditions that are the basis for the claim must be submitted in a narrative format, along with personal financial information. Married applicants must submit separate financial information for his or her spouse, unless the individual and spouse are legally separated.
2. The following factors will be examined when diminished capital and credit opportunities are considered: personal financial condition, including personal income for the last two years; personal net worth, and fair market value of all assets. Financial condition will be compared to the financial profiles (total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth) of small businesses in the same primary industry classification, or in similar lines of business, which are not owned by socially and economically disadvantaged individuals.
3. Transfers within two years.
   a. Recipients will attribute to an individual any assets that are transferred, within two years prior to application, to an immediate family member or to a trust, a beneficiary of which is an immediate family member, for less than fair market value. If the individual can demonstrate the transfer is to or on behalf of an immediate family member for education, medical expenses, or some other form of essential support the amount will not be attributed to the individual.
   b. Assets transferred to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries and retirements will not be attributed to the individual.
   c. In determining access to capital and credit, any assets that the individual transferred within such two-year period described in (c)(1) that are not considered in evaluating the individual's assets and net worth will be considered.

vii. In certifying companies owned by individuals whose race/ethnic origin is in question, the Certification Committee will request appropriate documentation

to determine if the applicant has held himself/herself out to be a member of the minority community and is so recognized by that community. This may include a history of the individual having held himself/herself out to be a member of the minority group or community, recognition of the applicant in the particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties, or proof of membership and interaction in recognized minority organizations.

viii. If the minority community necessary for determining the applicant's minority status does not exist, the applicant will be required to prove social and economic disadvantage and, if successful, will be certified on that basis.

ix. Those wishing to qualify to participate in the DBE Program as Native Americans must submit official documents to establish themselves as American Indians or Alaskan Natives. This documentation must include a copy of the tribal identification, roll, or registration card (certificate of degree of Indian blood is not sufficient).

x. Those wishing to qualify to participate in the DBE Program as Hispanic Americans, Asian-Pacific Americans, or Subcontinent Asian Americans must submit official documents to establish their race, country of origin, or ethnic origin. This documentation may consist of birth certificates, naturalization papers, census records, notarized and sworn statements from disinterested parties, proof of membership and interaction in recognized minority organizations, or other evidence acceptable to the Certification Committee. Additionally, proof of community recognition may be required.

xi. Proof of minority status or ancestry alone is not conclusive if an individual has not maintained identification with his/her respective group, has not held himself/herself out to be a member of the respective minority group, and is not identified by persons in the population at large as belonging to this group. In such cases, the applicant is not presumed to be socially and economically disadvantaged and would be required to demonstrate social disadvantage on an individual basis.

xii. Persons who are not members of one of the designated minority groups may request the Certification Committee make an individual determination that they are socially and economically disadvantaged.

d. Ownership

i. To establish ownership, the Certification Committee looks beyond what is reflected in the ownership documents and considers all facts in the record, viewed as a whole. The disadvantaged owner(s) must own 51 percent or more of the firm and the contributions to acquire ownership must have been real and substantial. Contributions to acquire ownership may be in the form of expertise, capital or other assets.

ii. Ownership by socially and economically disadvantaged individuals in the following types of firms must comprise:

1. Corporations – 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

2. Partnerships – 51 percent of each class of partnership interest and be reflected in the firm's partnership agreement.
3. Limited liability companies – 51 percent of each class of member interest.

iii. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing.

iv. Securities or assets held in trust, or by any guardian for a minor, do not meet the ownership requirements, except when:
   1. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
   2. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

v. Contributions of capital or expertise must be real and substantial.

vi. When expertise is relied upon as a contribution to acquire ownership, the disadvantaged owner:
   1. must have expertise in a specialized field of outstanding quality in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs, and documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
   2. must have a significant financial investment in the firm.

vii. Examples of acceptable contributions of assets to acquire ownership are: as the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; through inheritance, or otherwise because of the death of the former owner.

viii. For purposes of determining ownership, the Certification Committee will not presume as held by a socially or economically disadvantaged individual all interests in a business or other assets obtained by the individual as the result of a gift or transfer without adequate consideration from any non-disadvantaged individual or non-DBE firm who is involved in the same firm or an affiliate of the firm, the same or a similar line of business, or engaged in an ongoing business relationship with the firm or an affiliate of the firm. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that the gift or transfer was made for reasons other than obtaining certification as a DBE, and he or she actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

ix. When marital assets held jointly or as community property by both spouses are used to acquire ownership interest, the Department will deem that ownership

interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. A greater portion of joint or community property assets will not be counted toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets must be included as part of the firm's application.

x. The following factors will be considered in determining ownership; however, a contribution of capital will not be regarded as failing to be real and substantial, or used to find a firm ineligible, solely because:
    1. ownership interest was acquired as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (viii) of this section;
    2. a provision for the co-signature of a spouse who is not socially and economically disadvantaged on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
    3. ownership of the firm or its assets is transferred for adequate consideration from a spouse who is not disadvantaged to a spouse who is disadvantaged. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

e. Control

i. Only an independent business may be certified as a DBE. An independent business is one whose viability does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the Certification Committee will:
    1. scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources;
    2. consider whether employer/employee relationships between the disadvantaged owner(s) and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm;
    3. examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a contractor compromises the independence of the potential DBE firm; and
    4. consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

ii. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-

law provisions, contracts or any other formal or informal devices that prevent the owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

iii. The disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
2. In a corporation, disadvantaged owners must control the board of directors.
3. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
4. In a limited liability company, if the articles of organization provide that management of the limited liability company is vested in a manager or managers, one or more disadvantaged owners must serve as manager, with control over all member decisions. If the articles of organization do not provide for a manager or provide that management is vested in the members, one or more disadvantaged owners must serve as a member, with control over all member decisions.

iv. Individuals who are not 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.

v. The disadvantaged owners of the firm may delegate various areas of management, policymaking, or daily operations to other participants in the firm, regardless of whether these participants are disadvantaged. Such delegation of authority must be revocable, and the disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the disadvantaged owners in the firm's overall affairs must be such that the Certification Committee can reasonably conclude that the disadvantaged owners actually exercise control over the firm's operations, management and policy.

vi. The 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 in the firm's operations. The disadvantaged owner is 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 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 which is limited to office management, administration or bookkeeping functions and unrelated to the principal business activities of the firm is insufficient to demonstrate control.

vii. If state or local law requires individuals to have a particular license or other credential in order to own and/or control a certain type firm, the disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

viii. The Certification Committee will consider differences in remuneration between the disadvantaged owners and other participants in the firm in determining whether to certify a firm. Such consideration will 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 proffered.

1. Where a non-disadvantaged individual formerly controlled the firm, and a disadvantaged individual now controls it, the Certification Committee may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved and continues to receive greater compensation than the disadvantaged individual.
2. In order to be viewed as controlling a firm, a 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.

ix. A disadvantaged individual may control a firm even though one or more immediate family members who are not disadvantaged participate in the firm. A judgment will be made about the control the disadvantaged owner exercises vis-à-vis other persons involved in the business as the Certification Committee does in other situations, without regard to whether or not the other persons are immediate family members.

x. If the Certification Committee cannot determine that the disadvantaged owners, as distinct from the family as a whole, control the firm, then the disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

xi. Where a firm was formerly owned and/or controlled by a non-disadvantaged person, and its ownership and control have been transferred to a disadvantaged individual, and where the non-disadvantaged person remains involved with the firm in any capacity, the disadvantaged owner must demonstrate, by clear and convincing evidence, that the transfer of ownership and/or control was made for reasons other than obtaining DBE certification, and further that the disadvantaged owner actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged person who formerly owned and/or controlled the firm.

xii. In determining whether a firm is controlled by the disadvantaged owners, the Certification Committee will consider whether the firm owns equipment necessary to perform its work. Where leasing equipment is a normal industry practice and the lease does not involve a relationship with a contractor or other

party which may compromise the independence of the firm, a firm will not be considered ineligible because it leased its equipment.

xiii. The Certification Committee will grant certification to a firm only for specific types of work in which the disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate that its disadvantaged owners are able to control the firm with respect to that type of work and provide documentation that it has performed the work. The Certification Committee will not require a firm to recertify or submit a new application, but will verify the owner's control of the firm in the additional categories of work.

xiv. A business operating under a franchise or license agreement may be certified if it meets the certification standard and the franchiser or licensor is not affiliated with the franchisee or licensee.

xv. In order for a partnership to be controlled by disadvantaged individuals, any non-disadvantaged partner must not have the power, without the specific written concurrence of the disadvantaged partner, to contractually bind or subject the partnership to contract or tort liability.

xvi. The disadvantaged individuals controlling a firm may use an employee leasing company in the normal course of business. The use of such a company does not preclude the disadvantaged owners from controlling the firm if they continue to maintain control of the work of the leased employees. This includes being responsible for accepting, rejecting, assigning and otherwise controlling on-the-job activities of the employees. A DBE may not lease employees from a pre-qualified contractor or other subcontractor performing on the project without prior approval from the Department.

f. Other Certification Considerations

i. While consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting participation toward DBE goals, the Certification Committee may consider whether a firm has exhibited a pattern of conduct indicating involvement in attempts to evade or subvert the intent or requirements of the program in reviewing eligibility.

ii. Eligibility of potential DBE firms will be evaluated on the basis of present circumstances.

iii. DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for denial or removal of certification.

iv. Only firms organized for profit may be eligible for certification as DBEs. Not-for-profit organizations, even though controlled by disadvantaged individuals, are not eligible to be certified as DBEs.

v. An eligible DBE firm must be owned by individuals who are disadvantaged. Except as provided as follows, a firm that is not owned by such individuals, but instead is owned by another firm – even a DBE firm – cannot be an eligible DBE.

1. If disadvantaged individuals own and control a firm through a parent or holding company established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding

company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it otherwise meets all other eligibility requirements.

2. Such a subsidiary can be certified only if disadvantaged individuals cumulatively own 51 percent of the subsidiary. Illustrative examples of cumulative ownership provisions are included in 49 CFR 26.73(e)(2).
3. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by disadvantaged individuals.

vi. A DBE firm is not required to be prequalified as a condition for certification unless the Department requires all firms that participate in its contracts and subcontracts to be prequalified.

vii. A firm that is owned by an Indian tribe as an entity, rather than by individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.65 and be controlled by socially and economically disadvantaged individuals.

5. DENIALS OF CERTIFICATION

a. If it is determined that a firm requesting initial certification is not eligible, the firm will be given written notice that the Certification Committee has found the firm ineligible, setting forth the reasons for the determination, including specific references to the evidence in the record upon which each reason is based and citing the appropriate references in 49 CFR 26.

b. In any notice of a finding of inelibility, the firm will be given an opportunity for an informal hearing before the Certification Committee. At this hearing, the firm may respond in person to the reasons for the finding and provide information and arguments concerning why it should be considered eligible. This hearing will be tape-recorded, and a transcript or copy of the recording will be made available upon request to the firm, the ACP DBE Liaison Officer, and/or the U.S. DOT in the event of an appeal. The firm may also elect to present information and arguments to the Certification Committee in writing, without having a hearing.

c. The Certification Committee will allow a firm to postpone a hearing no longer than six months.

d. After all the facts have been thoroughly reviewed and considered, the Certification Committee will make a recommendation to the ACP DBE Liaison Officer regarding the firm's eligibility.

e. Upon receipt of the Certification Committee's recommendation, the ACP DBE Liaison Officer will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the ACP DBE Liaison Officer will make a determination regarding the firm's eligibility.

f. The firm will be given written notice of the ACP DBE Liaison Officer's decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

g. In the event of a denial of certification of a firm certified by the U.S. Small Business Administration (SBA), the SBA will be notified in writing of the Department's denial, including the reasons for the denial.
h. In any notice of denial of certification, a time period will be established of no less than 12 months that must elapse before the firm may reapply for certification. The time period for reapplication will begin on the date the notice of denial is received by the firm.
i. Any notice of denial will inform the firm of the availability of an appeal to the U.S. DOT under Section 26.89.

6 REMOVAL OF ELIGIBILITY

a. It is the responsibility of the ACP Hearing Committee to remove a firm's eligibility, that is, to withdraw recognition and certification of DBE designation upon discovery that the business does not meet eligibility criteria.
b. The procedure to remove eligibility may be initiated by any of the following: firm fail to provide its annual affidavit, complaint is received alleging that a currently-certified firm is ineligible; notification is received from the firm of a change in its circumstances; or other information pertaining to certification eligibility comes to the attention of the Department.
c. The records are reviewed and, if necessary, a verification review is conducted by the External EEO Coordinator. The External EEO Coordinator's report and findings are forwarded to the Certification Committee for review.
d. The Certification Committee will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the Certification Committee will determine whether or not there is reasonable cause to believe the firm is ineligible.
e If it is determined that such reasonable cause exists, the firm will be given written notice of its intent to remove eligibility setting forth the reasons for the proposed determination, including specific references to the evidence in the record upon which each reason is based and citing the appropriate references in 49 CFR 26. If it is determined that such reasonable cause does not exist, the firm and the complainant (if any) will be notified in writing of this determination and the reasons for it.
f. In any notice of reasonable cause to remove eligibility, the firm will be given an opportunity for an informal hearing before the Hearing Committee. This committee is composed of a representative from Legal, Programs and Contracts, and Construction who have thorough knowledge and understanding of the DBE Program and certification requirements, but have had no involvement in the subject DBE firm's initial certification or actions leading to or seeking to implement the proposal to remove the firm's eligibility. These individuals will also not be subject to direction from the office or personnel who did take part in the actions leading to or seeking to implement the proposal to remove the firm's eligibility.
g. At the hearing, 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. This hearing will be recorded, and a transcript or copy of the recording will be made available upon request to the firm, the ACP DBE Liaison Officer, and/or the U.S. DOT in the event of an appeal. The firm may also elect to

present information and arguments to the Hearing Committee in writing, without having a hearing.

h. After all the facts have been thoroughly reviewed and considered, the Hearing Committee will make a recommendation to the ACP DBE Liaison Officer regarding the firm's eligibility.

j. Upon receipt of the Hearing Committee's recommendation, the ACP DBE Liaison Officer will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the ACP DBE Liaison Officer will make a determination regarding the firm's eligibility.

k. The firm will be given written notice of the ACP DBE Liaison Officer's decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. Any notice of removal of certification will inform the firm of the consequences of the decision and of the availability of an appeal to the U.S. DOT under 49 CFR Part 26.89. A copy of this notice will also be sent to the complainant (if any). The firm will become ineligible upon issuance of this notice, not before.

l. When a firm has been declared ineligible to participate in the ACP DBE Program, the following actions will be taken:
    1. The firm's name will be removed from the ACP DBE Directory.
    2. The Department's Construction and Programs & Contracts Divisions and the primary partners of the ACP will be notified, so that the following provisions of the regulations will be enforced:
        1. When a prime contractor has made a commitment to use the ineligible firm, or when the ineligible firm has been awarded a contract as a prime contractor, but a subcontract or contract has not been executed, the ineligible firm will not count toward the contract goal or overall annual goal. The prime contractor will be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so (Refer to Chapter XI, 4d).
        2. If a prime contractor has executed a subcontract with the firm before notification of ineligibility, the prime contractor may continue to use the firm and may continue to receive credit towards its DBE goal for the firm's work. In this case, or in a case where a prime contract has been let to a DBE that was later ruled ineligible, the portion of the ineligible firm's performance on the contract remaining after the notice of ineligibility was issued shall not count toward the overall annual goal, but will count toward the contract goal.
        3. Exception: If the firm's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, its participation on that contract will be counted toward the overall and contract goals.

7. APPEALS TO THE U.S. DEPARTMENT OF TRANSPORTATION

If a firm is denied certification or has its eligibility removed by the Department, the firm may make an administrative appeal to the DOT. The DBE firm must send a letter to the DOT within 90 days of the date of the Department's final decision, including information and

arguments concerning why the decision should be reversed. Pending DOT's decision on the appeal, the Department's decision on the firm's eligibility remains in effect.

Appeals should be sent to the following address:

Department of Transportation
Attn: Office of Civil Rights
1200 New Jersey Avenue, SE W-35
Washington, D.C. 20590

8. NOTICE GIVEN FEDERAL AUTHORITIES OF DENIAL OR REMOVAL OF CERTIFICATION

The name and address of each business and its principal officials which has been subject to denial or removal of certification by the Department, along with the basis for such action, will be provided to the appropriate federal agencies. This is accomplished by transmitting a copy of the letter advising the applicant of the Department's decision.

9. INELIGIBILITY COMPLAINTS

a. Any person may file a written complaint with the Department or the ACP alleging that a currently certified firm is ineligible and specifying the alleged reasons the firm is ineligible. The Department and/or the ACP are not required to accept an anonymous complaint or a general allegation that a firm is ineligible.

b. The complaint should include any information supporting the assertion that the firm is ineligible and should not continue to be certified. Complainants' identities must be kept confidential at their request. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in closure of the investigation or dismissal of the proceeding or hearing. The complainant's waiver of confidentiality must be in writing.

c. The Certification Committee will review the complaint and if additional information is needed, the Committee will request the Department's External EEO Coordinator to conduct a review of the firm, including:

   i. a document review of the certification file;
   ii. an on-site interview of the business principals and others with knowledge of the company, including employees;
   iii. an inspection of business documents and records to verify or clarify information furnished regarding the applicant's disadvantaged status, business size, ownership, control and independence; and
   iv. an inspection of the business' physical plant and job site activities. Project engineers may be contacted to obtain general information about the DBE's method of operating at the project site and to ascertain if the project engineer has concerns or suspects there may be irregularities.
   v. Additional information may be requested from the firm, as deemed necessary.

d. A report consisting of the results of the review will be prepared within two weeks of the completion date of the investigation.
e. If, based on the review, the Department determines there is reasonable cause to believe the firm is ineligible, procedures for removal of eligibility included in this Chapter, Part 6 will be followed.

10. EFFECT AND LIMITS OF CERTIFICATION

a. The ACP's certification of a business as a DBE attests only to the fact that every reasonable effort made by the ACP revealed that the applicant met the criteria for designation as a DBE insofar as business size, ownership, control, functional intent, and functional potential. Certification by the ACP in no manner suggests, implies, represents, or guarantees the actual or potential ability, dependability, or availability of the business to responsibly and satisfactorily commence and/or complete a particular contract or subcontract.
b. Contractors and others contemplating subcontracts or other ventures with DBEs are expected to use the same degree and standards of screening and selection when negotiating with these businesses as customarily used in similar negotiations with others. The contractors should require such evidence of financial and operating stability, past performance, current capability, availability, etc., together with such assurances and guarantees, as necessary, to ensure the DBE can and will perform the work involved.

11. EXCLUSION FROM PARTICIPATION IN FEDERALLY ASSISTED PROGRAMS PROHIBITED

a. Title VI of the Civil Rights Act of 1964, as amended, provides, in part, that no person in the United States shall, on the basis of race, color, sex, age, national origin, or disability, be excluded from participation in any program or activity receiving federal financial assistance.
b. Nothing in 49 CFR 26 or in the Department's certification process is intended to prevent any otherwise qualified individual, business, or joint venture from competing for and/or participating in any project, program or activity. The only effect of the certification process is that any person, business, or joint venture wishing to participate as a DBE must be certified and that contractors in fulfilling contract goals can receive credit only for utilizing certified businesses. Businesses which choose not to apply for certification, or businesses unable to meet fully the business size, prescribed ownership, and control criteria, may nevertheless bid on and participate in Department projects and activities, but will not be recognized or given credit as disadvantaged business enterprises in fulfillment of contract goals.

12. UNIFIED CERTIFICATION PROGRAM

The Department, Arkansas Airport Operators Association, and Little Rock Municipal Airport are operating under the approved ACP or Unified Certification Program. The ACP follows all certification procedures and standards of 49 CFR 26; cooperates fully with oversight, review and monitoring activities; and implements DOT directives and guidance concerning certification matters. (See Appendix C - Arkansas Unified Certification Program)

CHAPTER IV – DIRECTORY OF CERTIFIED DBEs

1. PURPOSE OF DIRECTORY

a. A directory of certified DBEs is maintained by the DBE Staff. The listing contains the name and basic identifying data of each DBE presently certified by the ACP as meeting the requirements of 49 CFR 26.

b. In addition to the business' name, address, phone number, fax number and contact person, the directory includes the types of work that the business has been certified to perform, including the Department's item code(s).

c. The directory includes highway construction contractors, various types of non-highway construction related firms, and consultants (engineering, planning, environmental, etc.). These firms are designated by an asterisk (*) and may participate on U.S. DOT-funded projects (FHWA, FTA, FAA, FRA). Normally, these firms do not perform a discrete portion of highway construction work. However, in any instance where services are performed as a distinct element, or as part of a distinct element of an approved contract or subcontract (e.g., Roadway/Bridge Construction Control, Furnish Field Office, Furnish Field Laboratory, etc.), the services may be credited toward DBE goals provided a commercially useful function is performed. Department approval of items to be credited is required.

d. Inclusion in the directory is not an endorsement or guarantee of the capability, dependability, or availability of any business listed. Inclusion assures only that the business has been certified as eligible and will, if employed on a Department project, serve toward fulfillment of contract goals (please note exceptions in Chapter III, 6l). The certified business must perform a commercially useful function in order to be credited toward contract goals.

2. MAINTENANCE OF DIRECTORY

a. The Department's DBE staff compiles, maintains and updates the directory from information obtained from the Certification Committee decisions and information provided by DBEs. The directory is updated approximately four weeks prior to each letting.

b. The Department currently makes copies of the directory available at no cost to bidders, contractors, and other interested parties to facilitate the identification of certified DBEs. The directory is also available on the Department's website at www.arkansashighways.com.

CHAPTER V – OVER CONCENTRATION OF DBEs

1. If ACP determines that certified DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, it will devise appropriate measures to address the over concentration and submit them to FHWA for approval.

2. Measures may include, but are not limited to, the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which the Department has determined that non-DBEs are unduly burdened. The Department may also consider varying its use of contract goals, to the extent consistent with 49 CFR 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

3. If the Department determines that there is over concentration, measures as stated immediately above will not be used until such are approved by the U.S. DOT. If such approval is obtained, the measures will become part of the Department's DBE Program.

CHAPTER VI – DBE GOALS

1. GENERAL

The Department's overall goal will be based on evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in federally-assisted contracts. Separate goals are set for funds to be expended in FHWA, FAA and FTA-assisted contracts. Pursuant to 49 CFR 26, the Department establishes overall annual goals expressed as a percentage of all federal-aid highway funds that will be expended in FHWA-assisted contracts, and all federal-aid transit funds (exclusive of funds used for the purchase of transit vehicles) that will be expended in FTA-assisted contracts, in the forthcoming federal fiscal year. Based on revisions to the regulation, the Department is required to establish an overall DBE goal every three years.

2. OVERALL GOAL – HIGHWAY FUNDS

a. The overall goal will be based on the availability of DBE firms relative to the availability of all contractors (i.e., certified DBEs, subcontractors who have competed on projects to the extent such information is available, and all contractors who have bid on projects).

b. A two-step process is required for setting the overall goal. The first step is to establish a base figure for the relative availability of DBEs. Data will be accumulated by federal fiscal year for use in analyzing the number of firms providing quotes and the dollar value of work performed by both DBE and non-DBE firms. The second step is to adjust the base figure based on factors including past participation and evidence from disparity studies.

c. The Department will estimate the percentage of DBE firms available to perform work on federal-aid projects relative to the available pool of all contractors. This percentage will be the baseline annual goal for DBE participation.

d. The available pool of all contractors will be derived from a master bidders' list maintained by the Department. This is a list of all firms attempting to participate on federally-assisted projects. When a prime contractor submits a formal bid on a project, the contractor is required to provide a list of all subcontractors, trucks and/or material suppliers that bid or provided quotes on any item in the project, regardless of whether or not the quotes were used in preparing the proposal.

e. In order to determine the proposed overall goal, adjustments may be made to the baseline goal considering circumstances affecting the contractors competing or changes in the volume and distribution of contract dollars. The Department will utilize information on the capacity of DBE and non-DBE firms and historical dollar volume of DBE participation in federal-aid contracts. Adjustments will be made for situations such as DBE firms which graduate from the DBE Program, DBE firms no longer eligible to participate in the program, and other factors as found in 49 CFR 26.45(d). If data is being used from years administered under prior regulations,

which includes anything before 2000, adjustments will be made to account for the means of counting participation toward goals under the new regulations (i.e., second-tier subcontracts with non-DBE firms, DBE prime contractors executing subcontracts with non-DBE firms, and other previously counted items no longer eligible for participation goals will be discounted).

f. Due to the fact that the federal-aid construction program and DBE participation are dynamic, the Department will monitor the data available on an ongoing basis. Every three years, the overall goal will be developed based on the latest data available and include consultation with minority, women and general contractors concerning the availability of DBE and non-DBE businesses, effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs.

g. If the Department fails to meet its overall DBE goal at the end of the Federal Fiscal Year (FFY), the Department will analyze the reasons for the shortfall and establish specific steps and milestones to correct the problems in order for the Department to meet its goal in the next FFY. The Department will submit its analysis and corrective actions plan to FHWA within 90 days after the end of the FFY.

3. ATTAINING THE OVERALL GOAL

a. The Department will meet the maximum feasible portion of the overall goal through race-neutral means of facilitating DBE participation. Upon determination of the proposed overall goal, the Department will determine what part of the goal should be met through race-neutral means. Race-neutral includes prime contracts awarded to DBEs through competitive bidding, subcontracts awarded to DBEs on projects without DBE goals, and subcontracts awarded to DBEs not used to meet a project goal. The remainder of the proposed overall goal which is not expected to be met through race-neutral DBE participation should be met through race-conscious means (i.e., setting DBE participation goals for individual contracts).

b. In addition, the Department will utilize the means prescribed by 49 CFR 26.51 to maximize the portion of the goal to be met through race-neutral DBE participation. Some means included in 49 CFR 26.51 are providing technical assistance and other services to DBEs; ensuring wide distribution of the DBE directory to prime contractors; and providing services to help DBEs develop and improve their businesses. These services are available through the Department's DBE Supportive Services Program.

4. PROJECT GOALS

a. As required by 49 CFR 26, the Department will meet that portion of the overall goal remaining after deducting the portion to be achieved through race-neutral means with race-conscious means. Race-conscious includes DBE goals on those federally-assisted projects with subcontracting opportunities.

b. The Programs and Contracts Division analyzes each federally-assisted highway construction project following the preparation of plans, specifications and engineering cost estimates. Each line-item of work in the estimate is evaluated for its potential to support DBE subcontracting. The results of such line-item analysis, plus the anticipated availability of DBEs capable of performing the work and the location,

type and size of the project, are the basis for prescribing a DBE goal and percentage value. The Programs and Contracts Division Head, Assistant Division Head, and Staff Project Development Engineer, and the Section Head – EEO/DBE will review this information and recommend the project goal before it is specified in the Special Provisions of the contract.

c. Contracts awarded to DBE contractors and subcontracts committed to DBE subcontractors in each letting will be tracked to determine the amount of the goal achieved through race-neutral and race-conscious means. This information will be made available to the Programs and Contracts Division to assist in determining the amount of race-conscious goals necessary to achieve the overall goal.

d. If, during the year, it is determined that the overall goal will be exceeded, contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that the Department will fall short of its overall goal, then appropriate modifications will be made in the use of race-neutral and/or race-conscious measures to best achieve the goal.

5. FTA AND CONSULTANT GOALS

a. The same standards outlined for highway construction goals are used to determine an appropriate goal for each contract, grant, or agreement. There are, however, minor administrative and technical variations in arriving at and expressing a goal for a construction type contract, as opposed to a grant or other type of agreement.

b. A construction-type contract is characterized by the precise definition of the work to be done, together with a relatively predictable commencement and completion time. It contains only those matters relating to construction, progress, and completion of the project. Design, engineering, administration, and numerous other concerns and activities that precede actual construction or are conducted apart from the actual project are not included in the contract.

c. A single grant or consultant agreement may cover such concerns as planning, design, engineering, administration, and other matters and may or may not include a construction-type project or contract(s). Thus, a grant, though ultimately as precise in requirements, is generally more diverse in content than a construction-type contract and, in many cases less predictable as far as duration, i.e., commencement and completion dates.

d. The methodologies used in arriving at and expressing contract and grant goals are as follows:

   i. Grants

      1. Collective goals for grants from each modal agency providing funds to the Department will be established and applied on a federal fiscal year basis. The federal agency concerned (FTA) will give approval for the goal established.

      2. To the extent feasible and as acceptable to the approving agency, the goal for a construction-type contract, which is a distinct component within a grant, will be determined in the same manner and by the same standards described for highway construction contracts.

3. Goals are set on a federal fiscal year basis. Therefore, progress, goal fulfillment, and compliance will be measured based on the federal fiscal year for all active grants.
4. Information on the number and dollar value of procurements from DBE and non-DBE firms and County Business Pattern data is analyzed to determine the availability of ready, willing and able DBE firms and the capacity of those firms. This analysis provides a base figure and is adjusted for DBE capacity to arrive at the overall goal.

ii. Other Forms of Contracts and Agreements

1. The Department will ensure that DBEs are provided a reasonable opportunity to compete for and to participate in other forms of contractual agreements not specifically defined in the preceding paragraphs.
2. Where feasible, i.e., according to the nature of work or services to be obtained, goals for DBE subcontracting will be made a provision of such agreements.

6. PUBLIC NOTICE OF GOALS

a. In accordance with requirements of 49 CFR 26, the Department will submit the proposed overall goal to FHWA or FTA, as applicable, for review every three years by August 1 of the third year.

b. The members of the DBE Advisory Committee will review the proposed goals and methodologies and provide their comments prior to the goals being publicly announced.

c. The Department will publish a notice announcing the proposed goals in such general circulation media, available minority-focused media and trade association publications deemed effective.

d. The notice will inform the public that the goals and methodologies for their establishment are available for inspection during normal business hours at the Department Central Offices. This information will be available for 30 days following the date of the notice and the Department will accept comments for 45 days from the date of the notice. The notice will contain the address to which comments may be sent and will state that the comments are for informational purposes only. Comments received from the public notice and involvement session will be included as an attachment to the annual goal setting methodology.

e. A letter will also be sent to all certified DBEs notifying them of the proposed goals and advising them that the supporting documentation is available upon request.

f. Community leaders and minority organizations will also be notified of the proposed goals. A copy of the reports concerning goal-setting methodologies will be sent, along with a cover letter indicating that appropriate personnel are available to discuss the goal-setting process.

g. A public involvement meeting will be held prior to the submittal the DBE goal.

CHAPTER VII – PROCEDURES TO ENSURE EQUITABLE OPPORTUNITIES TO COMPETE

1. ARRANGEMENT OF SOLICITATION TIMES, LETTING DATES, NOTICE TO CONTRACTORS, ETC.

a. Any individual or organization may subscribe to the Department's Notice to Contractors, which provides information on upcoming highway construction projects. All bidders, proposers, and other interested parties are given the same final date and time for filing proposals. If extension, postponement, or cancellation becomes necessary, all parties are notified.

b. In addition to direct notices sent, the Department makes the same information available to various organizations and agencies involved in DBE development to aid those organizations and agencies in identifying opportunities for participation of DBEs.

c. Other information of particular benefit to potential subcontractors is available free or, in some instances, at a nominal charge to cover printing and distribution costs only. Much of the information related to the Department's construction contracts is available on the Department's web site at www.arkansashighways.com. Such information includes the following:

   i. Letting schedule
   ii. Contractor Notices
   iii. Contractor mailing list
   iv. Four-year weighted averages
   v. Standard Specifications for Highway Construction
   vi. Names and addresses of prospective bidders (i.e., names of businesses which have taken out plans and proposals for bidding purposes on a particular project)
   vii. Name of apparent low bidder and/or name of successful bidder on a particular project
   viii. As read bids and bid tabulations
   ix. Electronic Bidding Software

2. TECHNICAL ASSISTANCE AND SUPPORTIVE SERVICES

A major objective and task of the Department's entire DBE Program is to reduce, overcome, or eliminate barriers to increased and successful participation of DBEs in Department projects and activities. Some of these barriers are eased or eliminated by administrative means, modified procedures, etc. Other barriers are found in the unfamiliarity and/or inexperience of some DBEs in the public bidding process. To meet this latter type of barrier, the Department provides technical assistance to DBEs through the DBE Supportive Services Program (DBE/SSP). Refer to Appendix A for information regarding the work plan for the DBE/SSP.

3. INFORMATION PROGRAMS

a. The Department makes every effort to maintain free and open communication with the public regarding its programs and activities and to provide information to those seeking to participate in such programs and activities.

b. Because of the complexity of public bidding and contracting and the general unfamiliarity and/or inexperience of many DBEs in the public contracting field, Department and DBE/SSP staff use a "one-on-one" or small target group approach to inform DBEs. This approach assures thorough coverage of the basics and addresses the critical need of the individual DBE. In addition, it provides Department and DBE/SSP staffs with a better understanding of the true problems facing a particular DBE and what is required to overcome those problems.

c. The Department's principal channel for the flow of information to DBEs is through its Supportive Services Program.

CHAPTER VIII – MINORITY AND WOMEN-OWNED BANKS

1. **USE BY THE STATE**
   The Department identifies any banks which are owned and controlled by socially and economically disadvantaged individuals, ascertains the services offered, and utilizes them to the greatest feasible extent.

2. **USE BY CONTRACTORS**
   The Department will encourage bidders and contractors to consider the services offered by banks in their communities which are owned and controlled by disadvantaged individuals, and to utilize such services whenever feasible and beneficial. Banks owned and controlled by disadvantaged individuals will be listed in the DBE Directory.

3. **CREDIT TOWARD GOALS**
   At the present time, there is no provision which allows utilization of banks owned and controlled by disadvantaged individuals to be credited toward goal requirements of 49 CFR 26.

CHAPTER IX – DETERMINATION OF SUCCESSFUL BIDDER AND AWARD OF CONTRACT

COMPETITIVE BID PROJECTS WITH A DBE GOAL

1. Bid openings will be conducted in accordance with the Department's established procedures.
2. For contracts having DBE goals, the apparent successful bidder shall submit to the Department (either with the bid or within 10 calendar days after the conditional award of the contract) the proposed participation by Disadvantaged Business Enterprises. This information may be submitted on the form provided in the proposal (DBE Participation form) or other form specified by the Commission. The bidder shall list the names and addresses of the DBE subcontractors to be used to satisfy the percentage goal. (The DBE's certification by the Department must be fully in effect and without reservation at this time.) The bidder shall also provide an itemized description of the work each DBE subcontractor is to perform, the dollar value of each item to be included in the DBE subcontract, written documentation of the bidder's commitment to use a DBE subcontractor to meet a contract goal, and written confirmation from the DBE that it is participating in the contract as provided in the contractor's commitment. An apparent low bidder intending to use a DBE supplier, manufacturer, lessor, or non-construction service provider in or toward fulfillment of a contract goal shall indicate such on the DBE Participation form, giving the name of the supplier, lessor, etc.; type of service; total value of service; and creditable value of the service.
3. Only the value of work actually performed by a DBE will be counted toward the DBE goal. If the apparent successful bidder is a certified DBE, the bidder must propose participation in the contract by DBEs to achieve the goal. Work actually performed by the DBE bidder will be credited toward the goal. If a DBE subcontractor is proposed to fulfill a goal, only the work actually performed by the DBE subcontractor will be counted toward the goal. Any work the DBE subcontractor further subcontracts to a non-DBE firm will not count toward a goal, but work subcontracted to another DBE will.
4. The overall DBE goal shall be credited for the federal share of work performed by DBEs on the contract.
5. After a conditional award is made and the apparent successful bidder has submitted the required DBE information, the Department will determine the adequacy of the bidder's efforts to meet the contract goal, as outlined above. If those requirements are met, the conditional status will be removed and the contract will be forwarded to the bidder for execution.
6. An apparent successful bidder who cannot meet the percentage goal, shall document and submit the steps taken to obtain the required DBE participation as good faith efforts. This documentation may be submitted with the bid or within ten (10) calendar days after conditional award of the contract. A description of the documentation necessary is included

at Chapter XI, Item 4, d. and e. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. **Only those efforts made by the bidder to obtain DBE participation prior to the letting will be considered in the evaluation of good faith efforts.** If the Department accepts a good faith effort, the contractor is expected to continue efforts throughout the life of the project to attain the DBE participation goal and to document such efforts.

7. If it is determined that the goal was not met or a good faith effort made, the bidder will be notified and provided an opportunity for administrative reconsideration. As part of the reconsideration, the bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written request for administrative reconsideration must be submitted within two days to the Deputy Director and Chief Engineer, P. O. Box 2261, Little Rock AR 72203, (501) 569-2214.
    a. The decision on the reconsideration will be made by the Deputy Director and Chief Engineer and the bidder will have the opportunity to meet with the Deputy Director and Chief Engineer in person to discuss the issues.
    b. The bidder will be provided a written decision on the reconsideration explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration is not administratively subject to appeal to the U.S. Department of Transportation.
8. If the bidder to whom the contract is conditionally awarded refuses, neglects, or fails to meet the DBE goals or to furnish acceptable documentation of efforts to meet these goals, the bidder will not be provided a contract for execution, and the proposal guaranty filed with the bid shall become the property of the Commission, not as a penalty, but as liquidation of damages to the Department's DBE Program.
9. The DBE staff with assistance from the Construction Division, if necessary, will review each DBE Participation form to ensure each DBE listed is currently certified to perform the items of work indicated, the negotiated price is reasonable, and the value of the work to be performed fulfills the prescribed contract goal.
10. Determination of apparent low bidder, acceptability of offered price, and/or rejection of bids and readvertisement will be governed by existing standards of the Department. All bid conditions having been met, the Department will proceed with award of the contract according to normal procedures.
11. The contractor's fulfillment of DBE obligations and commitments will be monitored throughout the life of the contract by review of requests to subcontract, compliance reviews conducted on the project, and reports of actual payments to DBEs.

CHAPTER X – CONTRACT PERFORMANCE

1. COUNTING AND CREDITING DBE PARTICIPATION TOWARD GOALS

a. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal.
b. Only Department-certified DBEs may be utilized in fulfillment of contract goals.
c. The entire amount of that portion of a contract or subcontract that is performed by the DBE's own forces will be counted, including supplies and materials purchased or equipment leased by the DBE (except supplies, materials and equipment the DBE subcontractor purchases or leases from the contractor or its affiliates).
d. Fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, count toward the goal, provided those fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.
e. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.
f. Only expenditures to a DBE contractor that performs a commercially useful function may be counted toward a DBE goal.
g. The contractor may count toward the DBE goal only payments made to DBEs for work or services performed or material furnished after the DBE has been approved, either on the list in the contractor's original participation submittal or later as a substitute, and an executed subcontract or purchase order has been acknowledged by the Department. Payments made to a DBE for work, services, or materials performed or furnished prior to approval and acknowledgment of a subcontract will not be counted toward the DBE goal.

2. COMMERCIALLY USEFUL FUNCTION

a. A commercially useful function is considered to be performed when a DBE is responsible for execution of the work of a contract and carries out the responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material. To determine whether a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other relevant factors shall be evaluated.
b. No credit will be given toward the DBE goal for any subcontracting arrangement which is contrived to artificially inflate DBE participation. Of particular concern is the interjection of DBE middlemen or passive conduits which are inconsistent with standard industry practices or which serve no commercially useful function and

arrangements in which a DBE subcontractor is acting essentially as a broker. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. Regardless of whether an arrangement between the contractor and a DBE represents standard industry practice, where such an arrangement erodes the ownership or control of the DBE or does not meet the commercially useful function requirement, the contractor shall receive no credit toward the DBE goal.

c. Consistent with normal industry practices, a DBE may enter into subcontracts. A DBE subcontractor will be deemed to have performed a commercially useful function and the contractor will be allowed DBE goal credit for the work actually performed by the DBE when a DBE subcontractor performs at least 30 percent of the subcontract. This work shall be performed by the DBE's normal workforce.

d. Determinations of commercially useful function
    i. When it is determined or presumed that a DBE is not or would not be performing a commercially useful function and the services offered by the DBE are therefore deemed not creditable toward contract goals, the DBE may present evidence to the Department to rebut that presumption.
    ii. The Department's decision on the rebuttal is subject to review by the U.S. Department of Transportation. During the period pending decision on such rebuttal, the Department's determination regarding non-eligibility for contract goal credit remains valid, and the filing of the rebuttal shall in no manner serve to delay the letting or award of any contract.

e. Should the contractor fail to meet the DBE goal prescribed in the special provisions, the contractor's good faith efforts will be evaluated. If the contractor's good faith efforts are unacceptable, a sum in like amount to the unmet portion of the goal will be withheld from the final pay estimate.

3. COUNTING EXPENDITURES TO DBEs FOR PROCUREMENT OF SUPPLIES, MATERIALS AND SERVICES TOWARD CONTRACT GOALS

a. A contractor may count toward a DBE goal those expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided the DBEs assume the actual contractual responsibility for the provision of the materials and supplies.

b. To be counted toward fulfillment of a contract goal, the following applies:
    i. Expenditures must be to a DBE currently certified by the Department as a bona fide DBE in accordance with Chapter III of this program and performing as an independent entity.
    ii. The DBE must perform a commercially useful function consistent with normal industry practice for which the credit is given. The DBE must be principal party and signatory to the agreement and not merely the salesperson or agent in the employ of the supplier, manufacturer, or service provider.
    iii. The work or service provided by the DBE must be clearly identified with a federally assisted project and as a discrete portion of the contract work, not simply a service necessary as part of the contractor's general business overhead.

c. Capital expenditures for tools, equipment, vehicles, field office furniture, and similar property items, even though such items are used on the project and purchased from DBEs, are not creditable toward contract DBE goals. Lease expenditures may be eligible for credit toward contract goals (see paragraph 3e of this Chapter).

d. Expenditures for materials and supplies obtained from DBE suppliers and manufacturers for use in the contractor's general operations are not creditable in whole or part toward contract goals, even though a portion of such items may be used in the administration and/or execution of a project. Examples in this category of expenses are stationary and office supplies, janitorial supplies, health and safety supplies, salvageable and reusable signs, bulletin boards, portable buildings, etc. This does not prohibit the contractor from subcontracting out the "Signs and Barricades" items of a contract to a DBE, in which event the subcontract would count toward the contract goal.

e. Expenditures for lease of a particular piece or pieces of equipment from DBEs for exclusive use on the project for which DBE participation is to be claimed may be counted 60 percent toward contract goals, provided the DBE actually has ownership or control of the equipment and is considered a regular dealer.

f. Hauling Services

   i. Expenditures to and/or use of DBEs to perform hauling services to the particular project will be counted in the following manner toward contract goals, if these services are performed under an agreement (purchase order, subcontract, etc.) between the contractor and the certified DBE providing these services on a specific project.

   ii. The DBE must be responsible for the management and supervision of the entire trucking operation for the items on its subcontract or purchase order, including scheduling, providing sufficient trucks to accomplish the haul, and coordinating the work with the contractor. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

   iii. The DBE must own and operate at least one fully licensed, insured, and operational truck used on the project when hauling operations are in progress.

   iv. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE will receive credit for the total dollar value of the transportation services attributable to no more than twice the number of trucks owned by the DBE and leased from another DBE firm. Long-term lease arrangements are an acceptable form of "ownership."

   v. DBEs that haul materials, which are not included in an approved materials estimate, to a contractor's stockpile and are not immediately incorporated into the project may be paid by the prime contractor or first-tier subcontractor, as the case may be, prior to the material being incorporated into the project. However, the prime contractor will not receive payment from the Department until the materials from the stockpile are incorporated into the project. The amount credited toward the DBE goal will be limited to the final contract item amount for the project.

g. Lease Agreements

i. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

ii. The DBE may also lease trucks from a non-DBE firm or owner-operator. The total value of the transportation services provided by the non-DBE firm or owner-operator will be credited to the DBE so long as the number of trucks provided by the non-DBE or owner-operator does not exceed the number of trucks owned by the DBE or leased by the DBE from other DBE firms. For trucks leased by the DBE in excess of the total number of trucks owned by the DBE or leased by the DBE from other DBE firms, the DBE will receive credit only for the fees or commissions it receives as a result of the lease arrangements for the excess trucks.

iii. The DBE may lease trucks under a long-term lease arrangement from independent equipment leasing companies. An "independent equipment leasing company" is defined as a company that leases equipment to the public. A "long-term lease" is defined as a twelve-month or longer lease period. The drivers, fuel, minor maintenance responsibility, and full control of the leased trucks must rest solely with the DBE owner, and this must be stipulated in the lease agreement. Drivers must be employees of the DBE, subject to tax withholding, worker's compensation requirements, unemployment, etc. Leased trucks must display the name and identification number of the DBE. The DBE will receive full credit for the full value of the transportation services provided by trucks leased and operated in this manner. A DBE supplier (regular dealer) must utilize this type of lease arrangement to supplement distribution equipment owned by the DBE firm to receive credit for transportation services.

iv. All lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. A copy of each lease agreement must be provided to and approved by the Resident Engineer before the truck begins hauling. The agreement must reflect the name of the lessor, cab card registration numbers of all leased trucks, the description of the truck(s), the amount and terms of the lease and method of payment (hour, ton, cubic yard, or number of loads hauled), and, if owner-operator, his/her Social Security number. The lease agreement(s) will be maintained in the office of the Resident Engineer.

v. For more information, refer to XV-1, Monitoring Procedures.

vi. The apparent low bidder should include only the value of the transportation services to be performed by DBEs, plus the value of the fee or commission paid to non-DBE firms for hauling services.

vii. Counting participation for hauled material is determined by application of paragraph 3f.

h. Suppliers, manufacturers, and other providers of services

i. A contractor may count 100 percent of the expenditures to a DBE manufacturer. For purposes of this program, a "manufacturer" is a business that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

ii. The contractor may count 60 percent of its expenditures to DBE suppliers that are regular dealers. A "regular dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract for incorporation into the work are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the business must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question. A trucking firm or owner-operator will not be considered a supplier, nor will a supplier be considered a trucking firm.

iii. A regular dealer in such bulk items as asphalt, steel, cement, gravel, petroleum products, or stone must own or lease, and operate a refinery, pit, quarry, concrete plant, or other such facility that sells materials to the public. A person or firm may be a regular dealer in petroleum products or asphalt binder without owning, operating, or maintaining a place of business where these items are bought, kept in stock, and regularly sold to the public, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

iv. In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must also fabricate the pipe. Metal or concrete pipe is specialty pipe which is project-specific and is inspected during the manufacturing process. This arrangement provides for no warehousing of metal or concrete pipe, and essentially requires the manufacturer to be the supplier. Merely ordering pipe from the fabricator, and in turn selling it to contractors is not consistent with normal industry practice. Contractors normally purchase pipe directly from the manufacturer, thus eliminating the middleman. Supplying metal or concrete pipe is viewed as brokering, and is considered inconsistent with DBE program requirements.

v. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

vi. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, will count toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. None of the cost of the materials and supplies will count toward the goal, however.

vii. Credit will be allowed toward a DBE goal for 100 percent of the amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a federally-funded contract, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

i. Identify on payment logs and proof of DBE utilization

i. The contractor will be required to furnish the Department, by estimate period, a report certifying to the actual payments made to DBE contractors, suppliers, manufacturers, and/or non-construction services in fulfillment of the DBE goal. These certificates are to be submitted by the contractor to the Resident Engineer and entered into the Subcontractor Payment Database by residency staff.

ii. The contractor will be required to furnish the Department a final report certifying to the total actual payment(s) made to DBE subcontractors, suppliers, manufacturers and/or non-construction services rendered by DBEs in fulfillment of the contractor's goal commitment on the project. This certificate is to be submitted by the contractor through the Resident Engineer. It will be attached to the original copy of the final estimate. The certificate also requires an explanation from the contractor for failure to meet the specified goal percentage.

4. SUBSTITUTION OR REPLACEMENT OF DBEs

a. Substitution or replacement of a DBE will only be permitted after award and execution of a contract.

b. The DBE subcontractor or an approved substitute DBE can be terminated only with the Department's written consent for good cause that includes the following; the DBE fails or refuses to execute a written contract; fails or refuses to perform the work of its subcontract consistent with normal industry standards. Good cause does not exist where failure of refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime contractor; fails to meet reasonable, nondiscriminatory bond requirements; bankrupt, insolvent, or exhibits credit unworthiness; ineligible to work because of suspension and debarment proceedings; not a responsible contractor; voluntarily withdraws from the project and provides written notices; ineligible to receive DBE credit for the type of work required; owner dies or becomes disabled and is unable to complete its work; or documentation of good cause that compels termination. The prime contractor must give written notice of the proposal, including the reason for the request to the DBE with a copy to the Department. The DBE has up to five days to respond. The notice period may be reduced if required by public necessity (safety).

c. If a DBE subcontractor is unable or unwilling to perform the work of the subcontract, the contractor must make good faith efforts to find another DBE to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work (not necessarily the same work) under the contract as the terminated DBE, to the extent needed to meet the goal established in the contract.

d. The contractor must submit to the Resident Engineer a written plan to achieve DBE participation equal to or exceeding the goal or documentation of good faith efforts.
e. If a contractor fails to comply with this section, appropriate contract sanctions may be taken, including but not limited to: holding of progress payments, refusal to issue proposals, suspension of work on the project, or suspension of pre-qualification.
f. If at the completion of the project, the contractor has failed to meet the DBE goal and has not demonstrated good faith efforts to meet the goal, the contractor will be assessed liquidated damages for the difference between the contract goal and the actual DBE participation achieved. The Department shall deduct the amount from subsequent progress or final estimate payments. In the event insufficient amounts remain for the deduction of the damages, the Department may make a claim against the contractor's bond, suspend the contractor, withhold further proposals, or suspend pre-qualification.
g. In those instances when the goal is not met due to a change in quantity which occurs through no fault of the contractor but due to Department decisions, change orders or design, a brief explanation must be made by the contractor on the Final Certification of Payments to DBEs prior to submission to the Resident Engineer. The Resident Engineer will review the explanation and, if satisfactory, will concur.

5. PROMPT PAYMENTS

a. The contractor shall pay all subcontractors their respective subcontract amount within 10 calendar days after the contractor receives payment from the Department. The payment amount shall be according to the terms of the subcontract, except that the contractor shall not require or withhold a retainage in excess of 10 percent of the amount due to the subcontractor. Amounts withheld as retainage from subcontractors must be returned within thirty days after the subcontractor's work is satisfactorily completed, whether the contractor's work is complete or not. The term "satisfactorily completed" for the purpose of this prompt return of retainage provision is defined as when: 1) the Engineer finds the subcontractor's work completed in accordance with the plans and specifications; 2) any required paperwork, including material certifications, payrolls, etc., has been received and approved by the Engineer; 3) the subcontractor does not have past due balances with suppliers for work associated with this project; and 4) the Engineer has determined the final quantities for the subcontractor's portion of the work. Delay or postponement of payment to a subcontractor may only be affected after the contractor has established good cause and received written approval from the Engineer. If the contractor fails to pay the subcontractors within the required periods, all or any portion of subsequent payments due the contractor may be withheld by the Engineer. Internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed portions of the contract will be provided.
b. Contractors must include in their subcontract agreements notice to subcontractors of their right to prompt payment and return of retainage, and provisions that require the subcontractor to pay second tier subcontractors as provided above, with the same restrictions on withholding.
c. Failure to comply with the prompt payment provision of the contract may result in sanctions under the contract, including: refusal to issue proposals, liquidated

damages, suspension of work on the project, holding of progress estimates, suspension of pre-qualification.

d. Any delay or postponement of payment among the parties may take place only for good cause, with the Department's written approval. The explanation from the contractor must be made in writing to the Engineer.

CHAPTER XI – PROCEDURES TO ENSURE COMPLIANCE BY CONTRACTORS, SUBCONTRACTORS, AND OTHER SUB RECIPIENTS

1. **STATEMENT REQUIRED IN ALL FEDERALLY-ASSISTED CONTRACTS, SUBCONTRACTS AND OTHER CONTRACTUAL AGREEMENTS (46 CFR 23.13)**
   a. Each contract the Department signs with a contractor (and each subcontract the contractor signs with a subcontractor) will include the following assurance:
      i. It is the policy of the Arkansas State Highway and Transportation Department (Department) to ensure nondiscrimination in the award and administration of Department contracts and to create a level playing field on which DBEs can compete fairly. Consequently, the following applies to the contract, the DBEs listed in the contractor's DBE Participation submittal, the DBEs that are later approved as substitutes for those listed to satisfy the contract goal, and DBEs performing on a contract, but which are not used to fulfill a portion of a DBE goal.
      ii. The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, disability, age, 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 federally-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 Department deems appropriate.
   b. The foregoing clauses are included in the Department's latest edition of the Standard Specifications for Highway Construction, Section 103.08, as amended, and made a part of each contract requiring DBE participation (see Appendix E).

2. **ADDITIONAL STATEMENT REQUIRED IN ALL DEPARTMENT OF TRANSPORTATION (DOT) FINANCIAL AGREEMENTS**
   In addition to the preceding statements relative to policy and DBE obligation, all financial agreements, grant approvals, project approvals, etc., between the DOT and the Department shall contain the following statement: "The Department complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination programs and activities receiving federal financial assistance and therefore does not discriminate on the basis of race, color, national origin, disability, age, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR 26. The Department shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Department's DBE Program, as required by 49 CFR 26 and 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 Department of its failure to carry out its approved program, DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)." This statement is a part of the Project Agreement forms completed for each project approved by FHWA.

3. DEPARTMENT-REQUIRED CONTRACT PROVISIONS

a. All proposals and contracts in which DBE participation is prescribed as a condition to award of contract will contain a Special Provision to prescribe the actual percentage goal to be awarded DBEs. This Special Provision sets forth the percentage goal established for the contract and also includes a requirement for the contractor to complete a Certificate of Payments to DBEs form and submit to the Resident Engineer within 35 calendar days following the end of each estimate period. A Certificate of Final Payments to DBEs must be completed at the completion of the project to track amounts paid to each DBE.

b. The proposal/contract will contain the DBE Participation form. By signing the proposal and completing the DBE Participation form, the bidder gives written commitment to meet, exceed, or demonstrate good-faith efforts to meet or exceed goals and to comply with all other requirements of the contract. The DBE firm(s) named by the contractor to fulfill the goal must certify on the form that the firm will perform as shown. A copy of Section 103.08 of the Standard Specifications, current edition, as amended, and samples of the Special Provisions are included as Appendices D - F.

c. The proposal/contract for all federal-aid contracts will contain a bidders list. The bidder is requested to complete the bidders list by listing every subcontractor, material supplier, or trucking firm that bid or provided quotes on any item on the project, regardless of whether the quotes were used in preparing the bidder's proposal or not. Information to be shown includes the firm's name, address, and whether the firm is a DBE or non-DBE. The data collected from each contractor along with information on each contractor submitting a proposal for a project, will be utilized in compiling a master bidders list for the Department, as required by 49 CFR 26. If the Department determines that bidders are not providing the information on a voluntary basis, the submission of the information may be made a requirement with possible consequences for non-compliance being: forfeiture of bid bond, withholding of proposals for future projects, or rejection of the bid.

d. The FHWA 1273 will be included in all Federal aid contracts.

4. SUBCONTRACTING AND APPROVAL TO SUBLET

a. In addition to the bidder/contractor's commitment made prior to award of a contract, the contractor is required to submit to the Department any portion(s) of the contract the contractor will sublet, identifying the specific portion(s) or item(s) to be sublet, the agreed subcontract price, and the name of the proposed subcontractor. Acknowledgment of the subcontract must be obtained from the Assistant Chief Engineer - Operations, before any subcontractor is allowed to commence any work on the project.

b. The Department reviews each subletting request to ensure that the proposed subcontract is in accordance with Department standards and in compliance with contract provisions. Where the particular contract contains specific goals for DBE participation, the sublet request will be reviewed for evidence of fulfillment of the contractor's DBE participation commitment on which the contract award was based.
c. In reviewing a sublet request for fulfillment of DBE participation, the Department will note and verify, as a minimum, the following:
    i. Review the request to subcontract and determine if the contractor has committed the items to be subcontracted to DBE participation in the contract.
    ii. If the items have been committed to DBE participation in the contract, the contractor must honor this commitment or document that the DBE designated in the contract for the item(s) is unable or unwilling to perform. Adequate documentation is a letter from the DBE designated to perform the work stating the reason the DBE cannot perform. If unable to obtain such a letter from the DBE, the contractor will be required to fully explain, in writing, the reason the DBE is deemed unable to perform, efforts made by the contractor to get the DBE to perform, and other relevant facts. For additional information, refer to page X-6 (b).
d. When a DBE is unable or unwilling to fulfill the subcontract, the contractor will make good faith efforts to find another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the contract. The substitute DBE or any other person will not be permitted to commence work until satisfactory evidence of the original DBE's inability to perform and evidence of good faith effort to replace with another DBE, as appropriate, is submitted to and approved by the Department. The contractor will not perform the work with its own workforce in lieu of subcontracting without approval of the Department. The 49 CFR 26, Appendix A, describes the scope and nature of "good faith efforts" as including, but not limited to, the following:
    i. Soliciting through all reasonable and available means (e.g., attendance at a pre-bid meeting, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
    ii. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the contractor might otherwise prefer to perform these work items with its own forces.
    iii. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
    iv. Negotiating in good faith with interested DBEs.
        1. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the

work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the name, address, and telephone number of DBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for DBEs to perform the work.

2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

v. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

vi. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Department or contractor.

vii. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

viii. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

ix. In determining whether a bidder has made good faith efforts, the Department may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, there is the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, this may be viewed, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

e. In making determinations of good faith efforts, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder made. The efforts employed should be those that one could reasonably expect a bidder to

take if the bidder was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.

f. Should the contract not have DBE goals or the items to be sublet are not committed to DBE participation, the contractor's sublet request will be reviewed by the Construction Division for compliance with other Department requirements.

5. SUBRECIPIENTS - CONTRACT AWARD AND ADMINISTRATION OF PROJECTS UNDER DEPARTMENT JURISDICTION

a. Subrecipients, most generally cities and counties, which serve as the contracting agency for projects funded by the Surface Transportation Program, the Highway Bridge Replacement and Rehabilitation Program, and similar programs in which funds "flow through" the Department to the local unit, are required to follow the Department's contract award procedures when engaged in projects over which the Department has jurisdiction. This holds true even if the subrecipient is also a direct and/or primary recipient of DOT funds under another program not subject to Department scrutiny and thereby is required to have its own DBE Program pursuant to 49 CFR 26. The subrecipient's assignment of contract goals, its project advertising, its bid letting and contract award procedures, and its subletting procedures are subject to the Department's approval, whenever the project is under Department jurisdiction.

b. Forms and contract documents used by the subrecipient in administration of DBE contract matters in the situation(s) outlined above shall be similar in format and content to those used by the Department.

c. The DBEs used by the subrecipient in fulfillment of requirements of contracts over which the Department has jurisdiction must be Department-certified.

6. COOPERATION

All participants in the Department's DBE Program, including, but not limited to DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with federal or state compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved, including but not limited to findings of noncompliance, denial or removal of certification, withholding of payments, suspension or debarment.

CHAPTER XII – PROCEDURES TO REQUIRE IDENTIFICATION OF DBEs PRIOR TO CONTRACT AWARD

1. DEPARTMENT PROCEDURES

Procedures requiring that bidders identify participating DBEs prior to award of the contract are thoroughly detailed in Chapter IX and Appendix F.

2. EVALUATION OF BIDDER'S SUBMITTAL

Information submitted by the successful bidder identifying DBEs to be used in performance of the contract in fulfillment of the contract goal is reviewed by the DBE staff, with the assistance of Construction Division personnel (if necessary). The submittal is reviewed to determine that the DBEs named are Department-certified and that the type, quantity and value of the work to be performed will fulfill the prescribed contract goal. A report is given to the Commission recommending approval or disapproval of contract award, which considers the sufficiency of the bidder's effort to fulfill the contract DBE requirement.

CHAPTER XIII – MAINTENANCE OF RECORDS AND REPORTS

RECORDKEEPING SYSTEM

a. In order to monitor the progress of the DBE Program, the Department has developed a recordkeeping system that identifies and assesses DBE contract awards, contractors' progress in achieving DBE subcontract goals, and other DBE affirmative action efforts. These records are maintained by the Construction Division and the DBE Program staff.

b. Specifically, the Department maintains records showing:
   i. The procedures followed by the Department, as set forth in this Program, to identify and assess DBE contract awards and progress in achieving prescribed goals;
   ii. The amount paid to each DBE subcontractor by a contractor on an estimate basis; and
   iii. The amount paid to each DBE subcontractor by a contractor based on the "Certificate of Payment" obtained at the conclusion of each project.

c. The Department will maintain a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

d. Contractors and DBE subcontractors must maintain records and documentation of payments to DBEs for three years following performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Department or DOT.

e. Comparisons of contract payments to DBEs will be made with DBE Participation forms to ensure adequate progress toward meeting the project goal is being made.

f. Each year, the Department will update the master bidders list by obtaining information on all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list in calculating overall goals.
   i. The bidders list will consist of all contractors submitting proposals for projects and subcontractors, suppliers and trucking firms providing quotes to bidders.
   ii. Information on firms submitting proposals for projects will be obtained from the proposal holders list and prequalified contractors list.
   iii. The names, addresses, and DBE or non-DBE status of each firm providing quotes to a bidder will be collected by requiring bidders to submit the information on the form included by the Department in each proposal, prior to being issued proposals for subsequent lettings.

g. DBE Program records are available for review and inspection by authorized agency officials.

h. Information that may reasonably be considered as confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with federal,

state and local law. The Arkansas Freedom of Information Act (FOIA) is one of the most all-inclusive open records Acts in the nation. Under the FOIA, a person can inspect and obtain copies of all "public records," unless the law provides otherwise. The General Assembly stated its specific intent to exempt eleven categories of information from disclosure in the FOIA, among which is the provision that exempts "files which, if disclosed, would give advantage to competitors or bidders." Therefore, based on Arkansas Supreme Court rulings, it is the Department's legal opinion that the FOIA will not require the release of financial or proprietary information that might give advantage to competitors or bidders. Notwithstanding any contrary provisions of state or local law, the Department will not release personal financial information submitted in response to the personal net worth or bidders list requirements to a third party (other than DOT) without the written consent of the submitter.

i. A report entitled "Uniform Report of DBE Awards or Commitments and Payments" is prepared by the Department is submitted to FHWA and FTA. This report includes the awards/commitments made during the reporting period, broken down by ethnicity, gender and actual payments on contracts completed.

CHAPTER XIV – DBE SET-ASIDES

1. **SET-ASIDES PURSUANT TO 49 CFR 26**
   a. As used in 49 CFR 26, the term "set-aside" refers to an arrangement in which a contracting agency sets a contract aside and permits no one but DBEs to compete for the contract. Firms other than DBEs are not eligible to bid. The use of set-asides has never been required by federal regulations and has been utilized under very limited circumstances.
   b. Set-aside contracts for DBEs on DOT-assisted contracts subject to 49 CFR 26 will not be used except in limited and extreme circumstances when no other method could be reasonably expected to redress egregious instances of discrimination.

2. **FORCE ACCOUNTS, NEGOTIATED CONTRACTS, AND OTHER METHODS OF NON-BID PROCUREMENT**
   a. Force accounts, negotiated contracts, and other forms of procurement not requiring competitive bidding are governed by prescribed procedures and by regulations applicable to the particular procurement method which the Department follows.
   b. Department administrators and others responsible for selection of businesses and/or individuals to perform work or provide services not subject to open competitive bidding are accountable for ensuring that qualified and identified disadvantaged business enterprises are afforded ample opportunity to submit quotations, proposals, or other appropriate offerings for the work or services to be provided.

CHAPTER XV – PROJECT LEVEL MONITORING

1. COMMERCIALLY USEFUL FUNCTION

The regulations require DBEs to perform a commercially useful function in the work of the contract. A DBE is considered to have performed a commercially useful function when it is responsible for execution of the work of a contract and carries out the responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering material, installing (where applicable) and paying for material. The contractor is required to complete a DBE Participation form to designate DBEs to be used to fulfill the goal on the contract and the DBE must certify on the form that it will perform the work listed. The DBEs listed on this form must perform the work proposed unless prior written approval has been obtained from the Department. Details on commercially useful function are provided in Chapter X, Part 2.

2. ENFORCEMENT

Project personnel are responsible for enforcing DBE contract provisions with the same vigor as all other contract provisions. The DBE Participation form should be reviewed by project personnel to familiarize themselves with the DBEs listed and the work they are to perform on the project. Project personnel will monitor whether the DBE is performing a commercially useful function and what assistance, if any, the contractor or any other contractors are providing to DBEs. They will observe contractor and DBE activities on projects during construction and report any irregularities or questionable practices concerning DBE operations to the Resident Engineer (RE) for action. REs should notify the District Construction Engineer, State Construction Engineer, and EEO/DBE Section Head of any problems relating to DBE firms.

3. MONITORING PROCEDURES

The following procedures have been developed as a means for Department field personnel to monitor compliance by contractors with DBE regulations:

a. The RE's EEO Field Inspector/Labor Compliance Officer is responsible for reporting irregularities between the contractor's DBE commitments and the actual control and performance of subcontractor DBEs at the job site. Therefore, this individual should conduct a job site inspection at the start of work by a DBE. During this inspection, it should be determined if workers are full-time employees of the DBE and equipment is owned by the DBE. A DBE should not be allowed to use employees or equipment of another company without prior approval by the Department. The RE may give approval for the DBE to use another contractor's employees or equipment for temporary use with documentation in the RE's diary. Approval of these types of arrangements should only be for emergency situations where lack of personnel or

equipment would impose an unreasonable hardship on the DBE. An example would be an equipment breakdown during a concrete pour.

b. If a DBE desires to use equipment owned by another company or contractor in normal circumstances, the agreement for such usage must be a written lease agreement or purchase order. The RE will review the agreement and, if signed by both parties and otherwise in order, may give verbal approval with documentation in the diary. Continued or repetitive use of another contractor's personnel or equipment for a significant portion of a DBE's work on a project may be an indication that a commercially useful function is not being served.

c. In addition to monitoring the DBE's construction activity, occasional reviews should also be made of delivery tickets, invoices, and similarities between the DBE and other contractors in payroll format and personnel. This will enable project personnel to determine irregularities that may exist in the relationship between the DBE and contractor.

d. The RE's personnel should monitor payments made by the contractor to the DBE to verify that payment is made within ten days after the contractor receives payment from the Department. Contractors are also required to pay DBEs the amount of any retainage withheld upon the Department's determination that the DBE's work has been satisfactorily completed. The RE's personnel should review the information submitted by the contractor on the Certificates of Payment and verify that payments agree with current estimates paid to the contractor.

e. The DBE contract provisions will be discussed at each preconstruction conference. At this meeting, the contractor should be prepared to discuss all financial or other assistance the DBE will need, any personnel and equipment the DBE will obtain from the contractor, and how materials will be purchased. The contractor should receive prior approval for any arrangements for assistance prior to the start of work. By receiving the Department's approval of these and other arrangements that appear to conflict with DBE regulations and by performing in the approved manner, the contractor will not be found in noncompliance during the project. Additionally, the contractor and DBE subcontractors will notify the RE at the earliest moment of any problems that arise that may impede attainment of the goal. The RE will then notify the District Engineer, State Construction Engineer, and EEO/DBE Section Head.

4. IRREGULARITIES

a. If the DBE is not performing a commercially useful function or if the contractor or another subcontractor performs any portion of the work without prior written approval by the Department, the Department may withhold payment on items of work committed to a DBE subcontractor.

b. Should the RE become aware of a questionable arrangement between a contractor and a DBE after work begins, the RE will verbally notify the contractor and DBE immediately. The contractor and DBE will then be notified in writing. This notification will set forth the nature of the suspected irregular activity and state that payments for the work in question will be withheld until the matter is resolved. A copy of the letter will be transmitted to the District Engineer, State Construction Engineer, and EEO/DBE Section Head. A meeting of all parties involved may be requested. The purpose of the meeting is to discuss the situation and allow the

contractor and DBE the opportunity to correct any problems. The RE will document the problem(s) in the project diary. If the parties involved cannot agree on a course of action, the contractor may be found in noncompliance with contract provisions.

c. If a contractor is believed to be in noncompliance, a review of the situation will be conducted by the State Construction Engineer. The Engineer may request, through the EEO/DBE Section Head, that a verification review be performed by the External EEO Coordinator. The Coordinator will review project and business records and conduct interviews to determine whether the DBE was performing a commercially useful function on the project. A report and recommendation will be provided to the State Construction Engineer who will review the report and make a determination of commercially useful function.

d. If it is determined that a commercially useful function has been served, payments previously withheld will be released. If it is determined the DBE did not perform a commercially useful function, the contractor must submit a corrective action plan to achieve the goal. Payments for the affected work will continue to be withheld until the contractor has satisfied the contract goal or may, with the concurrence of the State Construction Engineer, be released upon approval of the corrective action plan.

5. ACHIEVEMENT OF GOALS

a. The contractor will submit a Certification of Actual Payments to DBEs each estimate period a DBE performs work. This form must be submitted to the RE within 35 days following the end of the estimate period. The RE should compare the submittal to current estimate data and enter the payment data into the Subcontractor Payment Database within 10 days of receipt. A Certificate of Payment to DBEs will be submitted by the contractor for each federal-aid project regardless of whether a DBE goal had been established.

b. A Final Certificate of Payment to DBEs will be submitted by the contractor for each project regardless of whether a DBE goal had been established. This form will show the total amount paid to each DBE subcontractor and work performed by a DBE prime contractor. The certification is submitted to the RE who will attach it to the original copy of the final estimate.

c. If the goal was not met, an explanation for the deficiency must be shown. Failure to meet the goal, unless acceptable good-faith efforts exist, will result in decreasing the final contract amount by the dollar amount of the unmet portion, or other appropriate action.

CHAPTER XVI – DBE ASSISTANCE

1. GENERAL

a. Contractors are encouraged to provide DBEs with advice, assistance, or other training. However, the assistance must be structured to ensure DBEs maintain the managerial and operational responsibilities. All arrangements to assist DBEs must be approved by the Department prior to the start of work or as soon as the need for assistance becomes evident. Approval will not be granted when the assistance provided reduces the DBE's management or control of the firm. The DBE must maintain all administrative functions, which must be performed by personnel responsible to or employed by the DBE at facilities or locations under the control of the DBE.

b. In all instances where a contractor or other firm assists a DBE, the distinction between "assisting" and "performing" the function should remain clear.

c. Efforts by contractors to assist DBEs shall be on a limited basis and designed to enhance the growth of the DBE.

d. Long-term, continual, or repetitive assistance by a contractor to the same DBE may be construed as an attempt to artificially inflate DBE participation and disproportionate dependence upon the contractor. Such arrangements will be monitored closely by the Department.

2. TYPES OF ASSISTANCE

a. Any contractor may assist a DBE in obtaining working capital. To accomplish this, the contractor should limit involvement to helping the DBE establish a relationship with a banker, guaranteeing a line of credit, or co-signing loans that have been applied for by the DBE. In no case can the day-to-day control of the firm be relinquished by the disadvantaged owner(s). The contractor will assist the DBE firm by making progress payments to the DBE firm within ten days of receipt of payment from the Department.

b. It is desirable for DBEs to bond jobs on their own, in order to establish a track record with a surety company. However, the contractor may waive the bonding requirements for the DBE and include the DBE on the contractor's bond. It is acceptable for the contractor to charge the DBE with the appropriate share of the bond premium, or to bond the entire job and "carry" the subcontractors, absorbing the cost of the bond. These arrangements should be noted in the subcontract agreement.

c. The contractor may provide valuable training in the technical aspects of highway construction. This does not mean the contractor performs the work for the DBE or supervises the work for the DBE. Rather, it involves providing advice, information, or otherwise facilitating the DBE's performance of the work. The contractor can provide advice on project

management and make the DBE aware of techniques that may improve productivity and competitiveness. The DBE's owner or superintendent/ foreman must be present when the work is performed, and it must be performed using the DBE's workforce and equipment.

d. The contractor may assist the DBE in material costs by guaranteeing the DBE's payment through the issuance of checks made out jointly to the DBE and supplier. The DBE must be responsible for all other aspects of material acquisition and payment (i.e., negotiation of cost, ordering, delivery, and invoicing.) A joint checking agreement must be contained either in the subcontract or a separate written agreement and approved by the RE. In either case, the subcontract or written agreement must be approved prior to the supplies being incorporated into the work. If a separate written agreement is approved by the RE, the original should be submitted to the Construction Division to be placed in the subcontract file.

e. A non-disadvantaged contractor may lease equipment to a DBE. A completed lease agreement must be executed, and rates must be competitive for the geographical area.

f. In limited instances, a contractor may provide skilled personnel to the DBE subcontractor provided advance approval is received from the Department. The workers shall be placed on the DBE's payroll and under direct supervision of the DBE for the performance of the work. These workers shall be used primarily to assist in training the DBE's employees. Use by a DBE firm of personnel primarily employed by another firm must be for a short period of time and constitute no more than a small portion of the personnel needed by the DBE.

g. A contractor may assist in training a DBE in such areas as plan interpretation, estimating, and cost accounting. The contractor may not prepare bids for the DBE.

h. Examples discussed in paragraphs 2a-g are not meant to be all-inclusive. Other methods of encouraging and supporting DBEs may be acceptable and should be brought to the attention of the RE and EEO/DBE Section Head for approval.

i. Repetitive arrangements between a DBE and another firm are not prohibited. However, when the arrangement indicates the DBE is disproportionately dependent on another firm, the arrangement will not be allowed as a method for meeting the DBE goal, and the DBE's certification may be placed in jeopardy.

3. PROCEDURES FOR APPROVAL

a. Assistance provided to a DBE by any other firm must be approved in advance by the Department, ideally prior to start of work on the project. By identifying the assistance to be provided and receiving advance approval, the contractor avoids being found in noncompliance and reduces the possibility of delays in the project and loss of credit toward the DBE goal.

b. If other needs for assistance become apparent after the project has begun, the contractor shall immediately request approval through the RE's office. The RE will forward the request to the EEO/DBE Section Head for consideration.
c. Should the contractor and/or DBE fail to operate in the manner approved, the contractor's credit for the work performed by the DBE will be withheld, pending review to determine if the method of operation constituted a commercially useful function (see Chapter X, Part 2).

4. GENERALLY UNACCEPTABLE PRACTICES

a. Subcontracting arrangements contrived to artificially inflate DBE participation are not acceptable. Of particular concern is the interjection of DBE middlemen or brokers who do not operate in accordance with standard industry practices or serve a commercially useful function.
b. Any formal or informal agreement that limits the disadvantaged owner's control and management of the firm is unacceptable.
c. An area of special concern is exclusive arrangements. During the course of the relationship, the DBE contractor must have the latitude to quote bids to other contractors.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

LITTLE ROCK, ARKANSAS

M E M O R A N D U M

August 29, 2011

TO: Scott Bennett, Assistant to the Director

SUBJECT: Revised DBE Manual

For your review and approval is a copy of the revised DBE Manual based on the revised DBE Rule effective February 28, 2011. The Manual has been reviewed and approved by the DBE Certification and Hearing Committee, Section Head-EEO and DBE Program Specialist, Transportation Program Coordinator Valera McDaniel, and me.

Should you have questions or need additional information, please contact me at 2221.

Emanuel Banks
Assistant Chief Engineer-Operation/DBE
Liaison Officer.

APPENDIX A

DISADVANTAGED BUSINESS ENTERPRISE SUPPORTIVE SERVICES WORK PLAN

Arkansas State Highway and Transportation Department

Disadvantaged Business Enterprises

Supportive Services Program

October 1, 2010 through September 30, 2011

Needs Assessment

Based on our most current DBE needs assessment, through survey participation, interviews and direct observation of DBE firms, we have come to the following conclusion(s):

Currently, the State of Arkansas has seen an increase in DBE certification. As of this date, the Department has 114 DBE with item codes.

The most current needs assessment of the DBE community indicates that:

- 64% of the DBE's would like to expand their item codes in order to broaden their work base and secure their work load.
- 87% of the DBE's intend to utilize the Supportive Service Program in some form this year.
- 43% of the DBE's are in need of training for planned conversion of Department electronic bidding process.
- 15% of the DBE's have no computer skills.
- 10% have no business access to a computer.
- 80% of the DBE's would prefer on-line training.
- 60% of the DBE's have never bided a job as a general contractor.
- 56% of the DBE community would like to participate in some form of "The Contractor Training Program."
- 53% of the DBE's desire to participate in some form of business development training through seminars.
- 93% of the DBE's are intending to utilize the resource room to obtain the Departments and out of markets plans and specifications.
- 63% of the DBE community wants to participate in the mentor/protégé program in some capacity.

Purpose Statement/ Scope of Work

The contractor is requesting for its implementation of the DBE/SSP program from October 1, 2010 through September 30, 2011, in the amount of **$194,864**, to perform the following services:

- DBE Universal Participation Building
- Capability Building
- Capacity Building

The major elements of the proposed 2010 DBE/SS program are as follows:

- DBE Contractor Recruitment and Outreach Program
- DBE Orientation Program
- Business Management Assistance
- DBE Community Newsletter & Website
- Contractor Training and Development Program
- Mentor/Protégé Program
- DBE Liaison

Performance Goals as it relates to Scope of Work

1. **Recruitment of New Capable DBE Contractors:** Outreach, educate, identify and recruit minority and/or female contractors presently performing or capable of performing construction related work and encourage them to apply for DBE certification and appropriate Department Item Codes. One seminar will be held to educate the Hispanic Community about the DBE Program. Ten or more firms submitting application for DBE certification and five being certified. Completion date September 30, 2011.

2. **DBE Contractors Orientation Program:** Develop and conduct DBE contractor orientation seminars for DBEs recently certified by the Department. The goal is to provide DBEs with the Departments expectations, rules and regulations as it relates to Federal-aid Projects. This orientation will also inform the DBEs of the various forms of assistance available to assist them in the development and improvement of their firm as well as their capabilities and capacity. Four seminars will be held and all recently certified DBEs will be invited to attend. Completion date September 30, 2011.

3. **Business Management Assistance:** Provide Business Management assistance to qualified DBEs in order to enhance management and operations of DBE owners, through the use of DBE/SS consultants, DBE/SS staff and informative meetings. Ten or more DBEs will receive business management services that include preparation of financial statements, preparation of tax returns, bookkeeping services, estimating, marketing assistance, and other technical services that may be requested by a certified DBE. One Workshop will be held to demonstrate to DBEs available commercial loan programs. Completion date September 30, 2011.

4. **Technical Assistance:** Provide a resource room for DBEs interested in performing work for the Department. The room will contain copies of the Department and outer Department plans and specifications, including office support and equipment such as fax, copier and computers. A meeting room the night before the letting will be available for DBEs in order to submit bids to

prime contractors, and to provide a forum for presenting and discussing topics related to the DBE community. Completion date September 30, 2011.

5. **Publish Newsletter:** Publish and distribute a bi-monthly newsletter containing informative articles of interest to the DBE community that can be used as a resource guide and a reminder of events and activities. Six newsletters will be published. Completion date September 30, 2011.

6. **Contractors Training and Development:** Provide professional development training to DBEs. DBEs will be introduced to professional development concepts to assist them in gaining capacity and capabilities to their various transportation related trades. Fifteen or more DBE firms will attend classes. Completion date September 30, 2011.

7. **Maintain A Dependable Supportive Service Program For DBE's:** Many DBE's greatly utilize the DBE/SS staff, either as a catalyst to receive services from DBE/SS Consultants, or as a liaison to prime contractors and/ or venders and/or the Department. The DBE/SSP staff will also continue to help increase an active pool of DBE contractors bidding as primes and subcontractors on outer Department projects. The DBE/SS staff will continue to give result-driven business development with DBE self-sufficiency being the primary objective. Completion date September 30, 2011.

8. **Maintain Strong Web Presence:** Maintain a website with the ability to deliver all the information that DBEs need to participate in the Supportive Services Program. It is a goal for this website to provide a web-driven link to every DBE with an item code that has a website. Completion date September 30, 2011.

9. **Mentor-Protégé Program:** Maintain a presence with the all prequalified advanced level contractors that offer a mentoring benefit to the DBE community in order to develop mentoring relationships and matchmaking opportunities for DBE firms. Establish a mentor-protégé program for two DBE firms. Completion date September 30, 2011.

Performance Period

All activities described in this proposal have a completion date of **September 30, 2011**. The performance period for this DBE/SSP contract is for one year with the option to extend for one-year periods. Options to extend the performance period for each additional year will be on the basis of satisfactory performance, an approved work plan with all required elements, and available funding.

Evaluation & Monitoring Plan

Evaluation of the DBE/SSP is ongoing through comments from DBEs, FHWA, the Department and self-analysis. These comments help in assessing the needs of DBE transportation construction contractors and the effectiveness of the supportive services program. The Department will also continue to implement recommendations from FHWA as a result of its quarterly reporting and annual reviews. Supportive Services tasks will continue to be monitored by the Department's approval process and evaluated through the use of questionnaires sent to DBEs for each task.

Reporting Requirements

A quarterly activity report, in narrative form, will be submitted to the Department's Section Head of EEO/DBE by the 15th day of the month following the end of the quarter covering the previous quarter activities. Accomplishments toward each goal and objective will be included. All major changes and any problems or recommendations affecting the program will be included in this report. An annual report outlining the accomplishments will also be prepared within 15 days after September 30, 2011.

DBE/SSP STAFF JOB DESCRIPTIONS

Program Administrator

- Assists in the organization, design and development of program structure and associated plans based upon collected data, research findings and outlined development.
- Ensures that staff adheres to the goals in the work plan.
- Responsible for the financial direction and implementation of the program.

Program Manager

- Carries out the day-to-day operations of the work plan.
- Public contact for the DBE/SS programs to resource agencies and interested parties in the community to encourage participation in the program.
- Works independently or as part of a group where there is a need for specialized technical skills and abilities in the development and modification of specific programs.
- Evaluates and monitors new or modified program operations to determine the soundness of the basic design and the effectiveness of the implemented procedures and policies.
- Develops specific procedures, policies and instructions necessary to the operation and implementation of newly designed or modified programs or demonstration projects.
- Designs and develops operational and administrative forms necessary for the transmission of information, satisfaction of reporting requirements, establishment of control systems, and evaluation of program effectiveness.
- Develops and reviews new and existing manuals, bulletins, and memorandums pertaining to program policy, procedures, and operating instructions.
- Supervises all staff activities and monitors staff productivity. Oversees overall operation of the supportive services program.
- Reports to the Program Administrator.

Program Assistant

- Assists the Program Manager in carrying out the day-to-day operation of the program.
- Ensures that all accounts are properly managed.
- Delivers a monthly report detailing the operational expenses.
- Answers incoming calls, record and deliver phone messages to the appropriate person.
- Reports to the Assistant Program Manager and Program Administrator.
- Ensures that all accounts are properly managed.
- Provides Program Administration a monthly report detailing the operational expenses.

Partnerships

We have various DBE/SS Consultants under contract for this program year and will continue the partnerships for this program year.

Basis for Payment

This is a performance based expenditures contract. The DBE/SS staff and its consultants will adhere to monthly invoices detailing separately, administration invoice and personnel invoicing based on actually funded items of DBE/SS contract.

Budget & Funding
Budget Summary
DBE SUPPORTIVE SERVICES PROGRAM
FEDERAL FISCAL YEAR 2011

Salaries	Hourly Rate	Budgeted Hours	Total
Program Administrator	$45.00	210	$9,450
Program Manager	$32.00	1,825	$58,400
Program Asst	$13.00	1,040	$13,520
Total Salaries			$81,370
Fringe Benefits (19%)			$15,460
TOTAL Salaries & Fringe			**$96,830**
Rent/Equip.			$13,200
Telephone			$4,000
Printing			$5,000
Postage			$2,500
Travel/Mileage			$4,500
Monthly meetings			$3,000
Business Management Asst.			$14,000
Supplies			$2,634
Newsletter			$7,200
Training			$10,000
Workshops, Seminars			$2,000
IT Support			$1,000
Mentor			$10,000
Contract Services			$19,000
TOTAL Program Elements & Administration			**$98,034**
SUB TOTAL BUDGET			**$194,864**
TOTAL BUDGET			**$194,864**

SALARIES

The salary line items will operate as documented, per the budget attached. Tammy Armond is fulltime staff, with a TBA support staff, all under the Program Administration of Mizan Rahman. The quote for the line items inclusive of fringe benefits is $96,830.

ADMINSTRATIVE

Rent/ Equipment Lease
The lease of two entire offices and sublets, a conference room, three computers, and two fax machines are set at a value of $13,200.

Telephone Line
There are two dedicated phone lines, a dedicated fax line and dedicated broadband device. In addition to those lines, a cellular phone line is added for the administrative staff. The line item is quoted at $4,000.

Printing Cost
The cost for printing DBE related material is quoted at $5,000.

Postage
There is $2,500 for postage.

Travel
The cost for travel and mileage is quoted at $4,500.

Monthly Meetings
A meeting room for DBE's will be available the day before the Department's bid letting. The cost for the meeting room is $3,000.

Business Management Assistance
There is $14,000 allocated for business management assistance.

Supplies
There is $2,634 quoted for supplies.

IT
There is $1,000 quoted for the maintenance of the IT services and support.

Newsletter
The cost for six monthly newsletters published and printed is $7,200.

Training
The cost for the implementation of the various training is quoted at $10,000. Training will be administered in the following topics but will not be limited to:

- Basic/ Advanced Plans Reading
- Construction Management
- RFIs & As- Build Drawing
- How to participate in live online training
- Safety and Health
- Hazard Communications
- Strategic Business Planning
- Contract Negotiation
- Construction Law
- OSHA 10 Hour Certification Course
- General Contractors Exam Preparations Course
- Heavy Construction Equipment Safety
- Construction Software
- Workers' Compensation Training
- Human Resource Training
- Quality Control in Construction
- Building Your Business & Personal Credit
- Construction Accounting
- Construction Surveying and Field Engineering Layout
- How to Do business with AHTD
- Work Zone Traffic Control Safety
- Heavy Construction Equipment Training
- Heavy Construction Equipment Safety / Shop Safety
- Asphalt Paving and Compaction
- Trenching and Shoring
- Introduction to GPS (Global Positioning Systems)
- Storm water certification

Workshops
The cost for all workshops is $2,000.

Mentor Program
The cost for the program is $10,000. The funds requested will for the Mentors direct and indirect cost in mentoring a DBE (protégé).

Contract Services
There is a need for contractor services, such as legal counsel, professional accounting, financial and marketing and other professional services needed to perform various program related activities. The expected program amount is $19,000.

DBE/SSP WORK PLAN AND BUDGET

OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011

ADDITIONAL DOCUMENTATION CONCERNING PERFORMANCE GOALS

APPENDIX B

ARKANSAS UNIFIED CERTIFICATION DBE CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS PROGRAM
APPLICATION FOR CERTIFICATION
EXPLANATION, DEFINITIONS, AND INSTRUCTIONS

1. EXPLANATION

a. The Arkansas State Highway and Transportation Department (Department), has an affirmative action program designed to increase participation of disadvantaged and woman-owned businesses (DBE and WBE) in federally assisted contracts administered by the Department. The authority for this program is 49 Code of Federal Regulations Part 26 (49 CFR Part 26).

b. The Arkansas Unified DBE Certification Program (ACP) Committee certifies businesses capable of performing services and providing products which can be credited toward disadvantaged business enterprise (DBE) goals on federally assisted contracts. These services and products are generally related to construction projects, transit services, professional and consultant services contracts, funded wholly or in part by FHWA, FTA, or FAA, or DBE/WBE technical assistance. Only those businesses which perform a commercially useful function (see Definitions) can be counted toward DBE goals.

c. Certification must be obtained through your home State Transportation Agency (STA), in accordance with 49 CFR Part 26, if you wish to perform work as a DBE/WBE on federally assisted contracts administered by the STA. Once certification is granted by your home STA, you may request certification by other STAs.

2. DEFINITIONS

a. Concerns are affiliates of each other when directly or indirectly (1) one concern controls or has the power to control the other, (2) a third party (or parties) controls or has the power to control both, or (3) an identity of interest between or among parties exists such that affiliation may be found. In determining whether affiliation exists, consideration shall be given to such factors as: common ownership, common management, and contractual relationships.

b. Commercially Useful Function means being responsible for the execution of a contract or a distinct element of the work under a contract by actually performing, managing, and supervising the work involved consistent with standard industry practice.

c. Disadvantaged Business Enterprise (DBE) means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more disadvantaged individuals. Owned and controlled means a business which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, has at least 51 percent of the stock owned by one or more socially and economically disadvantaged individuals AND whose management and daily business

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

d. 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. A contingent liability does not reduce an individual's net worth.

e. Socially and economically disadvantaged individuals means those individuals who are citizens or lawfully-admitted permanent residents of the United States and who are as follows:

(1) Women.

(2) Black Americans, which includes persons having origins in any black racial groups of Africa.

(3) 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.

(4) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

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

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

NOTE: Individuals listed above in 2 through 6 must be regarded by their respective minority community as a member of that particular minority group.

(7) Other additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration.

(8) Other individuals determined by the Department to be economically and socially disadvantaged.

3. ELIGIBILITY STANDARDS

a. To determine a firm's eligibility to participate in the DBE program the firm's business status, business size, social and economic disadvantage, ownership, and control (including independence) will be evaluated. The standards set forth in 49 CFR Part 26 will be used in determining whether a firm is owned and controlled by one or more disadvantaged individuals or women and will therefore be eligible to be certified as a Disadvantaged Business Enterprise. For a complete set of the rules you may request a copy of the federal regulation from the Department. These standards include:

(1) Bona fide disadvantaged status shall be established on the basis of the individual's claim that he or she is a member of one of the groups mentioned in 2 e. (1) through (8) and is so regarded by that particular community. However, the Department is not required to accept this claim if it determines the claim to be invalid.

(2) Only independent businesses 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. The ownership and control by disadvantaged individuals shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The disadvantaged individuals shall enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a DBE. In determining whether a potential DBE is an independent business, the following will be considered: (1) relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources; (2) present or recent employer/employee relationships between the disadvantaged owner and non-DBE firms or persons associated with non-DBE firms; (3) relationships with prime contractors; and (4) the consistency of relationships between the potential DBE and non-DBE firms with normal industry practices.

(3) The disadvantaged individuals shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as long-term decisions on matters of management, policy and operations. The firm must not be subject to any formal or informal restrictions which limit the customary discretion of the disadvantaged individual. There shall be no restrictions through, for example, corporate charter provisions, by-law provisions, contracts, or any other formal or informal devices that prevent the disadvantaged individual, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

(4) Individuals who are not socially and economically disadvantaged but are involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors must not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. The disadvantaged owners may delegate areas of the management, policy making, or daily operations of the firm, but such delegations must be revocable and the disadvantaged owners must retain the power to hire and fire persons to whom authority has been delegated.

(5) The 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 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 policy-making. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(6) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as a DBE shall be held directly by disadvantaged individuals. No securities held in trust, or by any guardian for a minor, shall be considered as held by disadvantaged individuals in determining the ownership or control of a corporation, except when: (1) the beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or (2) the beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operations of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(7) The contributions of capital or expertise by the disadvantaged individual to acquire interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee. If joint marital assets were used to acquire ownership interest, proper legal documentation must be provided that the non-disadvantaged spouse has irrevocably renounced and transferred all rights in the ownership interest.

b. To be determined economically disadvantaged, individuals whose ownership and control are relied upon for DBE certification must have a personal net worth not exceeding $1.32 million.

4. INSTRUCTIONS

a. The ACP Application must be completed by all businesses wanting to be certified as a DBE.

b. All questions must be answered and all information requested must be submitted. Applications must be legible, complete, signed, dated, and notarized to be accepted for review. Questions that do not apply to your business should be marked "N/A" in the space provided along with a brief explanation. **Failure to provide the requested documents with the application will delay processing of your application.**

c. All firms must be certified in their home state prior to applying for certification in the other STA's.

d. An on-site review of the business will be conducted by a representative of your home state's STA, prior to rendering of a certification decision. On-site reviews may also be conducted of your business operations in other states as deemed necessary.

e. The ACP Certification Committee will evaluate the information contained in the application, along with the facts learned during the on-site review to determine if your business meets the eligibility standards to be determined a DBE.

f. You will be notified of the Certification Committee's decision by letter. If the application is approved and you are certified as a DBE, your business will be added to the ACP's directory of certified disadvantaged businesses. The directory will show the name of the business, address, telephone number, fax number and name of the contact person in your business. It will also give a brief description of the type of work you are certified to perform under the program and the Department's item codes the firm has been certified to perform. (Please note that this does not preclude you from performing items of work in areas other than those in which you are certified. It does, however, restrict the items of work for which the prime contractor will be given credit toward the contract goal. You may ask for expanded work capabilities as you acquire experience in new areas.)

g. If you are denied certification, you may appeal to the Certification Committee To appeal, you must write a letter giving the reason(s) you feel that you should be certified.

h. If your application is not approved following the Certification Committee's appeal/due process procedures, you may appeal the decision to the U. S. Department of Transportation. To appeal, you must write a letter giving the reason(s) you feel that you should be certified. Send the letter directly to the following:

U. S. Department of Transportation
Attn: Office of Civil Rights
1200 New Jersey Avenue, SE W-35
Washington, DC 20590

NOTE: The appeal must be filed no later than 90 days from the date you were notified that the certification was denied.

i. A business that is denied certification by the Certification Committee may not reapply for at least 12 months from the date of the final decision of the panel. A business that is decertified may not reapply for certification for at least 12 months from the date of the final decision. A copy of the decertification notice will be forwarded to the firm's home STA. A business that appeals to the U.S. Department of Transportation cannot reapply to the Department until a final decision has been rendered on the appeal, or 12 months whichever is longer.

j. If additional information is requested and it is not received within six months after the initial request, the application and its related documents will be returned to the applicant(s).

k. If you are a woman, Black American, Hispanic American, Native American, Asian-Pacific American, or Subcontinent Asian American, you are presumed to be socially and economically disadvantaged. Other persons knowing of your actual social and economic condition, living standards, success in business, and other factors have the right to challenge your recognition and certification as a DBE. If your status is challenged, you will be given every opportunity to offer a defense; the challenge will be fully investigated, heard, and a final determination made.

l. Third party complaints: If you have reason to believe that a business has been wrongly granted certification as a DBE, you may advise the Department. A thorough investigation will be initiated upon receipt of a signed complaint. A complaint may also be submitted directly to the U.S. DOT.

REMEMBER: THE APPLICATION MUST BE COMPLETED AND ALL REQUESTED DOCUMENTS SUBMITTED BEFORE ACTION WILL BEGIN ON YOUR CERTIFICATION. INCOMPLETE APPLICATIONS WILL DELAY PROCESSING OF YOUR APPLICATION.

Arkansas.FHWA@fhwa.dot.gov

ArkansasHighways.com

LITTLE ROCK NATIONAL AIRPORT
LittleRockAirport.AERO

Central Arkansas Transit Authority
SWilliams@cata.org

ARKANSAS AIRPORT OPERATORS ASSOCIATION
BFlowers@DeltaAirport.com

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
TITLE 49 CODE OF FEDERAL REGULATIONS PART 26

ARKANSAS UNIFIED DBE CERTIFICATION APPLICATION

10324 Interstate 30, P. O. Box 2261
Little Rock, Arkansas 72203-2261
Natasha Halbert, DBE Program Specialist
(501) 569-2259

Aviation Oriented Services or Products including Concessionaires
One Airport Drive
Little Rock, Arkansas 72202
Tom Clarke, Director of Properties
(501) 372-3439

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in the admission, access to and treatment in Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to James B. Moore, Jr., Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: james.moore@arkansashighways.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

ROADMAP FOR APPLICANTS

1) Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. Citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed $22.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?
  - ⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

2) Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

3) Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

4) Where can I find more information?

- U.S. DOT – http://osdbuweb.dot.gov/business/dbe/index/html (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – http://www.ntis.gov/naics (provides a listing of NAICS codes) and http://www.sba.gov/size/indextableofsize.html (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

Note: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review. NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

(1) State the name and title of the person who will serve as your firm's primary contact under this application.
(2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) State the primary phone number of your firm.
(4) State a secondary phone number, if any.
(5) State your firm's fax number, if any.
(6) State your firm's or your contact person's e-mail address.
(7) State your firm's website address, if any.
(8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
(9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

(1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
(2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
(3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
(4) State the date of which you and/or each other owner took ownership of the firm.
(5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit."
NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided. If you are applying to be certified as an Airport Concessions Disadvantaged Business Enterprise (ACDBE) you must state that in the space provided.
(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
(10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
(2) Check the appropriate box that indicates whether at present, or at any time in the past:
(a) Your firm has been a subsidiary of any other firm;
(b) Your firm consisted of a partnership in which one or more of the partners are other firms;
(c) Your firm has owned any percentage of any other firm; and
(d) Your firm has had any subsidiaries of its own.
(3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

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

A. Background Information

(1) Give the name of the owner.
(2) State his/her title or position within your firm.
(3) Give his/her home phone number.
(4) State his/her home (street) address.
(5) Check the appropriate box that indicates this owner's gender.
(6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
(7) Check the appropriate box to indicate whether this owner is a U.S. Citizen.
(8) If this owner is not a U.S. Citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. Citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. Citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

(1) State the number of years during which this owner has been an owner of your firm.
(2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
(3) State the percentage of total ownership control of your firm that this owner possesses.
(4) State the familial relationship of this owner to each other owner of your firm.
(5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
(6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
(7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has <u>any</u> relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

<u>NOTE</u>: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program).

(1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
(2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
(3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

(1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
(2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;

(3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
(4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
(5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
(6) Office management;
(7) Marketing and sales;
(8) Purchasing of major equipment;
(9) Signing company checks (for any purpose), and;
(10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
(11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. **Indicated your firm's inventory in the following categories:**

(1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicated whether each piece is either owned or leased by your firm.

(2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.

(3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease. ACDBE's must also indicate all fees/lease payments paid to the airport.

(4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

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

E. **Financial Information**

(1) Banking Information
(a) State the name of your firm's bank.
(b) State the main phone number of your firm's bank branch.
(c) State the address of your firm's bank branch.

(2) Bonding Information
(a) State your firm's Binder Number.
(b) State the name of your firm's bond agent and/or broker.
(c) State your agent's/broker's phone number.
(d) State your agent's/broker's address.
(e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. **Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other that the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. **List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. **List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. **List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. **List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

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

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

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? *(If Yes, check appropriate box(es))*	☐ DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? ☐ Yes, on _____/_____/_____ State:_____ ☐ No
	☐ 8(a) ☐ SDB	⊗**STOP!** If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamline application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency or Federal entity?

☐ Yes, on _____/_____/_____

☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

_____

_____

_____

_____

_____

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:		(5) Fax #:	
(6) E-mail:		(7) Website *(if you have one)*:		
(8) Street address of firm *(No P. O. Box)*:	City:	County/Parish:	State:	Zip:
(9) Mailing address of firm *(if different)*:	City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:

(2) Federal Tax ID *(if any)*:

(3) This firm was established on ____/____/____

(4) I/We have owned this firm since ____/____/____

(5) Method of acquisition *(check all that apply)*:

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

(6) Is your firm "for-profit"?

- ☐ Yes
- ☐ No

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

(7) Type of Firm *(check all that apply)*:

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Limited Liability Partnership
- ☐ Limited Liability Corporation
- ☐ Joint Venture
- ☐ Other, Describe: ____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

- ☐ Yes
- ☐ No

If Yes, explain: ____

(9) Number of employees: Full-time ____ Part-time ____

(10) Specify the gross receipts of the firm for the last 3 years: Year ____ Total Receipts $____

Year ____ Total Receipts $____

Year ____ Total Receipts $____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P. O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?

- ☐ Yes
- ☐ No

If Yes, identify: Other Firm's name: ____

Explain nature of shared facilities: ____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? ☐ Yes ☐ No
	(b) consisted of a partnership in which one or more of the partners are other firms? ☐ Yes ☐ No
	(c) owned any percentage of any other firm? ☐ Yes ☐ No
	(d) had any subsidiaries? ☐ Yes ☐ No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past?
☐ Yes
☐ No

(4) If you answered "Yes" to any of the questions in (2) (a)-(d) and/or (3), identify the following for each *(attach extra sheets, if needed)*:

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Business

Do any of your immediate family members own or manage another company?
☐ Yes
☐ No

If Yes, then list *(attach extra sheets, if needed)*:

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(if more than one owner, attach separate sheets for each additional owner)*:

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4)Home Address (street and number):	City:	State: Zip:

(5) Gender: ☐ Male ☐ Female	(6) Ethnic group membership (check all that apply): ☐ Black ☐ Asian Pacific ☐ Hispanic ☐ Subcontinent Asian ☐ Native American ☐ Other *(specify)*: _____
(7) U.S. Citizen: ☐ Yes ☐ No	
(8) Lawfully Admitted Permanent Resident: ☐ Yes ☐ No	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	$
(4) Familial relationship to other owners:		Real Estate	$
		Equipment	$
		Other	$

(5) Shares of Stock:

Number	Percentage	Class	Date acquired	Method Acquired

(6) Does this owner perform a management or supervisory function for any other business?
☐ Yes
☐ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*?
☐ Yes
☐ No
If Yes, identify: Name of Business: _____ Function/Title: _____

Nature of Business Relationship: _____

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification *(i.e., for each owner claiming to be socially and economically disadvantaged)*

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Net Worth Calculator form at the end of this application; attach additional sheets if more than one owner is applying)*

Personal Net Worth $ _____

(2) Has any trust been created for the benefit of this disadvantaged owner(s)?

- ☐ Yes
- ☐ No

If Yes, explain *(attach additional sheets if needed)*: _____

Section 4: CONTROL

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

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

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business?

- ☐ Yes
- ☐ No

If Yes, identify for each: Person:_____ Title:_____

Business:_____ Function:_____

(4) Do any of the persons listed in (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*?

- ☐ Yes
- ☐ No

Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship: _____

_____

B. Identify your firm's management personnel who control your firm in the following areas *(if more than two persons, attach a separate sheet)*:

	Name	Title	Ethnicity	Gender
(1) Financial Decisions *(responsibility for acquisition of line of credit, surety bonding, supplies, etc.)*	(a)			
	(b)			
(2) Estimating and Bidding	(a)			
	(b)			
(3) Negotiating and Contract Execution	(a)			
	(b)			
(4) Hiring/Firing of Management Personnel	(a)			
	(b)			
(5) Field/Production Operations Supervision	(a)			
	(b)			
(6) Office Management	(a)			
	(b)			
(7) Marketing/Sales	(a)			
	(b)			
(8) Purchasing of major equipment	(a)			
	(b)			
(9) Authorized to Sign Company Checks (for any purpose)	(a)			
	(b)			
(10) Authorized to make Financial Transactions	(a)			
	(b)			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business?

- ☐ Yes
- ☐ No

If Yes, identify for each:

Person: _____ Title: _____

Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*?

- ☐ Yes
- ☐ No

If Yes, identify for each:

Firm Name: _____ Person: _____

Nature of Business Relationship: _____

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

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) **Storage Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Management Functions

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

- ☐ Yes
- ☐ No

If Yes, explain: _____

E. Financial Information

(1) Banking Information

(a) Name of Bank: _____

(b) Phone No.: (_____) _____

(c) Address of Bank: _____

City: _____ State: _____ Zip: _____

(2) Bonding Information

(a) Binder No.: _____

(b) Name of agent/broker: _____

(c) Phone No.: (_____) _____

(d) Address of agent/broker: _____

City: _____ State: _____ Zip: _____

(e) Bonding Limit: Aggregate Limit $ _____ Project Limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
(1)					
(2)					
(3)					

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

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

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

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
(1)			
(2)			
(3)			

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

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

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

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

[illegible] CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all the following documents as they apply to you and your firm.

All Applicants

- ❑ Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ❑ [illegible]rsonal Financial Statement (PFS). Form available with this application.
- ❑ [illegible]ank statement(s) for both checking and/or savings accounts, Mortgage Statement(s), and IRA Statement(s) that include the name of the bank(s), name of account holder(s), and account balance(s) as stated on the PFS.
- ❑ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ❑ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ❑ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ❑ Your firm's signed loan agreements, security agreements, and bonding forms
- ❑ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ❑ List of equipment leased and signed lease agreements
- ❑ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ❑ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ❑ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- ❑ All relevant licenses, license renewal forms, permits, and haul authority forms
- ❑ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ❑ Bank authorization and signatory cards
- ❑ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ❑ Trust agreements held by any owner claiming disadvantaged status, if any
- ❑ Copy of On-Site Review
- ❑ Notarized Affidavit (form available with this application)
- ❑ Proof of minority status for each owner
- ❑ Department Item Codes – Check list of type of work that the firm normally performs (form available with this application)
- ❑ Copy of (3) cancelled checks for accounts payable

Sole Proprietorship

- ❑ Copy of assumed name certificate

Partnership or Joint Venture

- ❑ [illegible]ginal and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ❑ Official Articles of Incorporation (*Signed by the state official*)
- ❑ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ❑ Shareholders' Agreement
- ❑ Minutes of all stockholders and board of directors meetings
- ❑ Corporate by-laws and any amendments
- ❑ Corporate bank resolution and bank signature cards
- ❑ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)
- ❑ If a foreign corporation, copy of authority to do business in the state

rucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

egular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

irport Concession

- Work history of the firm, including any concession contracts or other contracts the firm may have received
- List of license of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive
- Statement of the type(s) of concession(s) the firm prefers to operate or the type(s) of other contract(s) the firm prefers to perform
- Information concerning any other airport concession businesses the firm or any affiliate owns and/or operates, including name, location, type of [illegible]ession, and start date of concession

[illegible]TE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your [illegible]lication. Contact the appropriate certifying agency to which you are applying to find out if more is required.

OMB APPROVAL NO. 3245-0188
EXPIRATION DATE: 8/31/2011

PERSONAL FINANCIAL STATEMENT

U.S. SMALL BUSINESS ADMINISTRATION

As of _____ , _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name | Business Phone

Residence Address | Residence Phone

City, State, & Zip Code

Business Name of Applicant/Borrower

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks	$	Accounts Payable	$
Savings Accounts	$	Notes Payable to Banks and Others (Describe in Section 2)	$
IRA or Other Retirement Account	$	Installment Account (Auto)	$
Accounts & Notes Receivable	$	Mo. Payments	$
Life Insurance-Cash Surrender Value Only (Complete Section 8)	$	Installment Account (Other)	$
Stocks and Bonds (Describe in Section 3)	$	Mo. Payments	$
Real Estate (Describe in Section 4)	$	Loan on Life Insurance	$
Automobile-Present Value	$	Mortgages on Real Estate (Describe in Section 4)	$
Other Personal Property (Describe in Section 5)	$	Unpaid Taxes (Describe in Section 6)	$
Other Assets (Describe in Section 5)	$	Other Liabilities (Describe in Section 7)	$
		Total Liabilities	$
		Net Worth	$
Total	$	**Total**	$

Section 1. Source of Income		**Contingent Liabilities**	
Salary	$	As Endorser or Co-Maker	$
Net Investment Income	$	Legal Claims & Judgments	$
Real Estate Income	$	Provision for Federal Income Tax	$
Other Income (Describe below)*	$	Other Special Debt	$

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly,etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: Date: Social Security Number:

Signature: Date: Social Security Number:

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

AFFIDAVIT OF CERTIFICATION

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

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

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

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

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

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

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

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

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

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

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

I certify that on the Personal Financial Statement, I have listed all the financial institutions at which I have an account, and all accounts held either individually or jointly with another person.

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

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

Executed on _____(Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

STATE OF

COUNTY OF

Subscribed and sworn before me, the undersigned Notary Public, this _____ day of

_____, 20___.

_____
, Notary Public

My Commission Expires:_____

ITEM CODE	ITEMS

DIVISION 200 – SITE PREPARATION AND EARTHWORK

201	Clearing and Grubbing
202	Removal and Disposal of Structures
203	Removal and Disposal of Underground Storage Tank Systems
205	Removal and Disposal of Existing Bridge Structures
206	Flowable Select Material
207	Stone Backfill
208	Fence Moved and Reconstructed
209	Removing and Replacing Base Course and Asphalt Surfacing
210	Excavation and Embankment
212	Subgrade
213	Shaping Roadway Section
214	Subgrade Preparation
215	Trenching and Shoulder Preparation
216	Scarifying and Recompacting Shoulders

DIVISION 300 – BASES AND GRANULAR SURFACES

301	Lime Treated Subgrade
302	Selected Material
303	Aggregate Base Course
305	Reconstructed Base Course
306	Quality Control and Acceptance
307	Cement Treated Base Course
308	Cement Stabilized Crushed Stone Base Course
309	Portland Cement Concrete Base
310	Open Graded Portland Cement Concrete Base Course

DIVISION 400 – ASPHALT PAVEMENTS

401	Prime and Tack Coats and Emulsified Asphalt in Base Course
402	Asphalt Surface Treatment
403	Materials and Equipment for Prime, Tack, and Asphalt Surface Treatments
404	Design and Quality Control of Asphalt Mixtures
405	Asphalt Concrete Hot Mix Stabilized Base Course
406	Asphalt Concrete Hot Mix Binder Course
407	Asphalt Concrete Hot Mix Surface Course
409	Materials and Equipment for Asphalt Concrete Plant Mix Courses

DIVISION 400 – ASPHALT PAVEMENTS

410 Construction Requirements and Acceptance of Asphalt Concrete Plant Mix Courses
411 Asphalt Concrete Cold Plant Mix
412 Cold Milling Asphalt Pavement
414 Asphalt Concrete Patching for Maintenance of Traffic
415 Asphalt Concrete Hot Mix Patching of Asphalt Roadway
416 Recycled Asphalt Pavement
417 Open Graded Asphalt Base Course
418 Slurry Seal

DIVISION 500 – RIGID PAVEMENT

501 Portland Cement Concrete Pavement
502 Reinforcing Steel for Pavement
503 Continuously Reinforced Concrete Pavement
504 Approach Slabs and Gutters
505 Portland Cement Concrete Driveway
506 Portland Cement Concrete Corrugations
507 Portland Cement Concrete Pavement Patching
509 Joint Rehabilitation
510 Grinding Portland Cement Concrete Pavement
511 Portland Cement Concrete Shoulder (Add-On)
512 Cleaning and Filling Joints in Existing Concrete Pavement

DIVISION 600 – INCIDENTAL CONSTRUCTION

601 Mobilization
602 Furnishing Field Offices and Laboratories
603 Maintenance of Traffic and Temporary Structures
604 Traffic Control Devices in Construction Zones
605 Concrete Ditch Paving
606 Pipe Culverts
607 Precast Reinforced Concrete Box Culverts
608 Structural Plate Pipe and Arches
609 Drop Inlets and Junction Boxes
610 Manholes, Drop Inlets, and Junction Boxes Adjusted to Grade
611 Pipe Underdrains, Outlet Protectors, and Covers
612 Pipe Siphons
613 Steel Grate Assembly
614 Concrete Spillway
615 Pavement Repair Over Culverts
616 Automatic Floodgates
617 Guardrail
618 Guard Cable
619 Fences
620 Seeding

DIVISION 600 – INCIDENTAL CONSTRUCTION

621	Temporary Erosion Control Items and Devices
622	Sod Mulch
623	Second Seeding Application
624	Solid Sodding
625	Geotextile Fabric
626	Erosion Control Matting
628	Topsoil Furnished and Placed
629	Gabions
630	Rock Buttress
631	Concrete Barrier Wall
632	Concrete Island
633	Concrete Walks, Steps and Hand Railing
634	Curbing
635	Roadway Construction Control
636	Bridge Construction Control
637	Mailboxes
638	Painting of Miscellaneous Steel
639	Guardrail Moved and Reconstructed
640	Modifying Drop Inlets and Junction Boxes
641	Wheelchair Ramps
642	Rumble Strips

DIVISION 700 – TRAFFIC CONTROL FACILITIES

701	Actuated Controller
702	Pre-timed Controller
703	Flashing Beacon Controller
704	Loop Detector
705	Loop Wiring in Duct
706	Traffic Signal Head
707	Pedestrian Signal Head
708	Traffic Signal Cable
709	Galvanized Steel Conduit
710	Non-metallic Conduit
711	Concrete Pull Box
712	Span Wire Support Pole with Foundation
713	Span Wire Assembly
714	Traffic Signal Mast Arm and Pole with Foundation
715	Traffic Signal Pedestal Pole with Foundation
716	Treated Wood Pole
717	Traffic Signal Equipment Performance Test
718	Reflectorized Paint Pavement Marking
719	Thermoplastic Pavement Marking
720	Permanent Pavement Marking Tape
721	Raised Pavement Marker
722	Plowable Pavement Marker
723	General Requirements for Signs

DIVISION 700 – TRAFFIC CONTROL FACILITIES

724 Overhead, Bridge Mounted, and Cantilever Sign Structures
725 Guide Sign
726 Standard Sign
727 Exit Number Panel
728 Delineators
729 Channel Post Sign Support
730 Breakaway Sign Support
731 Impact Attenuation Barrier
732 Crash Cushions
733 Video Detector with Radio Interface
734 Bridge End Terminal

DIVISION 800 – STRUCTURES

801 Excavation and Backfilling
802 Concrete for Structures
803 Protective Surface Treatment for Concrete
804 Reinforcing Steel for Structures
805 Piling
806 Bridge Railings
807 Steel Structures
808 Elastomeric Bearings
809 Preformed Joint Seal
810 Closed Cell Joint Filler
811 Sheet Piles
812 Bridge Name Plate
813 Dampproofing
815 Membrane Waterproofing
816 Filter Blanket and Riprap
817 Timber Bridges
818 Untreated and Treated Timber Piling
820 Cleaning and Painting Existing Structural Steel
821 Modification of Existing Bridge Structures
822 Repair and Overlay of Concrete Bridge Decks

APPENDIX C

ARKANSAS UNIFIED CERTIFICATION PROGRAM

U.S Department of Tranportation
Office of the Secretary of Transportation

General Counsel

400 Seventh Street S.W.
Washington, D.C. 20590

February 27, 2004

James Moore
Section Head EEO/DBE
Arkansas Highways Department
P.O. Box 2261
Little Rock, AK 72203-2261

Dear Mr. Moore:

The Department of Transportation (DOT) has reviewed the Unified Certification Program (UCP) submitted to us on behalf of the Arkansas recipients of Department of Transportation DOT financial assistance. Your most recent submission has satisfactorily incorporated our earlier comments.

Consequently, I have approved the Arkansas UCP as provided by the Department's disadvantaged business enterprise regulations (49 CFR §26.81(a)(4)). Please remember that any inconsistency or ambiguity in the UCP agreement shall be resolved by giving precedence to the following in this order: 49 CFR 26/23, USDOT Directives, the DBE Program as approved by DOT and applicable Arkansas regulations.

DOT looks forward to working with you as you implement the UCP.

Sincerely yours,

Jeffrey A. Rosen
General Counsel

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Unified Certification Program

Arkansas Unified DBE Certification Program

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Unified Certification Program

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 Code of Federal Regulations (CFR) Part 26 published in February 1999 (see Attachment) include a provision for a "one-stop" certification process. The process must be defined and submitted to the Secretary of Transportation for approval by March 2002. Failure to develop and execute a Unified Certification Program (UCP) agreement will result in a loss of United States Department of Transportation (USDOT) funding.

Arkansas entities receiving Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) funding were identified and asked to participate in developing a UCP. A committee to oversee the development of the UCP statewide was formed that included FHWA, FAA and FTA funding recipients. The committee decided the Arkansas UCP would be called the Arkansas Unified Disadvantaged Business Enterprise Certification Program, or ACP.

Additionally, the Arkansas State Highway and Transportation Department (AHTD), Little Rock Municipal Airport Commission (LRMAC), and the Arkansas Airport Operators Association (AAOA) were designated as Primary Partners within the ACP and will oversee implementation of the ACP. Each Primary Partner entity will designate a representative.

The ACP will not establish, recommend, or alter any agency's overall DBE Program, other than to supplement an approved program submittal, DBE goal or goal methodology. DBE goal development, administration, monitoring, and reporting remains the sole responsibility of the agency with a USDOT approved DBE Program, in accordance with 49 CFR Part 26, subject to any oversight requirements of FHWA, FAA or FTA. All USDOT recipients will be required to ratify the ACP agreement and all DBE certifications by the ACP will be binding.

Definitions

The following definitions are provided to facilitate reading and comprehension of the UCP agreement:

ACP: The Arkansas Unified Disadvantaged Business Enterprise Certification Program, created to provide a "one-stop" statewide certification process for disadvantaged business owners.

Agency: department or organization involved in the certification review process.

DBE: Disadvantaged Business Enterprise - a for - profit small business that (1) is at least 51 percent owned by one or more individuals who are both socially and

economically disadvantaged (as defined by 49 CFR Part 26) or 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.

MBE/WBE: Minority or Women Business Enterprise -a for-profit small business that is at least 51 percent owned by one or more minorities (as defined by 49 CFR Part 23A) or women, and whose management and daily business operations are controlled by one or more of the minorities or women who own it.

Partners: Arkansas recipients of funds from the U.S. Department of Transportation's Federal Aviation Administration (FAA), Federal Transit Administration (FTA) and Federal Highway Administration (FHWA).

Primary Partners: those partners that will oversee the implementation of the ACP, namely the Arkansas State Highway and Transportation Department (AHTD), Little Rock Municipal Airport Commission (LRMAC) and the Arkansas Airport Operators Association (AAOA).

SIC/NAIC: the Standard Industrial Classification and North American Industrial Classification system; four digit code designation which best describes the primary business of a firm.

UCP: Unified Certification Program, or the "one-stop" certification process for each state's DBE program as contained in 49 CFR Part 26.

49 CFR Part 26: the Department of Transportation's Rules and Regulations for the Disadvantaged Business Enterprise (DBE) program. (also see Attachment)

Ratification Process

All recipients of more than $250,000 in federal funds administered by the USDOT, either directly or indirectly, must ratify and comply with the ACP agreement. Failure to ratify the agreement may result in the loss of federal funds from the ACP partners and/or the USDOT.

Prior to submission of the ACP document to USDOT, recipients will be required to make an affirmative statement of intent to comply and will be subject to administrative review by the ACP, the lead agency, or any branch of the USDOT. If at any time a recipient of federal funds receives at least $250,000 from any agency of USDOT, the recipient must accept and execute the ACP agreement and participate accordingly.

Communication Sharing information on any matter related to the operation of the ACP is important. All ACP partners agree to communicate openly with each other. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings, written correspondence, electronic transmittals, and/or discussion.

If any ACP partner is in receipt of information that is necessary or critical to making a determination of DBE eligibility, the ACP partner shall notify and submit the appropriate information to the ACP. Each ACP partner shall be notified of all changes affecting current certifications, new certifications and denial actions.

All "media" contacts related to the ACP or its activities can be made by the agency contacted. The response should be appropriate and present an accurate representation of the facts. Such contacts shall be reported to all of the Primary Partners within 24 hours.

Initial Consolidation (Grandfather Clause) The ACP shall institute a limited "grandfather clause" that may grant DBE certification to firms currently certified by agencies that administer programs under the USDOT and 49 CFR Part 26. Those agencies are AHTD and LRMAC. This does not include firms certified as a DBE, MBE or WBE by any city, state, or federal agency, or any other entity who does not comply with 49 CFR Part 26, as determined by the ACP.

This grandfather clause is a one time only occurrence and is subject to approval of the ACP on a firm-by-firm basis. The Primary Partners will review all firms for which any ACP partner makes a written request, to determine eligibility under 49 CFR Part 26. The Primary Partners will review any investigative information, the certification file and any other documentation provided, as necessary. A determination will then be made as to whether or not the firm meets the eligibility requirements. If the Primary Partners determine the firm is ineligible to participate as a DBE, the firm will be advised of the intent to decertify. The firm may appeal this decision by submitting a written request within 14 days of the date of the notice of intent to decertify.

An appeals committee consisting of representatives of the Primary Partners will conduct the appeal hearing. The appeals committee will not include the agency making the original certification determination. A representative of Central Arkansas Transit Authority (CATA) will sit in as the third member. As provided in the DBE regulations, a firm may appeal directly to the USDOT; however, if they choose to appeal to the ACP, the firm does *not* forfeit the right to appeal to the USDOT, within the time frame provided in 49 CFR Part 26.

After the effective date of this UCP agreement, only firms certified based on guidelines prescribed in 49 CFR 26 and provisions under this agreement shall be recognized as certified by the ACP. Any ACP partner that has concerns regarding any "grandfathered" firm may file a Third Party Challenge. That challenge will be treated in the manner set out below in the section titled Third Party Challenges.

Certification Process The ACP shall review and make an eligibility determination on all firms applying for DBE certification whose business is located in the State of Arkansas, including those firms whose main headquarters is in another state but which maintain a branch office in the State of Arkansas. The ACP shall accept applications from firms located across state lines; however, the firm must be currently certified by its home state UCP in accordance with 49 CFR 26.

Reviewing Entity Designation The firm's primary type of work or industry will be ascertained by the agency receiving the firm's application. The ACP partners agree to divide the applicants in accordance with a firm's primary industry or market. Specifically the partners agree to divide application reviews in the following manner:

- Applicants that provide primarily transit oriented services or products will be reviewed by the AHTD. These may include, but are not limited to, transit services, maintenance services, maintenance products or transportation management services.

- Applicants that are primarily aviation oriented services or products, including concessionaires, will be reviewed by the Little Rock National Airport. These may include, but are not limited to, non-heavy highway construction products and services, food service firms, aviation specialty firms or structural construction firms.

- Applicants that are primarily heavy highway construction oriented services or products will be reviewed by AHTD. These may include, but are not limited to, heavy and bridge construction contractors, specialty contractors, planning and engineering consultants, specialty consultants, construction suppliers, and steel manufacturers or fabricators.

There may be exceptions to assignments based upon familiarity with the firm, historical knowledge, or resources. Such exceptions must be agreed to by the Primary Partners prior to a review of the application.

The certification process must include an on-site review at the firm's headquarters and a project site review In order to expedite the certification process and efficiently utilize resources, ACP partners other than the AHTD and LRMAC may perform on-site or project reviews for the reviewing entity.

Standard Industrial Classification (SIC) / North American Industry Classification System (NAICS) Codes The ACP agrees to certify all firms in compliance with 49 CFR Part 26, including designating specific work types. The partners agree to use the SIC/NAIC codes for those designations. All firms will be informed of the specific codes and a short narrative description of that designation.

Any firm may request modification and/or additions to their approved codes by making a written request to the certifying partner. That request must include the equipment and experience indicating the firm's ability to perform the particular work type. In addition, the firm must submit documentation of past contracts on which the firm has performed the specific type of work.

Reciprocity The ACP may elect to enter into a limited written reciprocity agreement with UCPs in other states or regions to share information. The reciprocity agreement will require that, at the request of the applicant firm, the home state UCP provide a complete copy of the firm's file. The certifying agency (AHTD or LRMAC) will review the file and on-site review prior to making a determination of eligibility. All partners agree that they will not individually execute any reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that partner, and subsequently the ACP, to a reciprocity agreement.

3rd Party Challenges The ACP shall accept written complaints from any person, including ACP partners, alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit any documentation in support of the complaint. The ACP partner originally responsible for the certification shall thoroughly investigate the complaint within 60 days. The firm being challenged will be notified by the original certifying partner, in writing, of the challenge, the basic grounds, and the relevant regulations. At the conclusion of the review, the partner shall notify the DBE in writing, by certified mail, of the findings. If reasonable cause to remove certification eligibility is found, the ACP partner will notify the complainant of the specific grounds and inform the firm of the intent to decertify and right to appeal to the ACP.

The firm may submit an appeal, in writing, of the intent to remove certification eligibility within 14 days of the date of the notice. The appeal must be made to the initial certifying partner and state if the firm wishes to file a written appeal or appear in person. If the firm requests the opportunity to appear before the ACP hearing board, the request for appeal must state whether the firm is to be represented by counsel. That partner must notify the ACP partners within 2 days of receipt of the request. If the firm requests an appeal in person, the chair of the ACP will contact the appellant and ACP partners to set a date.

The ACP Primary Partners will hear all challenges to currently certified firms. The entity completing the investigation and making the preliminary determination for eligibility removal will not act as a voting member on the board. A representative of CATA will vote in place of that entity.

The USDOT may notify the ACP of reasonable cause to find a certified DBE firm to be ineligible and the ACP shall immediately remove the certification eligibility of that firm.

Appeals Process

The ACP established the following appeal processes for firms denied initial certification or re-certification, or notified of an intent to decertify. The firm may follow the appeal process set forth as follows and retain the right to appeal to the USDOT, or may appeal directly to the USDOT without utilizing appeals to the certifying agency or ACP.

Initial Certification Applicant Denials

The regulations do not require any appeal of certification denials for initial applicants; however, the partners indicated that it was preferred to have the opportunity to review denials prior to review by the USDOT. Therefore, it was agreed that any firm that received a denial of an initial request for certification would have the ability to make a written appeal to the entity that denied certification to the firm.

A firm denied certification will be advised of the right to file a written appeal with the ACP within 15 days of the date of denial. The appeal must be submitted to the denying agency within that time frame. The agency will then offer the firm the opportunity for an appeal hearing. After the hearing or review of the written appeal, the agency will make a final determination of eligibility. The firm will be notified in writing of the decision and right to appeal to the USDOT.

Denial of Re-Certification and De-Certifications

If a certifying agency becomes aware of reasons that a currently certified firm should be denied re-certification or be de-certified, the firm will be advised of the intent to decertify, the reasons and applicable federal regulations cited. Firms will be advised of the right to file a written appeal with the certifying agency within 15 days of the date of the notice of intent. The firm may request a hearing with the ACP in addition to providing a written appeal. The agency will then forward the appeal to the ACP for scheduling of a hearing.

The Primary Partners will conduct a hearing or review the written appeal, and make a final determination of eligibility. The Primary Partner responsible for making the initial determination of ineligibility will not participate. CATA will sit in place of that partner. The firm will be notified in writing of the decision and right to appeal to the USDOT.

Administrative Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has failed to submit required documentation or exceeded Personal Net Worth thresholds, there will be no administrative re-consideration. Those circumstances include:

- Any certified firm that does not submit the annual affidavit required in 49 CFR Part 26 will have certification removed for failure to comply after 60 days from the date the affidavit was due. The affidavit is due at the 1st and 2nd year anniversary dates of a firm's certification. Failure to submit the affidavit cannot be appealed to the partner agency or ACP.

- Any firm not previously certified and denied certification due to exceeding the Personal Net Worth cap by the disadvantaged owner cannot appeal to the partner agency or ACP.

- If any certified firm's disadvantaged owner's Personal Net Worth exceeds the cap within the 3 year period of certification, the eligibility of the firm will be removed. Removal of certification for exceeding Personal Net Worth cannot be appealed to the partner agency or ACP.

DBE Directory The UCP must provide for a single directory to include firms certified by the ACP. AHTD agrees to maintain and update a directory which will be available electronically on the AHTD website (www.ArkansasHighways.com). Links from the partners' websites will be accessible.

The ACP agreed that this is the most beneficial and effective means of implementing the data requirements of the UCP. The data and format currently used for the AHTD DBE directory will be utilized. ACP entities will be responsible for transmitting certification information to the AHTD for inclusion and updating of the Directory database.

Agency Compliance The partners agree there are many agency specific issues related to their agency's certification processes. The primary areas of concern are:

- Interference In Certification Decisions
- Incomplete Or Inadequate Definition Of Processes
- Non-Compliance With 49 CFR Part 26
- Quality Of Decisions

In order for the ACP to succeed and the partners to maintain the level of trust needed to effectively comply with the UCP requirements it is necessary to implement minimum requirements for compliance, as well as a process for dealing with any agency that is found to be in non-compliance. The specific minimum requirements are:

- All decisions related to certification must be made in compliance with 49 CFR Part 26. This requires the independence to make decisions based solely upon the specific eligibility requirements.

- All de-certification appeals or hearings *must* be decided by a third party who was not involved in the determination, nor was a direct or indirect supervisor of the party involved in the decision.
- Outside entities such as construction boards or other politically mandated organizations cannot be involved in the certification determination, investigations of 3rd party challenges, or any administrative reconsideration.
- The ACP Partners must have an approved DBE Program in place, if required under 49 CFR Part 26, that clearly defines the role of the administrative staff. In addition, each partner must have clearly defined processes and procedures related to administration of the DBE Program and certification decisions.
- Any partner with a DBE Program administered in conjunction with an MBE/WBE program of another entity must have the procedures and policies for the DBE program clearly defined and separated. This includes eligibility requirements, data tracking, and removal/denial of certification.
- All partners agree to make all decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or factors.
- All partners agree that there is no "emergency" certification, nor is there a provision within 49 CFR Part 26 for "conditional" certification. The eligibility requirements are to be determined with the factors present at the time of application and the decision is to be made in compliance with Part 26.

If any ACP partner feels that a particular agency is not complying with the requirements of 49 CFR Part 26, they may make a written complaint to the ACP. The ACP will review the complaint and circumstances. If a majority of the ACP partners, not including the complaining agency or the agency in question, agrees that the agency is not complying with the requirements, remedial action will be taken. The remedial action can take the form of one of the following:

- **Written Findings** – The ACP may issue a formal written determination of the issues regarding that agency's certification, procedures, or practices. This determination will be sent to the senior management official or chief operating officer of the agency in question, the program administrator, and USDOT. It is hoped that the agency will review the procedures at issue and make improvements to the process in order to meet 49 CFR Part 26.

- **Monitoring & Concurrence** – The ACP may issue a formal written determination as set out above, as well as provide a procedural review and concurrence process. It is the hope of the partners that the agency in question will take this opportunity to gain additional knowledge and education of the regulations and requirements.

  The agency in question will be required to gain ACP concurrence in certification determinations for a specific period of time. Depending upon the situation, the ACP may choose to "pair" the agency with another ACP partner or it may choose to require concurrence by a majority of the ACP

partners. If an agency is paired with another agency and a dispute continues to exist, the ACP will make the final determination.

- Non-Compliance – Should the ACP make every effort to correct the deficiencies in an agency's certification process without success, extreme measures may be necessary. The ACP may find that an agency is not acting in good faith and determine that the UCP will not accept firms certified by that agency until the required changes are implemented.

  The ACP recognizes that this is a method of last resort and would not apply this remedy liberally. In addition, the ACP would not proceed with this remedy without notification to the USDOT, as well as the lead federal agency for the partner agency. The ACP further agrees that should the USDOT or the lead federal agency wish to assist or provide guidance on resolution, the ACP would make every effort to resolve the situation prior to implementing this remedy.

Training

Training will be provided to ACP partners as needs are identified. The ACP will seek the assistance of the USDOT, FHWA, FAA, FTA and any other agency to provide guidance and training. The ACP may also utilize in-service opportunities to provide updated information to the partners. These opportunities may be in conjunction with other UCPs, states, or entities.

Revisions to ACP Document

Revisions or changes to this ACP document can be proposed by any ACP partner. The revision must be submitted in writing to any Primary Partner and include reasons why the change is necessary. The Primary Partners will review and discuss the suggested change prior to voting on whether to adopt the revision. Revisions to the program document must be submitted to USDOT for approval prior to implementation by the ACP.

The following entities agree to implement and administer Disadvantaged Business Enterprise certification activities in accordance with this agreement, the Arkansas Unified DBE Certification Program (ACP). Additionally, the agencies of the United States Department of Transportation noted below have reviewed and concur in the ACP.

Signatures

Primary Partners

Arkansas State Highway and Transportation Department

Little Rock Municipal Airport Commission

Arkansas Airport Operators Association

Operating Administrations

U. S. Department of Transportation

Federal Highway Administration – Arkansas Division

Federal Aviation Administration – Regional Office of Civil Rights

Federal Transit Administration – Regional Office of Civil Rights

APPENDIX D

STANDARD SPECIFICATIONS
SECTIONS 103.06 & 103.07

Section 103.06

EXECUTION AND APPROVAL OF CONTRACT

(a) General. The contract shall be signed by the successful bidder and returned to the Division Head, Programs & Contracts Division, together with the required bonds and proof of liability insurance, within 10 business days after written notice of award has been issued. Execution of the Contract by the Department will take place as soon as practical after it has been signed and returned by the successful bidder.

(b) Furnishing DBE Information. For contracts having DBE goals, and where required DBE information is not submitted with the bidder's proposal, the successful bidder shall furnish this required DBE information as specified in Subsection 103.08. If the information is furnished and the conditional award status is lifted, the Contract will be handled as stated in (a) above.

SECTION 103.07

FAILURE TO EXECUTE CONTRACT

(a) General. Failure to execute the Contract and file acceptable bonds and proof of liability insurance within 10 business days after the written notice of award has been issued to the bidder shall be just cause for the cancellation of the award and forfeiture of the proposal guaranty, which shall become the property of the Commission, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and constructed under contract or otherwise, as the Commission may decide. The low bidder who fails to execute the Contract and submit acceptable bonds and proof of liability insurance will not be permitted to bid on any subsequent advertisement of that project.

(b) Failure to Furnish DBE Information. For contracts having DBE goals, failure to furnish the DBE information required under Subsection 103.08 shall be just cause of the conditional award and forfeiture of the proposal guaranty. The proposal guaranty shall become property of the Commission, not as a penalty, but in liquidation of damages sustained to the DBE Program. Conditional award, re-advertisement, etc., will be handled as in (a) above.

APPENDIX E

SPECIAL PROVISIONS FOR DBE GOALS

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

SPECIAL PROVISION

JOB «LCONTID»

GOALS FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A Disadvantaged Business Enterprise (DBE) goal of «DBE» has been established for this contract. Therefore, the provisions of subsection 103.08 of the Standard Specifications for Highway Construction, Edition of 2003, as revised, apply.

In order to satisfy the requirements of Subsection 103.08(d), a Disadvantaged Business Enterprise Participation form and a Certification to Submit DBE Participation are included with the Proposal Forms.

Requirements of Subsection 103.08 apply to successful bidders that are certified by the Department as a DBE. The Prime Contractor must meet the DBE goal. If the Prime Contractor is a Department certified DBE, then the work the Prime Contractor performs with its own forces, as well as work committed to be performed by DBE subcontractors and suppliers will count toward the goal. Therefore, DBE bidders should list work to be performed with its own forces on the DBE Participation form, along with DBE subcontractors to be utilized in achieving the goal.

All payments made to DBE Contractors, suppliers, manufacturers, and/or non-construction service firms must be reported by the Prime Contractor. This includes all payments made to DBE firms utilized in achieving the project goal and DBE firms that perform work that is not listed in the Disadvantaged Business Enterprise Participation form submitted with the executed Contract.

As required by Subsection 103.08(h), the Prime Contractor must use the appropriate DBE Payment Log form included in this Special Provision during the progress of the Contract. Listed below are the instructions on when each form is required to be submitted.

- The Prime DBE Payment Log (page 4) must be submitted by the Prime Contractor when he/she is a certified DBE Contractor and work was performed by their own forces or money was earned by the DBE Prime Contractor for work performed by a Subcontractor during the estimate period.
- The DBE Subcontractor Payment Log (page 3) must be submitted by the Prime Contractor when a Subcontractor is a certified DBE Contractor and work was performed by a Subcontractor or money was earned by a Subcontractor for work performed by a Second-tier Subcontractor during the estimate period.
- The 2nd Tier DBE Payment Log (page 5) must be submitted by the Prime Contractor when a 2nd Tier Subcontractor is a certified DBE Contractor and work was performed by a 2nd Tier Subcontractor during the estimate period.
- The 2nd Tier DBE Payment Log (page 5) must be submitted by the Prime Contractor when payments are made to a Department Certified DBE supplier, manufacturer, and/or non-construction service firm by the Prime Contractor or any Subcontractor or 2nd Tier Subcontractor during the estimate period.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

SPECIAL PROVISION

JOB «LCONTID»

GOALS FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A separate DBE Payment Log form is required for each DBE firm receiving payments for work completed or services provided during each estimate period. The DBE Payment Log forms, along with instructions for their use, are available on the Department's website at:

http://arkansashighways.com/Construc/SpecBK03/DBE_Log.xls

All certifications of payments must be received by the Resident Engineer within thirty-five (35) calendar days following the end of each estimate period. Facsimile or scanned copies of the completed original payment log forms are acceptable to fulfill this requirement.

Upon completion of the contract, a final certificate of payments to all DBE firms -- page 6 of this Special Provision -- is required by Subsection 103.08 (h). The final amount paid to each DBE firm shall match the total to date reported on the last DBE payment log submitted for each firm. If necessary, an additional DBE payment log shall be submitted with the certificate of payment itemizing all payments made to DBE firms since the last estimate period. A signed, original of the Final Certificate of Payment must be furnished to the Resident Engineer.

Arkansas State Highway and Transportation Department
DBE Subcontractor Payment Log

Job Number _____ Prime Contractor _____

Estimate No. _____ DBE Subcontractor _____

Estimate Ending Date_____ Date Payment Made to DBE_____

Item Code*	Item Description	Subcontract Unit Price	2nd Tier Unit Price	Quantity	Value Earned By Subcontractor

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Retainage Withheld This Estimate	
Net Total This Estimate	
___% Retainage Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the payment listed has been made to the DBE Subcontractor and that the documentation of this payment is available for inspection upon request.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received By _____ Date _____

Verified By _____ Date _____ _____ RE Initials

Arkansas State Highway and Transportation Department

DBE Prime Contractor Payment Log

Job Number _____ DBE Prime Contractor _____

Estimate No. _____

Estimate Ending Date_____

Item Code*	Item Description	Contract Unit Price	Sub Unit Price	Quantity	Value Earned By DBE Prime

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the information shown above is correct and represents the value earned by the DBE Prime Contractor during the above estimate period.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received

By _____

Date _____

Verified

By _____ _____

Date _____ RE Initials

Rev. 2-19-08

Arkansas State Highway and Transportation Department
DBE 2nd Tier Payment Log

Job Number _____ Prime Contractor _____

Estimate No. _____ Subcontractor _____

Estimate Ending Date_____ DBE 2nd Tier Subcontractor _____

Date Payment Made to DBE _____

Item Code*	Item Description	2nd Tier Unit Price	Quantity	Value Earned by 2nd Tier

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Retainage Withheld This Estimate	
Net Total This Estimate	
___% Retainage Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the payment listed has been made to the DBE 2nd Tier Subcontractor and that the documentation of this payment is available for inspection upon request.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received By _____ Date _____

Verified By _____ Date _____ RE Initials _____

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
CERTIFICATE OF PAYMENT

JOB _____ F.A.P. _____

JOB NAME _____

ORIGINAL CONTRACT AMOUNT $_____ DBE GOAL $_____*
(Contract Commitment)

DBE CONTRACT GOAL ___%

FINAL PAYMENT TO DBEs

The undersigned Contractor on the above mentioned project hereby certifies that the following amount(s) were paid to:

DBE Subcontractor(s)	Amount Paid
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
Total Paid to DBEs	$

Only payments related to work, services, or material actually provided by DBE firms should be shown. Payments under second tier subcontracts from DBE firms to non-DBE firms should not be included. **DBE prime Contractors should include the value of work performed by its own forces.**

Contractor:			
Signature:			
Typed or Printed Name:			
Title:		Date:	

THIS "CERTIFICATE OF PAYMENT" IS TO BE SUBMITTED TO THE RESIDENT ENGINEER PRIOR TO PROJECT ACCEPTANCE.

* If goal not met, brief explanation: _____

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

CERTIFICATION TO SUBMIT DBE PARTICIPATION

JOB «LCONTID»

If the bidder is not submitting the required DBE participation information or documentation of good faith efforts with the proposal, this form must be completed and submitted with the proposal.

The undersigned bidder irrevocably certifies that at least «DBE» of the total contract will be performed by certified Disadvantaged Business Enterprise (DBE) firms and the required DBE participation information will be submitted within 10 business days of notification of tentative award of the contract.

If DBE participation sufficient to achieve the DBE goal established for this project is not provided within 10 business days, the proposal will be rejected and the proposal guaranty shall become the property of the Commission, not as a penalty, but as liquidation of damages to the Department's DBE program.

Only work, materials, or services that will actually be provided by DBE firms will be credited toward the goal. The DBE firm's certification must be fully in effect at the letting date.

Bidder	Signature (Owner/Agent)
Date	Title

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

SPECIAL PROVISION

JOB «LCONTID»

DOCUMENTATION OF PAYMENTS MADE TO DISADVANTAGED BUSINESS ENTERPRISES

Although this contract does not have a Disadvantaged Business Enterprise (DBE) Goal, in accordance with Subsection 103.08(a) of the Standard Specifications all payments made to DBE Contractors, suppliers, manufacturers, and/or non-construction service firms must be reported by the Prime Contractor.

As required by Subsection 103.08(h), the Prime Contractor must use the appropriate DBE Payment Log form included in this Special Provision during the progress of the Contract. Listed below are the instructions on when each form is required to be submitted.

- The Prime DBE Payment Log (page 3) must be submitted by the Prime Contractor when he/she is a certified DBE Contractor and work was performed by their own forces or money was earned by the DBE Prime Contractor for work performed by a Subcontractor during the estimate period.
- The DBE Subcontractor Payment Log (page 2) must be submitted by the Prime Contractor when a Subcontractor is a certified DBE Contractor and work was performed by a Subcontractor or money was earned by a Subcontractor for work performed by a Second-tier Subcontractor during the estimate period.
- The 2nd Tier DBE Payment Log (page 4) must be submitted by the Prime Contractor when a 2nd Tier Subcontractor is a certified DBE Contractor and work was performed by a 2nd Tier Subcontractor during the estimate period.
- The 2nd Tier DBE Payment Log (page 4) must be submitted by the Prime Contractor when payments are made to a Department Certified DBE supplier, manufacturer, and/or non-construction service firm by the Prime Contractor or any Subcontractor or 2nd Tier Subcontractor during the estimate period.

A separate DBE Payment Log form is required for each DBE firm receiving payments for work completed or services provided during each estimate period. The DBE Payment Log forms, along with instructions for their use, are available on the Department's website at:

http://arkansashighways.com/Construc/SpecBK03/DBE_Log.xls

All certifications of payments must be received by the Resident Engineer within thirty-five (35) calendar days following the end of each estimate period. Facsimile or scanned copies of the completed original payment log forms are acceptable to fulfill this requirement.

Upon completion of the contract, a final certificate of payments to all DBE firms -- page 5 of this Special Provision -- is required by Subsection 103.08 (h). The final amount paid to each DBE firm shall match the total to date reported on the last DBE payment log submitted for each firm. If necessary, an additional DBE payment log shall be submitted with the certificate of payment itemizing all payments made to DBE firms since the last estimate period. A signed, original of the Final Certificate of Payment must be furnished to the Resident Engineer.

Arkansas State Highway and Transportation Department
DBE Subcontractor Payment Log

Job Number _____ Prime Contractor _____

Estimate No. _____ DBE Subcontractor _____

Estimate Ending Date_____ Date Payment Made to DBE _____

Item Code*	Item Description	Subcontract Unit Price	2nd Tier Unit Price	Quantity	Value Earned By Subcontractor

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Retainage Withheld This Estimate	
Net Total This Estimate	
___% Retainage Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the payment listed has been made to the DBE Subcontractor and that the documentation of this payment is available for inspection upon request.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received By _____ Date _____

Verified By _____ Date _____ RE Initials _____

Rev. 11-20-08

Arkansas State Highway and Transportation Department
DBE Prime Contractor Payment Log

Job Number _____ DBE Prime Contractor _____

Estimate No. _____

Estimate Ending Date_____

Item Code*	Item Description	Contract Unit Price	Sub Unit Price	Quantity	Value Earned By DBE Prime

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the information shown above is correct and represents the value earned by the DBE Prime Contractor during the above estimate period.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received

By _____

Date _____

Verified

By _____ _____

Date _____ RE Initials

Rev. 2-19-08

Arkansas State Highway and Transportation Department
DBE 2nd Tier Payment Log

Job Number _____ Prime Contractor _____

Estimate No. _____ Subcontractor _____

Estimate Ending Date_____ DBE 2nd Tier Subcontractor _____

Date Payment Made to DBE _____

Item Code*	Item Description	2nd Tier Unit Price	Quantity	Value Earned by 2nd Tier

* Item Codes for pay items are shown on the estimate voucher

Total This Estimate	
Retainage Withheld This Estimate	
Net Total This Estimate	
___% Retainage Previous Total	
Total To Date	

DBE Payment Log must be received within 35 calendar days of the ending date of the estimate.

The Prime Contractor certifies that the payment listed has been made to the DBE 2nd Tier Subcontractor and that the documentation of this payment is available for inspection upon request.

Authorized Signature_____ Title _____

Typed or Printed Name_____ Date _____

Department Use Only

Received

By _____

Date _____

Verified

By _____ _____

Date _____ RE Initials

Rev. 11-20-08

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
CERTIFICATE OF PAYMENT

JOB _____ F.A.P. _____

JOB NAME _____

ORIGINAL CONTRACT AMOUNT $_____ DBE GOAL $_____*
(Contract Commitment)

DBE CONTRACT GOAL ___%

FINAL PAYMENT TO DBEs

The undersigned Contractor on the above mentioned project hereby certifies that the following amount(s) were paid to:

DBE Subcontractor(s)	Amount Paid
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
Total Paid to DBEs	$

Only payments related to work, services, or material actually provided by DBE firms should be shown. Payments under second tier subcontracts from DBE firms to non-DBE firms should not be included. **DBE prime Contractors should include the value of work performed by its own forces.**

Contractor:			
Signature:			
Typed or Printed Name:			
Title:		Date:	

THIS "CERTIFICATE OF PAYMENT" IS TO BE SUBMITTED TO THE RESIDENT ENGINEER PRIOR TO PROJECT ACCEPTANCE.

* If goal not met, brief explanation: _____

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

CERTIFICATION TO SUBMIT DBE PARTICIPATION

JOB «LCONTID»

FAILURE TO COMPLY WITH ONE OF THE FOLLOWING SHALL RENDER THIS BID NONRESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION

(1) SUBMITTAL OF REQUIRED DBE PARTICIPATION INFORMATION,
(2) SUBMITTAL OF DOCUMENTATION OF GOOD FAITH EFFORTS, OR
(3) SIGNING OF THIS CERTIFICATION

In accordance with Supplemental Specification 103-1, if the bidder is not submitting the required DBE participation information or documentation of good faith efforts with the proposal, this Certification must be completed and submitted with the proposal.

The undersigned bidder irrevocably certifies that at least **«DBE»** of the total contract will be performed by certified Disadvantaged Business Enterprise (DBE) firms and the required DBE participation information will be submitted within 10 business days of notification of tentative award of the contract.

If DBE participation sufficient to achieve the DBE goal established for this project is not provided within 10 business days, the proposal will be rejected and the proposal guaranty shall become the property of the Commission, not as a penalty, but as liquidation of damages to the Department's DBE program.

Only work, materials, or services that will actually be provided by DBE firms will be credited toward the goal. The DBE firm's certification must be fully in effect at the letting date.

Bidder	Signature (Owner/Agent)
Date	Title

Rev. 11-29-99

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

JOB «LCONTID»

NOTE: PROPOSED PARTICIPATION BY DBEs MAY BE SHOWN BELOW AND SUBMITTED WITH BIDDER'S PROPOSAL, OR THE REQUIRED INFORMATION MAY BE SUBMITTED IN KEEPING WITH THE STANDARD SPECIFICATIONS AND THE SPECIAL PROVISION "GOALS FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION".

As provided in the Special Provision "Goals for Disadvantaged Business Enterprise Participation", the undersigned bidder proposes to use the certified DISADVANTAGED BUSINESS ENTERPRISE (DBE) subcontractors listed below to meet the goal of **«DBE»** of the total contract by DBEs. Only work or services that will actually be provided by the DBE firm(s) should be shown.

NAME & ADDRESS	LINE #	ITEM DESCRIPTION	AMOUNT
			$

If any firm listed above is a regular dealer, but not a manufacturer, the total amount of the agreement and the amount to be credited (60%) should be recorded on this form.

Total for DBEs - $ _____ or _____ % of bid.

_____ By: _____

(Contractor)

Title: _____

The named DBE subcontractors confirm their participation in the contract as provided in the commitment.

DBE Firm:	DBE Owner or Authorized Representative's Signature:
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

APPENDIX F

SUPPLEMENTAL SPECIFICATIONS

BIDDERS LIST

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

BIDDERS LIST

JOB NUMBER «LCONTID» LETTING DATE «DateLetStr»

JOB NAME «CDESCR»

CONTRACTOR _____

➔*ENTER THE WORK CODES TO BE PERFORMED BY THE PRIME CONTRACTOR* _____

The Department is required by 49 CFR 26.11, to create and maintain a master bidder's list of all firms attempting to participate on federally assisted projects. Therefore, the Contractor should provide the names and addresses of all subcontractors, truckers or material suppliers that bid or provided quotes on any item on the project, regardless of whether or not the quotes were used in preparing the proposal. DBE contractors should be indicated by placing an X in the box preceding the firm's name. The general type of work to be performed, i.e., (01) removal and disposal items (including clearing and grubbing), (02) earthwork (including drainage items), (03) hauling, (04) paving (PCCP or ACHM), (05) miscellaneous concrete, (06) traffic control, (07) erosion control, (08) signals/electrical, (09) structures (includes steel suppliers), (10) material (aggregate) supplier (11) miscellaneous *items should be shown*.

DBE	FIRM NAME ADDRESS	TYPE OF WORK (Enter Code)

SUBSECTION 103.08 AND SS-103-1(REV. 2/2/04)

DISADVANTAGED BUSINESS ENTERPRISE IN HIGHWAY CONSTRUCTION

103.08 Disadvantaged Business Enterprise (DBE) in Highway Construction.
(a) Contract Requirements. The provisions of this subsection shall apply to all contracts administered by the Department. If there are no specific participation goals for a contract, the Contractor agrees to ensure that Disadvantaged Business Enterprises (DBEs) are provided reasonable opportunities to compete for and perform on the contract or subcontracts and shall take all necessary and reasonable steps to ensure that the policy set forth in this supplemental specification is maintained. If a Contractor on a project without a specific participation goal elects to utilize a DBE subcontractor, all payments to the DBE subcontractor must be documented in accordance with Subsection 103.08(h). If the Prime Contractor is a DBE, records must be submitted in accordance with the above referenced section for work accomplished by their own forces.

(b) Policy. It is the policy of the Department to ensure nondiscrimination in the award and administration of Department contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly. Consequently, the following apply to the Contract, the DBEs listed in the Contractor's submittal required by Subsection 103.06(b) to achieve a DBE goal (either on a subcontract, purchase order, or other written agreement), the DBEs that may be added to the list later as substitutes, and DBEs performing on a contract, but not used to fulfill a portion of a DBE goal:

(1) The Contractor agrees to ensure that DBEs are provided reasonable opportunities to compete for and to perform on contracts awarded by the Department. In this regard, the Contractor shall take all necessary and reasonable steps to meet the DBE goal established in the Contract.

(2) The Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR § 26 in the award, administration and performance of 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 Department deems appropriate.

(3) After a conditional award is made and the apparent successful bidder has submitted the required DBE information, the Department will determine if the DBE requirements have been met. If those requirements are met, the conditional status will be removed and the Contract will be forwarded to the bidder for execution. If those requirements are not met, the proposal guaranty will become the property of the Commission, as specified in subsection 103.08(d).

(4) The Contractor should ensure that all DBEs performing on the Contract serve a commercially useful function. To ascertain that all obligations under contracts awarded to DBEs are met, the Department will review the Contractor's DBE involvement efforts during the performance of the Contract. No work shall be performed by the Contractor or any subcontractor on items originally committed to or included in a subcontract (including purchase orders or other written agreements) with a DBE without prior written approval by the Department. Payments to the Contractor will be withheld or previous payments recovered by the Department in amounts equivalent to that portion of the subcontract with a DBE in which:

a. The DBE subcontractor is found not performing a commercially useful function as defined in subsection 103.08(f)(3); or

b. The Contractor or any subcontractor performs any portion of the work to be accomplished by a DBE without prior written approval by the Department.

Amounts that have been withheld as a result of a or b above will be retained by the Department until the Contract DBE goal is satisfied or will be withheld permanently if the Contract DBE goal is not met.

(5) The Contractor shall pay all subcontractors their respective subcontract amounts, including retainage, according to subsection 108.01. The Contractor shall inform the Department of any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

Failure of the Contractor or any subcontractor to carry out the requirements set forth above shall constitute a breach of contract and, after notification by the Department, may result in withholding estimates due the Contractor, termination of the Contract by the Department, or other action as the Department deems appropriate.

(c) Definitions.

(1) "Disadvantaged Business Enterprise" means a for profit small business concern:

a. which 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, at least 51 percent of the stock is owned by one or more such individuals; and

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

(2) "Small Business Concern" means, with respect to firms seeking to participate as DBEs, a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR § 121), that also does not exceed the cap on average annual gross receipts allowed by Federal Regulation.

(3) "Socially and economically disadvantaged individual" means any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is found to be a socially and economically disadvantaged individual on a case-by-case basis; or any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, Women and any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

a. "Black Americans" includes persons having origins in any of the Black racial groups of Africa;

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

c. "Native Americans" includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

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

e. "Subcontinent Asian Americans" includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and

f. "Women".

(d) Bidder's Responsibilities.

(1) On projects with a DBE goal, each bidder shall furnish, with the proposal, one of the following:

a. The required DBE participation,
b. Documentation of good faith efforts, or
c. An irrevocable certification that the required DBE participation will be submitted within ten (10) business days following conditional award of the project.

If none of the items listed in (d) (1) a, b, or c is submitted, the Department will reject the bid and the proposal guaranty will be handled in accordance with Subsection 103.04.

(2) If an irrevocable certification to achieve the required DBE participation is submitted with the proposal, within ten (10) business days after conditional award of the Contract, the apparent successful bidder shall furnish the required information to the Department on a form provided by the Department. If the information is not furnished as required, the conditional award will be cancelled in accordance with Subsection 103.07(b).

(3) Information required to be submitted to document DBE participation is:

a. The names and addresses of the AHTD-certified DBE subcontractors to be used to satisfy the percentage goal;
b. An itemized description of the work each DBE subcontractor is to perform;
c. The dollar value of each item to be included in the DBE subcontract;
d. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
e. Written confirmation from the DBE that it is participating in the contract as provided in the Contractor's commitment.

(4) An apparent successful bidder who cannot meet the percentage goals shall document and submit with the proposal the steps taken to obtain the required DBE participation. Only those efforts made by the bidder to obtain DBE participation prior to the letting will be considered in the evaluation of good faith efforts. Good faith

efforts to meet DBE goals would include such items as, but not limited to, the following:

a. Soliciting through all reasonable and available means (e.g., attendance at a pre-bid meeting, if any, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest at least two weeks prior to the letting to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;

b. Selecting portions of the work to be performed by DBEs to increase the likelihood of meeting DBE goals (including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces). Selections should be made based on the current DBE directory of contractors and their specialty area/areas of work.

c. Providing interested DBEs with adequate information about plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation;

d. Negotiations.

(1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work;

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable;

e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal;

f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Department or Contractor;

g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;

h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(5) The preceding information shall be submitted directly to the Arkansas State Highway and Transportation Department, Programs and Contracts Division, P. O. Box 2261, Little Rock, Arkansas 72203.

a. The information submitted by the apparent low bidder will be reviewed by the Department to determine if the Contractor has successfully met the DBE goal or made a good faith effort to obtain DBE participation sufficient to achieve the DBE goal.

b. If it is determined that the goal was not met or a good faith effort was not made, the bidder will be notified and provided an opportunity for administrative reconsideration. As part of the reconsideration, the bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A request for administrative reconsideration must be submitted to the Chief Engineer within two business days of the Department's notification. The Chief Engineer will render a written decision on the reconsideration explaining the basis for the finding.

(6) Should the bidder to whom the Contract is conditionally awarded refuse, neglect, or fail to meet the DBE goals or to furnish acceptable documentation of efforts to meet these goals, the bidder will not be provided a contract for execution. If the goal is not met and the good faith efforts are found to be inadequate, the proposal will be rejected and the proposal guaranty filed with the bid will be returned to the contractor. However, if documentation of good faith effort was not submitted with the bid and DBE participation sufficient to achieve the goal is not provided within ten days, as required, the proposal will be rejected and the proposal guaranty shall become the property of the Commission, not as a penalty, but as liquidation of damages to the Department's DBE program.

(7) Should the Department accept a good faith effort, this determination will be made on the condition that the Contractor continue efforts throughout the life of the project to attain the DBE participation goal and to document such continued good faith efforts.

(8) A Contractor may not terminate a DBE firm's subcontract or purchase order without the written approval of the Department. The Contractor shall make good faith efforts to replace a DBE subcontractor with another DBE subcontractor if the original DBE subcontractor is unable or unwilling to perform successfully. All substitutions of DBE subcontractors during Contract performance must be approved by the Department in writing, not only because it is routinely required, but also to ensure that

DBE firms are provided reasonable opportunities to perform on contracts and substitute firms are eligible DBEs. A substitute DBE or the Contractor will not be allowed to commence work on those items committed or subcontracted to a DBE until satisfactory evidence of the original DBE's inability or unwillingness to perform is submitted to and approved by the Department in writing. For projects with a DBE goal, evidence of good faith efforts exerted by the Contractor must be submitted to and approved by the Department. Good faith efforts to replace a DBE subcontractor shall be directed at finding another DBE to perform at least the same amount of work (not necessarily the same work) under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the project. (See also subsection 103.08(b)(4).)

(9) Requirements of this Subsection shall also apply to DBE firms bidding as the Prime Contractor on a project. In determining whether a DBE bidder has met a contract goal, the work that the DBE performs with its own forces, as well as the work performed by DBE subcontractors and suppliers will count toward the goal. DBE bidders must list on the DBE Participation Form all work to be performed with its own forces and work to be performed by DBE subcontractors, DBE suppliers, DBE manufacturers, and/or DBE non-construction services that will be utilized in achieving the goal.

(10) Agreements between a bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

(11) The successful bidder shall designate a liaison officer who will administer the Contractor's DBE program and maintain in the home office the records and results of the contacts made with DBE subcontractors.

(12) Contractors are encouraged to investigate the full extent of services offered by banks owned and controlled by disadvantaged individuals.

(e) Eligibility of DBEs.

(1) To ensure that the Department's DBE program benefits only those firms for whom it is intended, the Department will certify or ascertain the eligibility of DBEs, and joint ventures, any of which are proposed to be used by contractors to perform subcontract work.

(2) Certification by the Department will be accomplished through the use of Schedules A, B, and C. Certification will be granted for specific types of work for which the socially and economically disadvantaged owners have the ability to control the firm.

(3) Eligibility of firms certified by the Small Business Administration under Section 8(a) of the Small Business Act or small and disadvantaged business (SDB) programs will be considered on a case-by-case basis by the Department.

(4) Contractors are encouraged to solicit DBE subcontractors wherever they may be located and, if the DBE is not certified by the Department, to encourage the DBE to submit certification forms for approval.

(5) Early submission of certification forms is encouraged, particularly for those complex situations in which a determination of eligibility may require extensive documentation and review.

(6) A Disadvantaged Business Enterprise Directory is published, maintained, and available from the Department. Firms listed in the Directory are certified at the date the Directory is printed. Additions or deletions to the Directory after that date due to certifications, decertifications, etc. are possible. The current status of firms can be ascertained by contacting the Department's DBE Program Specialist.

(f) Determination of DBE Participation. DBE participation shall be counted toward meeting the DBE goal according to the following:

(1) When a DBE participates in a contract, only the value of the work actually performed by the DBE for which it is certified is counted toward a DBE goal.

a. The entire amount of that portion of a contract that is performed by the DBE's own forces for which it is certified is counted toward a goal. The cost of supplies and materials obtained by the DBE for the work of that portion of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the Contractor or its affiliates), is included. DBEs bidding as prime contractors must indicate all work the firm will be performing with its own forces on the DBE Participation form.

b. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is a DBE and is certified for the types of work. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

c. No credit will be given toward the DBE goal for any subcontracting arrangement that is contrived to artificially inflate or obtain the appearance of DBE participation. Of particular concern is the interjection of DBE middlemen or passive conduits that are inconsistent with standard industry practices or which serve no commercially useful function, and arrangements in which a DBE subcontractor is acting essentially as a broker, (e.g., DBE second-tier subcontracts between DBE subcontractors who are fulfilling project goals, and non-DBE subcontractors with contracts acknowledged by the Department on the same project). Regardless of whether an arrangement between the Contractor and a DBE represents standard industry practice, where such an arrangement erodes the ownership, control, or independence of the DBE or does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the DBE goal.

d. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, may be counted toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.

(3) The Contractor may count toward the DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A commercially useful function is performed when:

a. All employees are under direct supervision of the DBE and on the DBE's payroll. Use by a DBE of personnel from the Contractor or any subcontractor will not be permitted without prior approval by the Department.

b. The DBE is responsible for obtaining all equipment necessary to perform Contract work. The DBE shall negotiate and enter into equipment lease or purchase order agreements directly with the equipment source. Such lease or purchase order agreements shall have prior approval by the Department.

c. The DBE is responsible, with respect to materials and supplies, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

If the Contractor chooses to assist a DBE firm by assuring payment for materials to be placed in the DBE's work or equipment leased by the DBE and wants to receive credit toward the DBE goal for the cost, the following procedures may be used:

- the material supplier or lessor may invoice the DBE firm and be paid by remittance from the DBE firm or
- the supplier or lessor may invoice the Contractor and DBE firm jointly and be paid by the Contractor and DBE firm utilizing a joint check from the Contractor. Such a joint checking arrangement must be in writing, either in the subcontract or a separate agreement, and approved by the Department prior to the supplies or equipment being utilized and payment being made.

No credit will be given toward the DBE goal for the cost of the DBE's required materials or equipment that the Contractor pays directly to the material supplier or lessor.

d. A DBE subcontractor will be deemed to have performed a commercially useful function and the Contractor will be allowed DBE goal credit when a DBE subcontractor performs at least 30 percent of its subcontract. This work shall be performed by the DBE subcontractor's normal work force.

(4) The following factors will be used in determining whether a DBE trucking firm or owner/operator is performing a commercially useful function:

a. The DBE must be responsible for the management and supervision of the entire trucking operation for the items on its subcontract or purchase order, including scheduling, providing sufficient trucks to accomplish the haul, and coordinating the work with the Contractor. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

b. The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract when work is in progress.

c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. Long-term lease arrangements are an acceptable form of "ownership."

d. Lease Agreements. There are two types of lease arrangements that can be utilized by DBE firms: long-term leases and short-term leases.

(1) Long-term lease arrangements. The DBE may lease trucks under a long-term lease arrangement from independent equipment leasing companies. Long-term leases with owner/operators or other trucking firms, even though only the truck is leased, are not acceptable. A long term lease is defined as a twelve month or longer lease period. The drivers, fuel, minor maintenance responsibility, and full control of the leased trucks must rest solely with the DBE owner as stipulated in the lease agreement. Drivers must be employees of the DBE, subject to withholding, worker's compensation requirements, unemployment, etc. Leased trucks must display the name and identification number of the DBE. The DBE will receive full credit for the full value of the transportation services provided by trucks leased and operated in this manner. A DBE supplier (regular dealer) must utilize this type of lease to supplement distribution equipment owned by the firm to receive credit for transportation services.

(2) Short-term lease arrangements.

a). The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

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

All lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. A copy of each lease agreement must be provided to and approved by the Resident Engineer before the truck begins hauling. The agreement must reflect the name of the lessor, cab card registration numbers of all leased trucks, the description of the truck(s), the amount and terms of the lease and method of payment (hour, ton, cubic yard, or number of loads hauled), and, if owner-operator, his/her Social Security Number.

e. The DBE must certify each estimate period the amounts paid to: (1) other DBE truckers, (2) non-DBE truckers, and (3) for hauls made with trucks owned by the firm. This certification must be made on the form provided by the Department.

(5) When a DBE is found not to be performing a commercially useful function, the DBE may present evidence to rebut the finding. Such evidence will be reviewed by the Department and a determination made. Decisions on commercially useful function matters are subject to review by the Federal Highway Administration for projects receiving federal funds.

(6) The Contractor may count toward the DBE goal 60 percent of expenditures for materials and supplies required under a Contract and obtained from a DBE regular dealer, and 100 percent of such expenditures to a DBE manufacturer.

a. For purposes of this Section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles or equipment required under the contract for incorporation into the work, and of the general character described by the specifications.

b. For purposes of this Section, a supplier or regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract for incorporation into the work are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a supplier, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question. A trucking firm or owner/operator will not be considered a supplier, nor will a supplier be considered a trucking firm.

A regular dealer in such bulk items as asphalt, steel, cement, gravel, stone, or petroleum products must own or lease, and operate, a refinery, pit, quarry, concrete plant, or other such facility that sells materials to the public. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

c. Expenditures for lease of a particular piece or pieces of equipment from DBEs for exclusive use on the project for which DBE participation is to be claimed may be counted 60 percent toward contract goals, provided the DBE dealer actually has ownership or control of the equipment and is considered a regular dealer.

d. Capital expenditures for tools, equipment, vehicles, field office furniture, and similar property items, even though such items are used on the project and purchased from DBEs, are not creditable toward contract DBE goals.

e. Expenditures for materials and supplies obtained from DBE suppliers and manufacturers for use in the Contractor's general operations which are not incorporated into the work are not creditable in whole or part toward contract goals, even though a portion of such items may be used in the administration and/or execution of a project.

(7) Brokers, manufacturer's representatives, packagers, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, can be counted toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. None of the cost of the materials and supplies themselves will count toward DBE goals.

(8) In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must fabricate the pipe.

(9) If material is purchased from a DBE supplier, credit will be allowed at 60% of the total cost of the material obtained from the DBE facility and the cost of delivery if the supplier is transporting the material using equipment it owns or leases on a long-term basis. Credit for 100% of transportation services provided by the DBE truckers will be allowed.

(10) A valid purchase order for the material must be executed by the contractor and DBE and approved by the Department prior to the material being hauled from the facility.

(11) The Contractor may count toward the DBE goal only those payments made to DBEs for work or services performed or material furnished after the DBE has been approved, either on the list in the Contractor's original participation submittal or later as a substitute. The Department must have acknowledged a subcontract or purchase order prior to the beginning of work by the DBE firm. Payments made to a DBE for work, services, or materials performed or furnished prior to approval and acknowledgment will not be counted toward the DBE goal.

(g) Subcontract Eligibility. On Federal-Aid projects, the provisions of Arkansas Act 936 of 1989, concerning the listing of unlicensed subcontractors, do not apply. However, the proposed DBE subcontractor shall meet all requirements of applicable Arkansas law (including licensing) prior to subcontract approval by the Department.

(h) Certificate of Payment to DBEs/Non-DBEs. Certification of payments to DBE subcontractors, suppliers, manufacturers, and/or non-construction services must be submitted by the Contractor each estimate period utilizing the forms provided by the Resident Engineer. A payment certification is also required when a non-DBE subcontractor subcontracts a portion of its work to a DBE firm or a DBE subcontractor subcontracts to another firm (DBE or non-DBE). In this case, the subcontractor shall complete the proper form and submit it through the Contractor. In lieu of using these forms, contractors may submit a copy of subcontractor pay estimates provided the required information and certification are included. This information will be submitted to the Resident Engineer for review and compilation. Only those payments reported will be credited toward the DBE goal. Failure to submit the reports within thirty calendar days after the end of the estimate period may result in contract sanctions, including withholding of progress payments.

In addition, a final certificate of payment to DBEs shall be submitted to the Resident Engineer who will attach it to the original copy of the final estimate for payment. This requirement applies regardless of whether a DBE goal had been established for the project.

(i) Cooperation. All participants in the Department's DBE program, including, but not limited to, DBE firms and applicants for DBE certification, and Contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with U. S. Department of Transportation or Department compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a Contractor using DBE firms to meet goals, withholding of progress estimates, findings of non-responsibility for future contracts and/or suspension and debarment).

(j) **Intimidation and retaliation.** All participants in the DBE program, including but not limited to the Department and contractors, must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR § 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

SUPPLEMENTAL SPECIFICATION

DETERMINATION OF DBE PARTICIPATION

Section 103 of the Standard Specifications for Highway Construction, Edition of 2003, is hereby amended as follows:

Subsection 103.08(f)(4) is hereby deleted and the following substituted therefor:

(4) The following factors will be used in determining whether a DBE trucking firm or owner/operator is performing a commercially useful function:

a. The DBE must be responsible for the management and supervision of the entire trucking operation for the items on its subcontract or purchase order, including scheduling, providing sufficient trucks to accomplish the haul, and coordinating the work with the Contractor. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

b. The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract when work is in progress.

c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE will also receive credit for the total dollar value of the transportation services attributable to no more than twice the number of trucks owned by the DBE and leased from another DBE firm. Long-term lease arrangements are an acceptable form of "ownership."

d. Lease Agreements. There are two types of lease arrangements that can be utilized by DBE firms: long-term leases and short-term leases.

(1) Short-term lease arrangements.

a). The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

b). The DBE may lease trucks from a non-DBE firm or owner-operator. Credit for the total value of the non-DBE firm or owner-operator trucks transportation services will be credited to the DBE so long as the number of non-DBE firm or owner-operator trucks does not exceed the number of trucks owned by the DBE or leased from other DBE firms. For trucks leased by the DBE in excess of the total number of owned or leased DBE trucks, the DBE is entitled to receive credit only for the fee or commission it receives as a result of the lease arrangements for the excess trucks.

(2) Long-term lease arrangements. The DBE may lease trucks under a long-term lease arrangement from independent equipment leasing companies. To be an independent equipment leasing company, the company must lease equipment to the public. A long term lease is defined as a twelve month or longer lease period. The drivers, fuel, minor maintenance responsibility, and full control of the leased trucks must rest solely with the DBE owner as stipulated in the lease agreement. Drivers must be employees of the DBE, subject to withholding, worker's compensation requirements, unemployment, etc. Leased trucks must display the name and identification number of the DBE. The DBE will receive full credit for the full value of the transportation services provided by trucks leased and operated in this manner. A DBE supplier (regular dealer) must utilize this type of lease to supplement distribution equipment owned by the firm to receive credit for transportation services.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

SUPPLEMENTAL SPECIFICATION

DETERMINATION OF DBE PARTICIPATION

All lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. A copy of each lease agreement must be provided to and approved by the Resident Engineer before the truck begins hauling. The agreement must reflect the name of the lessor, cab card registration numbers of all leased trucks, the description of the truck(s), the amount and terms of the lease and method of payment (hour, ton, cubic yard, or number of loads hauled), and, if owner-operator, his/her Social Security Number.

e. The DBE must certify each estimate period the amounts paid to: (1) other DBE truckers, (2) non-DBE truckers, and (3) for hauls made with trucks owned by the firm. This certification must be made on the form provided by the Department.

Subsection 103.08(f)(6)(b) is hereby deleted and the following substituted therefor:

b. For purposes of this Section, a supplier or regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract for incorporation into the work are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a supplier, the firm must be an established, regular business that engages in, as its <u>principal business</u> and under its own name, the purchase and sale or lease of the products in question. A trucking firm or owner/operator will not be considered a supplier, nor will a supplier be considered a trucking firm.

A regular dealer in such bulk items as steel, cement, gravel, or stone must own or lease, and operate a pit, quarry, concrete plant, or other such facility that sells materials to the public. A person may be a regular dealer in petroleum products or asphalt binder without owning, operating, or maintaining a place of business, where these items are bought, kept in stock, and regularly sold to the public, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

PAYMENT OF SUBCONTRACTOR RETAINAGE

Standard Specifications for Highway Construction, Edition of 2003

Section 108.01

PAYMENT OF SUBCONTRACTOR RETAINAGE

The Contractor shall pay all subcontractors their respective subcontract amount within 10 calendar days after the Contractor receives payment from the Department. The payment amount shall be according to the terms of the subcontract, except that the Contractor shall not require or withhold a retainage in excess of 10% of the amount due to the subcontractor. Amounts withheld as retainage from subcontractors must be returned within thirty calendar days after the subcontractor's work is satisfactorily completed, whether the Contractor's work is complete or not. The term "satisfactorily completed" for the purpose of this prompt return of retainage provision is defined as when; 1) the subcontractor's work is completed in accordance with the plans and specifications, 2) all required paperwork, including material certifications, payrolls, etc., has been received and approved by the Engineer; 3) the subcontractor does not have past due balances with suppliers for work associated with the project; and 4) the Engineer has determined the final quantities for the subcontractor's portion of the work. Delay or postponement of payment to a subcontractor may only be effected after the Contractor has established good cause and received written approval from the Engineer. If the Contractor fails to pay the subcontractors within the required periods, all or any portion of subsequent payments due the Contractor may be withheld by the Engineer.

In addition to the allowable retainage specified above, the Contractor may withhold from payments due to the subcontractor amounts owed by the subcontractor to the Contractor for items on the Contract. Payments to subcontractors in the form of joint checks made payable to the subcontractor and any other party shall be documented either in the approved subcontract or by a separate written agreement between the Contractor and the subcontractor. **No other deductions from the full amount due will be allowed.**

Contractors must include in their subcontract agreements notice to subcontractors of their right to prompt payment and return of retainage, and provisions that require the subcontractor to pay second tier subcontractors as provided above, with the same restrictions on retainage.

APPENDIX G

OTHER DBE REQUIREMENTS

GENERAL REQUIREMENTS
FOR
RECIPIENTS AND SUB-RECIPIENTS
CONCERNING DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the U. S. Department of Transportation (DOT) that no person should be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of DOT-assisted contracts covered by 49 CFR part 26 on the basis of race, color, sex, disability, age or national origin. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply to this Agreement.

Each financial assistance agreement a recipient signs with a DOT operating administration (or a primary recipient) must include the following assurance:

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

Each contract the recipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

(NOTE: Where appropriate, the term "recipient" may be modified to mean "sub-recipient", and the term "contractor" modified to include "subcontractor".)