

STATE OF OHIO



OHIO DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM PLAN

2007

**THE OHIO DEPARTMENT OF TRANSPORTATION
DBE PROGRAM**

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the ODOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

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

The Deputy Director of the Division of Contract Administration, has been designated the DBE Liaison Officer (DBELO). The DBELO reports directly to the Director of ODOT and has been granted authority to oversee the implementation of the DBE Program. The Administrator of the Office of Contracts, DBE services section, is responsible for implementing the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the ODOT in its financial assistance agreements with the Department of Transportation.

The ODOT has disseminated this policy statement to the Federal Highway Administration (FHWA) and all the components of our organization. This policy will be disseminated in all subsequent agreements between ODOT and all firms/organizations, doing business with ODOT.

James Beasley, P.E., P.S.
Director, ODOT

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this Program.

Section 26.3 Applicability

The ODOT is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107). The ODOT is also a recipient of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU) which was passed by Congress in August 2005 as the successor to the Transportation Efficiency Act for the 21st Century (TEA-21).

Section 26.5 Definitions

The terms used in this program are as defined in 49 CFR §26.5.

Section 26.7 Non-discrimination Requirements

The ODOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to USDOT:

The ODOT will report DBE participation on a semi-annual basis, using USDOT Form “Uniform Report of DBE Commitments/Awards and Payments”.

Bidders List:

The ODOT submitted a request for exemption of the requirement of maintaining a bidders list, consisting of information about all DBE and non-DBE firms that quote as subcontractors on USDOT-assisted contracts. FHWA headquarters in Washington D.C. notified the FHWA Ohio Office on April 26, 2000 that a waiver for exemption was not needed and the exemption was approved. (See Exhibit A - correspondence)

Prequalification Procedure:

The Contractor Qualification Section prequalifies construction companies to bid on projects let by the Ohio Department of Transportation by determining the bidder's dollar bidding capacity and the work types for which the bidder is qualified.

The Qualification Section reviews all construction contracts to ensure that all of the required information is compiled prior to the contract execution. Additionally, this section reviews all Requests to Sublet (C92s) to determine if subcontractors have sufficient dollar qualification and work types to perform the anticipated work.

ODOT determines an applicant's responsibility and competency by first computing the applicant's net assets in accordance with Rule 5501:2-3-01 of the Administrative Code. Next, ODOT grants the applicant types of work for which the applicant is responsible and competent in accordance with Rule 5501:2-3-04 of the Administrative Code. Finally, the net assets will be multiplied by a factor between one and ten with ten being the maximum rating, with the resultant total representing the dollar bidding capacity or bidder's qualification amount. The multiplying factor the applicant receives will be determined by averaging the total scores received in the previous calendar year from its evaluations. If the applicant has not completed work for the Department, the applicant will receive the maximum rating of ten. If the applicant has performed work for the Department, but not in the previous calendar year, the applicant will receive its most recent rating. Each contractor will receive an evaluation for each project for which it has performed work. In the event it is a multiple year project, an evaluation will be completed yearly.

ODOT publishes a list of work types for which bidders who desire to become qualified contractors pursuant to Sections 5525.02 to 5525.09 of the Revised Code may make application. In order to receive a particular work type designation, applicants must complete the application for qualification in accordance with Rule 5501:2-3-02 of the Administrative Code and submit adequate information in support of their request for particular work types. The information must contain verifiable resumes of currently employed persons who have the requisite experience as set out in the minimum skills of the application for qualification.

ODOT may amend at anytime the list of work types in order to remain current with technological advances, innovations in construction techniques and for other sound administrative reasons.

A Certificate of Qualification is valid for one year or less, unless revoked by the ODOT in accordance with Sections 5525.03 and 5525.07 of the Revised Code and the rules promulgated pursuant thereto, provided that the applicant's financial statement is not more than one year and five months beyond the last day of an applicant's fiscal year. The certificate shall set out the bidder's dollar bidding capacity and the work types for which the bidder is qualified on the basis of its submitted financial documents, previous performance for the Department and general work experience. The bidder may only bid on contracts for which it has dollar bidding capacity for one hundred per cent of its bid at the time of submittal. The dollar amount of all pending work shall be subtracted from the

bidder's dollar bidding capacity at the time of bidding by the Department to determine whether the bidder has dollar bidding capacity at least equal to one hundred per cent of its bid.

A bidder must possess work types, and perform work, equal to at least fifty per cent of the total amount of the submitted bid price. ODOT may, by insertion of a contract provision, reduce the fifty per cent amount. However, per the Code of Federal Regulations, Title 23, Part 635, Section 635.116(a), the ODOT will not reduce this amount below thirty per cent of the total original contract price excluding any identified specialty items.

Bidders without any prior work experience with the Department shall be granted a multiplying factor of ten in order to establish a dollar bidding capacity on their certificates. In the event a bidder bids with the Department as a prime contractor or is selected to perform work as a subcontractor, all pending work of the bidder will be assessed against the dollar amount set out in its certificate.

The list of prequalified contractors by name and work type can be found on ODOT's website at http://www.dot.state.oh.us/CONTRACT/pq_contractor.htm. This list is updated monthly.

Section 26.13 Federal Financial Assistance Agreement

Each financial assistance agreement the ODOT signs with a DOT operating administration (or a primary recipient) includes the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT 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 USDOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the ODOT 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.).

The following clause is placed in every USDOT-assisted contract and subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program

Since the ODOT has received a grant authorized by the statute for which this part applies, the ODOT will continue to carry out this program until all funds from USDOT financial assistance have been expended. The ODOT will provide to USDOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The first page of this document has been created to satisfy the requirement of this section. This document is available on the ODOT Office of Contracts website: <http://www.dot.state.oh.us/CONTRACT/>

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the ODOT DBE Liaison Officer:

Deputy Director
Division of Contract Administration
Ohio Department of Transportation
1980 West Broad Street, 1st Floor
Columbus Ohio 43223
Tel. 614-644-8390

In that capacity, the DBELO is responsible for overseeing the implementation of all aspects of the DBE program and ensuring that the ODOT complies with all provisions of 49 CFR Part 26. The Deputy Director of the Division of Contract Administration has direct, independent access to the Director concerning DBE program matters. Kerry Yoakum, Administrator of the Office of Contracts, is responsible for implementing the DBE program. An organizational chart displaying the DBELO's position in the organization is found in **Exhibit B** to this program.

The DBELO/Office of Contracts is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBE Services section within the Office of Contracts is staffed by 7 professionals to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment), identifies ways to improve progress and monitors results.
6. Analyzes ODOT's progress toward goal attainment and identifies ways to improve progress.
7. Advises the Director on DBE matters and achievement.
8. Participates with legal counsel and project personnel to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by USDOT and acts as liaison to the Uniform Certification Process in Ohio.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the ODOT updated directory of certified DBEs.

Section 26.27 DBE Financial Institutions

The ODOT has thoroughly investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons in Ohio. At the present time no minority owned financial institutions have been located. *(The Federal Reserve Board compiles quarterly data on banks that participate in the Department of the Treasury's Minority Bank Deposit Program and releases the data about twelve weeks after the end of each quarter. The data comes from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information in the Board's National Information Center database. Most recent data – June 30, 2006).*

The ODOT will conduct an annual review of the above referenced report to locate financial institutions owned and controlled by socially and economically disadvantaged persons in Ohio. If the ODOT locates financial institutions owned and controlled by socially and economically disadvantaged persons, the ODOT will provide the names and addresses to all contractors, subcontractors, and DBE firms. In addition, the ODOT will contact these institutions in order to determine services available and discuss innovative cooperative efforts to encourage contractors to use the services of the institutions.

Section 26.29

Prompt Payment Mechanisms

Retainage requirements on construction contracts have been repealed. Ohio law currently does not permit the use of retainage on ODOT contracts and requires the prompt payment of subcontractors and suppliers by the prime contractor. This provision also ensures that second tier subs and suppliers are paid promptly. The following clause is included in each USDOT-assisted prime contract:

In accordance with Section 4113.61 of the Ohio Revised Code, the prime contractor shall make payment to each subcontractor and materialman within ten (10) calendar days after receipt of payment from the Ohio Department of Transportation for work performed or materials delivered or incorporated into the public improvement, provided that the pay estimate prepared by the engineer includes work performed or materials delivered or incorporated into the public improvement by the subcontractor or materialman.

The prime contractor shall also require that this contractual obligation be placed in all subcontractor and materialman contracts that it enters into and further require that all subcontractors and materialmen place the same payment obligations in each of their lower tier contracts. If the prime contractor, subcontractors or materialmen subject to this provision fail to comply with the ten (10) day payment requirement, the offending party shall pay, in addition to the payment due, interest in the amount of eighteen percent (18%) per annum of the payment due, beginning on the eleventh (11th) day following the receipt of payment from the Department and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and materialmen timely as defined by this statute shall result in a finding that the prime is in breach of contract and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely as defined by the statute shall result in a lower evaluation score for the prime contractor and those subcontractors who are subject to evaluation.

In the event funds are unlawfully retained by an ODOT contractor, the subcontractor or sub-subcontractor has the right to pursue their legal remedies. In the event the ODOT is apprized of the lack of timely payment, the ODOT will initiate an investigation to determine the cause of the lack of timely payment. Repeated violations will impact the prime or subcontractor ability to secure future work with the ODOT. However, the ODOT has no legal right to interfere in a contract between a prime and sub when funds are being reasonably retained to protect the prime against faulty workmanship.

Section 26.31**Directory**

The ODOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The ODOT revises the directory daily. The Directory is made available by the following means:

- 1. Web-site address:**
www.OhioUCP.org

- 2. By mail:**
Ohio Department of Transportation
DBE Services Section
Office of Contracts, 1st Floor
Columbus, Ohio 43223

- 3. By telephone:**
1-800-459-3778

Section 26.33**Overconcentration**

Pursuant to 49 CFR Section 26.33, if the DBE Liaison Officer determines that DBE participation is so overconcentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs in that type of work, the DBE Liaison Officer will develop appropriate measures to address the overconcentration. The DBE Liaison Officer will seek approval from the FHWA. Once approved, the measures will become part of this Program. Measures to address DBE overconcentration in a particular field may include but are not limited to:

1. The DBE Liaison Officer will develop ways to assist DBEs to move into nontraditional areas of work;
2. The DBE Liaison Officer may vary the use of contract DBE goals;
3. The DBE Liaison Officer may work with prime contractors to find and use DBEs in other industry areas;

At this time, the ODOT has not identified an overconcentration in any one work type. If in the future, over concentration becomes an issue, the ODOT will address the problem.

Section 26.35

Business Development Program

The ODOT, as part of its regular business, has developed a number of program strategies that will ensure the fullest possible participation of DBE contractors in all ODOT programs and projects. These program strategies include, but are not limited to: providing timely information, outreach, technical assistance, education and mentoring which are provided through the ODOT Supportive Services Program. The Supportive Services Program offers professional services such as technical training and tuition reimbursement for ODOT-sponsored seminars and non-ODOT sponsored seminars. Technical reimbursement can be obtained if attending relevant trade shows, association sponsored programs, workshops and professional conferences. Tuition reimbursement can be obtained for formal education courses such as relevant technical training from a university, community college or technical trade school. The DBE Supportive Services Program also offers one-on-one consultant services at no cost to the DBE firm. The consultant services offered include customized help from professionals in Marketing Plans, Business Plans Development, Loan Packaging, Advertising/Promotion, Accounting Services, Bidding/Estimating, Bonding, Small Business Fundamentals Information Systems and Web Site Development.

The Mentor-Protégé Program has been developed as a permanent aspect of the ODOT's DBE Program. It involves a comprehensive developmental program of hands-on training and assistance in all phases of the construction business. It is intended to help DBE firms become more competitive and increase their business acumen. ODOT contractors and consultants are encouraged to participate as mentors to assist DBEs as protégés in developing their technical and business capabilities.

During the course of the Mentor-Protégé relationship, the ODOT will:

1. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient,
2. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm,
3. Not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program.

The ODOT Mentor-Protégé Program and the approval of this program by FHWA may be found in [Exhibit C](#).

Section 26.37

Monitoring and Enforcement Mechanisms

The ODOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The ODOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The ODOT will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The following are regulations, provisions, and contract remedies available to the ODOT to use in the events of non-compliance with 49 CFR part 26, and the ODOT DBE Program regulations by a participant in the Program:
 - a. TITLE 29 Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.
Subpart A – Davis-Bacon and Related Acts, Provisions, and Procedures, Section 5.1 (See Code of Federal Regulations – Title 29, Volume 1, Part 5)
 - b. 49 CFR Part 31 – Program Fraud and Civil Remedies.
 - c. 18 U.S.C. 1001 – Chapter 47, Fraud and False Statements.
 - d. ODOT Suspension and Debarment Procedures – **Exhibit D - Ohio Administrative Code.**
3. The regulation, provisions, and contract remedies available to the ODOT in the events of non-compliance with the DBE regulation by a participant in its procurement activities may be found in **Exhibit E - Sanctions.**
4. The ODOT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. A prime contractor will be given credit, towards the applicable DBE contract goal, for the amounts paid to the DBE firm only if that firm performs a commercially useful function. Failure to fulfill this obligation will be considered a breach of contract and sanctions may be assessed by ODOT. The ODOT will determine compliance with the commercially useful function requirement through application of the following principals. **Exhibit F - CUF Policy**
5. The ODOT will keep a running tally of actual DBE goal attainments. This will be accomplished through DBE Affidavit of Subcontractor Payment tracking. Actual payment to the DBE will be compared to the original subcontract amount and attainment of the DBE goal will be calculated based on the contract amount and the actual payments made to the DBE.

Reporting of DBE participation to the USDOT will indicate both commitments and attainments as required by the USDOT “Uniform Report of DBE Awards, Commitments and Payments” Form. DBE Commitment is reported in the reporting period in which the award of contract is made. This information is reported on the top half of the Uniform Report of DBE Awards or Commitments and Payments.

The report of DBE Participation is based on the actual dollars paid to DBEs is reported in full on that project for the reporting period in which the project has been completed and paid in full. This is reported on the bottom portion of the Uniform Report (Completed Projects).

The ODOT will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the ODOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The ODOT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

DBE Affidavit of Subcontractor Payment Verification Process

The Code of Federal Regulations 49, 26.37(b), requires the ODOT to monitor and verify that work subcontracted to DBE firms is actually performed by the DBEs. Additionally, ODOT is required to report the DBE participation on each project. Therefore, it is ODOT's responsibility to discern whether payments are made to DBE firms. The DBE Affidavit of Subcontractor Payment is to be completed and signed by the contractor within 15 days of the completion of the project. The affidavit seeks to verify actual payments made to DBE firms on the project. Each DBE firm must verify the actual payment amount.

For those Prime contracts where DBE affidavit information is not in the database nor is the DBE affidavit in the DBE affidavit file, a form letter is sent to the Prime advising that a completed and notarized DBE affidavit for the DBEs on their project must be submitted to the Office of Contracts. A two week deadline is given for submission of this information.

If the DBE affidavit is not received by the due date, nor is a letter offering explanation as to the delay, a second letter is written to the Prime contractor requesting said documentation. A one week deadline is given for submission of this information. The ODOT will consider invoking sanctions if the deadline is not met.

In addition to tracking the actual receipt of the DBE affidavit, goal attainment or non-attainment is also tracked. Any non-attainment of the goal is then investigated by the Office of Contracts.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The ODOT does not use quotas or set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Exhibit G** to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the ODOT will submit its overall goal to USDOT by August 1 of each year. Before establishing the overall goal each year, the ODOT will consult with minority, women's, and contractor groups, community organizations, and other organizations or officials to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ODOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the ODOT will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the ODOT's Central Office for 30 days following the date of the notice, and the ODOT and USDOT will accept comments on the goals for 45 days from the date of the notice.

Normally, the ODOT will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The ODOT's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and the ODOT's responses. Included with the goals are descriptions of the methodologies used, the base figures, and the evidence relied on for adjustments.

The ODOT will begin using its overall goal on October 1 of each year, unless it has received other instructions from USDOT. If the ODOT establishes a goal on a project basis, the ODOT will begin using that goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

The ODOT will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on Federal Transit Administration (FTA) assisted transit vehicle procurements, to certify that it has complied with the requirements of this section (**Exhibit H - Required Bid Submission Form 6, Transit Vehicle Manufacturers**

Certification of Compliance with 49 CFR Part 26 DBE Participation). Alternatively, the ODOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program. The ODOT will also require the TVM to submit a copy of its approved or not disapproved annual overall DBE goal percentage with bid submittal or the bid will not be considered.

Section 26.51(d-g) Contract Goals

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting the portion of the ODOT's overall goal that is not projected to be met through the use of race-neutral means.

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

The ODOT will express its subcontract goals as a percentage of the total amount of Federally-assisted contracts. To ensure that the program continues to be narrowly tailored to overcome the effects of discrimination, the ODOT will adjust its use of subcontract goals as outlined in Subsection 26.51.

The following outlines the process used to establish contract goals on Federal aid projects:

The ODOT identifies project work types needed for a particular project.

The following is used to determine the DBE availability for each project:

1. List of pre qualified DBE contractors by work type.
2. List of certified DBEs.
3. List of total certified, pre qualified DBE contractors by work type.
4. Map of each ODOT District location.
5. List of DBE subcontractors' previous work by work type.
6. Associative knowledge of non-pre qualified DBEs.

A goal setting meeting is facilitated and the aforementioned DBE availability information is provided to the goal setting committee members. The contract goal setting committee is made up of the following individuals:

1. DBE Representative from the Office of Contracts, Division of Contract Administration.
2. Prequalification Engineer, Office of Contracts, Division of Contract Administration.

3. Section Head for Construction Costs, Office of Estimating, Division of Contract Administration.
4. Bridge Hydraulics Engineer, Office of Structural Engineering, Division of Highway Operations.
5. Partnering Coordinator in Construction Management, Office of Construction Administration, Division of Construction Management.

The goal setting committee's decisions are expressed in percentages and included in the project's proposal.

A notice letter is prepared to be sent to DBE firms, informing them that they were considered as a potential firm to satisfy the DBE goal. A similar letter is sent to the prime contractor which identifies potential DBE firms.

Contract Goal Setting for Consultant Contracts

DBE projected goals will be established based on estimates of baseline dollars provided by the ODOT's Division of Finance. However, actual project posting will be used as the basis to select projects that will include goals, and actual funds expended will be the basis for the performance measures.

The selection of projects to include goals must consider:

1. The capabilities and prequalification levels of the pool of firms available – distribution among project types based on the number and size of firms prequalified.
2. Statewide distribution of the goals – all ODOT Districts should participate more or less equally based on the size of the District program.
3. Direct selection (Goal of 100%) should be favored over subconsultant arrangements based on the certainty of meeting the goal and ease of accounting.

Projects to include goals should be selected prior to advertisement based on the group of projects to be posted. Selection should be made by the Consultants Committee or a group appointed by the Committee. Project selection (for goals) at the point of advertisement is recommended as being more accurate than selection based on annual projections of consultant projects, which are prone to change and uncertainty of state or federal funding.

Section 26.53 Good Faith Efforts Procedures

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following language is contained in all ODOT contracts:

Proposal Note 013 - 10/15/2004 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. The Contractor must use its best efforts to solicit bids from and to utilize DBE subcontractors with meaningful minority groups and female representation among their employees. Consequently, the requirements of Title 49 CFR Part 26 and Ohio Revised Code §5525.011 apply to this contract. The Contractor must ensure that the DBE subcontractor(s) is performing a “commercially useful function” as defined in CFR 26.55.

The percentage indicated on the front cover of this bid is the percent of the awarded Contractor's bid which must be subcontract to certified ODOT DBE firms.

In order to be assured that the Contractor complies with this contract requirement the Contractor shall provide certified payrolls from its DBE subcontractors where appropriate. When the Contractor utilizes a service, for example trucking, to satisfy a part or its entire contractual goal, the Contractor, when requested, must provide a copy of each canceled check issued to the DBE service provider until the goal amount is reached. The Department shall total the amounts of the canceled checks and compare that total to the subcontract agreement by the parties and the C-92 issued to the Contractor for the work to be performed by the DBE subcontractor.

WAIVER PROCESS FOR DBE GOAL

The Contractor must document the progress and efforts being made in securing the services of DBE subcontractors. In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for a waiver of all or part of the goal may be made to the Office of Contracts. The written request must indicate a good faith effort was made to meet the goal and be sent to the Administrator, Office of Contracts, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by the Department or the subject of an approved Value Engineering Change Proposal (VECP), the Contractor may request a waiver for the portion of work excluded.

The Contractor must provide the following information and documentation when requesting DBE goal waiver:

1. Dollar value and % of DBE goal. Dollar value and % of waiver request.
2. Signed copy of each subcontract or purchase order agreement between the prime and DBE subcontractor utilized in meeting the contract goal.

3. Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with the DBE's.
4. Copy of dated written communication and/or fax confirmation that bidder solicited and provided DBE's with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
5. Copy of dated written communication and/ or fax confirmation of each noncompetitive DBE quote that includes the dollar value of each reference item and work type.
6. Copy of dated written communication and/ or dated fax confirmation of DBE's that were not interested in providing a quote for the project.
7. Documentation of all negotiating efforts and reason for rejecting bids.
8. Documentation of good faith efforts (GFE) to meet the DBE subcontract goal, by looking beyond the items typically subcontract or consideration of subcontracting items normally performed by the prime as a way to meet the DBE goal.

The Administrator will review the submitted documentation and issue a written decision within ten (10) business days. The Contractor may request administrative reconsideration within 14 days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation
Attention: -Deputy Director, Division of Contract Administration
1980 West Broad Street
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the contractor did not document sufficient good faith effort.

As part of this reconsideration, the contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the contractor a written decision on reconsideration explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable to the USDOT. However, it is appealable to the Franklin County Court of Common Pleas.

SANCTIONS

The Ohio Department of Transportation will issue sanctions if the Contractor chooses not to request a waiver, the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort.

The Ohio Department of Transportation may impose any of the following sanctions:

- (1) letter of reprimand;
- (2) liquidated damages computed up to the amount of goal dollars not met;
- (3) cross-withhold from future projects;
- (4) contract termination and/or
- (5) other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions include, but are not limited to:

- (1) the magnitude and the type of offense;
- (2) the degree of the Contractor's culpability;
- (3) any steps taken to rectify the situation;
- (4) the Contractor's record of performance on other projects including, but not limited to:
 - a. annual DBE participation over DBE goals;
 - b. annual DBE participation on projects without goals;
 - c. number of complaints the Ohio Department of Transportation has received from DBEs regarding the Contractor; and
 - d. the number of times the Contractor has been previously sanctioned by the Department of Transportation; and
- (5) whether the Contractor falsified, misrepresented, or withheld information.

The ODOT will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

The ODOT treats bidders' compliance with good faith efforts requirements as a matter of responsiveness.

Good Faith Efforts when a DBE is replaced on a contract

The ODOT requires a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The ODOT requires the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

During the life of the construction project the DEEOCC will conduct the following investigatory activities:

1. Conduct on-site visits
2. Interview contractors' employees (this is done by either the ODOT project personnel or the DEEOCC. DBE subcontractors are interviewed in the same manner as non DBE contractors.)
3. Attend progress meetings and discuss EEO, DBE and Prevailing Wage issues.
4. Receive weekly certified payrolls from all contractors. These payrolls are audited and reviewed for both wage issues and indication of employee sharing.
5. Conduct verification of owner-operator status of a DBE trucking firm.
6. Conduct verification of truck registration of a DBE trucking firm.
7. Conduct verification of equipment ownership of a DBE firm.
8. All information will be gathered and sent to the Office of Contracts for verification with Bureau of Motor Vehicles.
9. Review and verification of DBE firm equipment lease agreements. Lease agreement must indicate that the DBE firm has exclusive use of and control over the truck. Leased trucks must display the name and identification number of the DBE.
10. Conduct verification that DBE material supplier is an established regular dealer.
11. Conduct verification of long term agreements when distribution equipment is leased.
12. Conduct verification that there are no contract to contract based agreements.

Investigation findings are reported to the ODOT Central Office, Office of Contracts. If necessary, a meeting is scheduled with the ODOT Central Office, the ODOT District office and the Prime to discuss the investigation findings. At that time, the prime contractor is required to provide a resolution/corrective action plan (CAP). ODOT Central Office reviews and approves or rejects the CAP. If the ODOT accepts the CAP, the ODOT District monitors the contractor for compliance with the CAP. This includes verification that the new subcontractor is performing a CUF and verification of the purchase of additional materials if from a DBE supplier.

Upon completion of the project, a DBE Affidavit of Subcontractor Payment is sent by the District to the Prime contractor. This Affidavit is also available on the Office of Contracts web site. The prime contractor and the DBE subcontractor sign the affidavit and original notarized form is sent to the ODOT Central Office, Office of Contracts. A copy is sent from the ODOT Office of Contracts to the DEEOCC.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The ODOT will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Ohio Department of Transportation
DBE Services Section
Office of Contracts, 1st Floor
Columbus, Ohio 43223
Tel. 1-800-459-3778

The Ohio Unified Certification Program (UCP) certification application forms and documentation requirements may be found in [Exhibit J](#) to this program or on-line at www.OhioUCP.org.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The ODOT is a member of the Ohio UCP. The following is a description of the UCP. [See Exhibit K - UCP Program approval letter from US DOT.](#)

The Ohio UCP is a "one stop" certification process for the Federal DBE Programs in Ohio. The Ohio UCP consolidates all DBE firms certified by five different agencies into one centralized DBE Directory for USDOT funded contracts. A business' DBE certification is valid at any Ohio entity that receives USDOT funds and has a DBE Program. Small businesses desiring DBE certification must submit their application to one of the five certifying agencies within the state. Firms certified by each of the five agencies are included in one consolidated and centralized DBE Directory.

The Ohio UCP certifying entities

The Ohio Department of Transportation
Office of Contracts, DBE Section
1980 W. Broad Street, 1st Floor
Columbus, OH 43223
(614) 728-9598
(614) 728-2078 (fax)

3. The Department safeguards applicant information and documents in accordance with §§26.109, 26.67(a)(2)(ii); and
4. The Department cooperates fully with other U.S. DOT recipients regarding all DBE issues.

There is no application fee for DBE certification. All applications for certification must be accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided.

The Ohio UCP certification application must be submitted by each firm seeking DBE certification including SBA 8(a) and Small Disadvantaged Businesses (SDB).

The ODOT DBE Certification Officers conduct an on-site review at the applicant firm's premises after a complete application has been received. The purpose of the on-site review is to verify information submitted, assess the firm's capabilities and capacity, and determine the independence of the firm and the control or management of the firm demonstrated by the disadvantaged owner. Applicant firms must allow the DBE Certification Officer to examine and review all books, records, documents and files of the firm and its affiliates, inspect its place of business and equipment, and permit interviews of its principals, agents and employees.

Refusal to permit such inquiries shall be grounds for denial of certification. The DBE Certification Officer may contact firms or individuals associated with or having direct knowledge of the firm applying for certification as a normal part of its investigation.

The DBE Certification Officers will make every reasonable effort to schedule the on-site review within 30 days of receipt of a completed application and all necessary supporting documentation from the firm applying for DBE certification.

Prior to the on-site being conducted, a thorough file review is performed, and a letter is sent, as well as e-mail notification when applicable, to the president of the firm stating the date, time and location of the on-site interview. If the applicant is unable to attend the scheduled interview, the on-site will be rescheduled and a second notification letter sent. Additionally, a follow-up phone call will be made to the firm. If the applicant fails to attend the review, their file is closed and they are denied certification.

A standard set of questions, (**Exhibit L**), will be asked of all firms and every concern will be addressed. Hard copies of the report become part of the permanent certification file.

The on-site review conducted for firms headquartered or having their principle place of business in Ohio will include:

1. A visit to the firm's home office.
2. A review of any of the firm's records as deemed necessary.
3. Personal interviews with the firm's principal owners, managers and other individuals as deemed necessary.
4. On-site visits to the firm's active ODOT construction projects (if applicable).

5. Review of information from other states if the firm is or has been certified as a DBE in another state.
6. Review of any information deemed necessary and obtained from other sources.

The following applies for all applications for DBE certification from firms not headquartered or having their principle place of business in Ohio:

1. If a firm applying for DBE certification is from a state other than Ohio, the firm must be certified as a DBE under 49 CFR part 26 in its home state before applying for certification in Ohio and must provide proof of its certification with an agency which uses 49 CFR Part 26.
2. If the firm is from another state, an on-site visit report will be requested from the firm's home state certifying agency. If the firm's home state has never conducted an on-site review, ODOT will not process the firm's application until such time as an on-site has been conducted by the home state and the on-site review has been received by ODOT.
3. The findings of the investigation will be compiled for a determination of eligibility as soon as possible following the completed review.
4. The firm must file an Ohio UCP DBE Certification Application.

The ODOT may confirm the existence of an office operated by the firm within Ohio, the type of work the firm provides and the date the firm was established. A list of three contracts that the firm has completed or is performing will be obtained and the ODOT may perform an on-site review at the Ohio business location.