# STATE OF MARYLAND

# Federal Disadvantaged Business Enterprise Program

Maryland Department of Transportation

Office of MBE

**June 2012**

**(Revised March 2015)**

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# PART I
# POLICY STATEMENT OF THE SECRETARY
# FOR
# THE MARYLAND DEPARTMENT OF TRANSPORTATION

In accordance with Federal Regulations 49 CFR, Part 26.81, Maryland Department of Transportation (MDOT) operates the Unified Certification Program (UCP) for the State of Maryland. MDOT manages both the Federal Disadvantaged Business Enterprise (DBE) Program. Included within MDOT are the following six Administrations: Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Maryland Motor Vehicle Administration, Maryland Transit Administration and the Maryland Transportation Authority (an independent agency that is subject to MDOT policies regarding the DBE Program).

As the designated Unified Certification Program agency, MDOT renews its commitment to enhance the existing DBE Program to reflect changes in State and Federal law, as well as changes in the marketplace and the DBE community. MDOT, through the DBE Program, continues to encourage the growth of disadvantaged and/or minority owned and operated businesses that seek to avail themselves of business opportunities in Maryland.

MDOT will ensure that:

- No discrimination exists in contract awards or administration in the DBE Program
- Certified DBE firms will fully meet eligibility standards
- Assistance will be given to firms to develop and compete successfully in the marketplace without the DBE Program
- The DBE Program is narrowly tailored, with appropriate flexibility
- Every effort is made to remove barriers to the participation of DBE firms on MDOT contracts
- A level playing field is created so that DBE firms can compete fairly for USDOT-assisted contracts
- Appropriate flexibility is provided to recipients of federal financial assistance to establish and provide opportunities for DBE firms
- Statutory requirements for concessions are followed

MDOT is committed to the successful implementation of the DBE Program. The Assistant Secretary for Administration, MDOT, is responsible for implementing all aspects of the DBE Program. The Office of Minority Business Enterprise (OMBE) provides policy development and guidance, policy monitoring and overall goal development.

Each Administration is responsible for program implementation including the goal setting on individual contracts, contract administration, contract compliance, participation reporting, and enforcement and sanctions.

Transportation serves as the lifeline of the State's economy, and viable, competitive DBEs are a vital part of a balanced economic climate. Together we can build a better Maryland.

9/7/12
DATE

Sincerely,

Darrell B. Mobley
Acting Secretary

## PART II
## MARYLAND DEPARTMENT OF TRANSPORATION
## UNIFORM CERTIFICATION PROGRAM

Pursuant to 49 CFR §26.81, the Maryland Department of Transportation (MDOT) hereby commits to writing its Uniform Certification Program (UCP) for all recipients in Maryland of United States Department of Transportation (USDOT) assistance.

1. Maryland recipients of USDOT assistance are the Maryland State Highway Administration (SHA); Maryland Aviation Administration (MAA), and Maryland Transit Administration (MTA).

2. SHA, MAA, and MTA are each a unit of MDOT. Md. Code Ann., Transp. Art., §2-107(a). As the Secretary of MDOT, I am authorized by law to sign this UCP for MDOT, SHA, MAA, and MTA. Md. Code Ann., Transp. Art., §2-103(g).

3. In accordance with Maryland law and regulations, MDOT is the single Disadvantaged Business Enterprise (DBE) certification agency for the SHA, MAA and MTA, and makes all certification decisions on behalf of these entities with respect to participation in the USDOT DBE Program. MDOT UCP is currently fully operational, has been fully operational since at least 1990, and offers "one-stop shopping" to all applicants for DBE certification. MDOT uses the consolidated Transportation Trust Fund to financially support all activities of MDOT, including its DBE certification functions.

4. As the DBE certification agency, MDOT shall: follow all certification procedures and standards of 49 CFR, Part 26; cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations; and implement USDOT directives and guidance concerning certification matters.

MDOT maintains a unified DBE Directory containing for each certified firm the address, telephone number, and the types of work the firm has been certified to perform. MDOT makes the directory available to the public 24 hours a day, seven days a week, via the Internet. MDOT updates this directory as additions, deletions, or other changes are made.

## PART III
## PROGRAM AUTHORITY

The Maryland Department of Transportation (MDOT) Disadvantaged Business Enterprise Program (DBE), as mandated by federal regulations 49 CFR, Part 26 must meet certain regulatory requirements as a condition of law and federal funding requirements. Those statutory and regulatory requirements are as follows:

A. Federal Register. The USDOT on February 2, 1999, published in the *Federal Register* its final rule, 49 CFR, Part 26, Entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," as amended.. It supplemented all DBE regulations, orders, circulars, and administrative requirements concerning financial assistance programs issued by USDOT before March 4, 1999. This rule requires the MDOT to implement a program to encourage the participation of DBEs in its USDOT-assisted contracting activities.

B. 49 CFR, Part 23 & 26, Subparts A through F for all applicable Federal Department of Transportation Financial Assistance Programs. This regulation, in its entirety, is incorporated by reference in the MDOT DBE Program. It requires a uniform certification program for DBE as well as ACDBEs pursuant to 49 CFR Part 23. It also requires both an overall goal and individual contract goal. For the purposes of this Program, goals shall be set for specific contracts based on those ready, willing and able certified firms. See 49 CFR §26.51. MDOT establishes overall goals every three years for DBEs for each of the administrations that receive USDOT assistance.

C. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This act replaces the Surface Transportation and Uniform Relocation Assistance Act of 1987, which provides that, except to the extent that the USDOT Secretary determines otherwise, not less than 13 percent 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.

D. Transportation Equity Act of 1998 (TEA-21). This act replaces the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which provides that, except to the extent that the USDOT Secretary determines otherwise, not less than 10 percent 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.

E. Federal Requirements. To the extent required by federal assistance instruments applicable to contracts let by the State under a federal assistance program, only those DBEs meeting federal requirements and criteria shall be used.

F. MDOT advises each sub recipient (local agencies receiving federal funds from the State), that they are required to include the following provision in all agreements with contractors on projects utilizing federal funds:

Disadvantaged Business Enterprises:

1. Policy. It is the policy of the United States Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26, apply to this Agreement.

2. DBE Obligation. The Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts assisted by the United States Department of Transportation.

MDOT DBE Program also contains procedures and special bid provisions which are to be included in all bid documents and appropriate contracts to assure conformance with applicable requirements. These special bid provisions are available for viewing upon request by contacting the Maryland Department of Transportation, Office of Minority Business Enterprise, during normal business hours.

Each financial assistance agreement between MDOT and a USDOT operating administration must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any 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.*).

## PART IV
## DISADVANTAGED BUSINESS ENTERPRISE PROGRAM INFORMATION

The MDOT Program Manual is available electronically at the MDOT website, http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/HomePage.html. A hard copy is also available upon written request to the Office of Minority Business Enterprise.

For Additional Program Information Please Contact:

For Certification Procedures and General Program Information

Maryland Department of Transportation
Office of Minority Business Enterprise (OMBE)
7201 Corporate Center Drive
Hanover, Maryland 21076
General Number: 410-865-1269
Toll Free Phone: 1-800-544-6056
Fax Number: 410-865-1309
www.mdot.maryland.gov

For DBE Contract Compliance

Maryland Department of Transportation
Office of Diversity and Equity (ODE)
Hanover, Maryland 21076
General Number: 410-865-1397
Toll Free Phone: 1-800-544-6056
Fax Number: 410-865-1192
www.mdot.maryland.gov

DBE Liaison Officer:

In compliance with 49 CFR, Part 26, MDOT has designated the Assistant Secretary for Administration as the DBE Liaison. Any questions or requests for additional information should be forwarded to this designated individual.

DBE Participation Goals:

MDOT will publish a notice of proposed overall DBE participation goals, informing the public of the proposed goals, their rationale, and the availability for inspection. After a proposed goal is published, MDOT will convene a public meeting to receive feedback.

Complaint Procedure:

MDOT recognizes its responsibility to render courteous and timely service to the public. Complaints regarding the DBE program should be forwarded to the above address of MDOT's OMBE or ODE as set forth in Part X.

Public Information Guidelines:

MDOT's policy, in regard to information requests, is that all queries by the general public, contractors, news reporters, and attorneys shall be responded to promptly and with candor in so far as the information sought is not protected from disclosure by statute. Requests for public records, shall be handled in accordance with provisions of 49 CFR §26.109 and the Maryland Public Information Act, Md. Code Ann., State Government Article §10-611 *et. seq.*

## PART V
## DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION STANDARDS

### A. ELIGIBILITY STANDARDS

49 CFR, Part 26, Subpart D, pertaining to certification standards, applies to all businesses seeking certification through the MDOT DBE Program. Subpart D states in part: "The firm seeking certification has the burden of demonstrating to [MDOT], by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control." Determinations will be made concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

In accordance with 49 CFR, Part 26, since 1978, MDOT is the Unified Certification Program (UCP) for the State of Maryland. The following standards are derived in part from 49 CFR, Part 26:

#### 1. Group Membership

Any socially and economically disadvantaged individual who is a citizen of the United States (or lawfully admitted permanent resident). Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

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

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

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

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

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

f. Women;

g. A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71;

h. The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs). Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the regulatory requirements; and

i. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

It is rebuttably presumed that members of the above groups are socially and economically disadvantaged. This means that they do not have the burden of proving that they are socially and economically disadvantaged. Applicants have the obligation, however, to provide information concerning their economic disadvantage. If it is determined that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

If there is a question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, the individual must demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

The determination must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The applicant must produce appropriate documentation of group membership.

2. Individual Determinations of Social and Economic Disadvantage

MDOT adopts 49 CFR, Part 26, Appendix E and will apply the definition of Socially and Economically Disadvantaged Individual in the Explanation of Terms section of this manual for the purpose of determining social and economic disadvantage.

The below socially and economically disadvantaged criteria is not applicable to those groups under federal certification criteria which are presumed to be socially and economically disadvantaged. For those not in the presumed groups, evidence will be evaluated with specific instances of discrimination related to the disadvantaged status of the owner. The evidence must demonstrate that the discrimination impeded or negatively affected the individual's entry and/or advancement in the business world. In all instances, the totality of circumstances will be considered in arriving at a final decision of social disadvantage status. In the separate test of economic disadvantage, the determination should reflect that the applicant firm and its owner are in a more difficult economic situation than most firms (including established firms) and owners who are not socially disadvantaged.

a. Social Disadvantage

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

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

    b. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and;

    c. Negative impact on entry into or advancement in the business world because of the disadvantage. Consideration will be given to any relevant evidence in assessing specific factors. In every case, however, consideration will be given to education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

2. An individual may demonstrate social disadvantage through documentation pertinent to the following factors:

a. Education

i. Access to a publicly available educational system of acceptable standards.

ii. Education in a non-discriminatory setting.

iii. Equal access to institutions of higher education and vocational training.

iv. Access to social and professional associations with students or teachers.

v. Denial of educational honors rightfully earned.

vi. Social patterns or pressures which discouraged the individual from pursuing a professional or business education.

b. Employment

i. Access to employment and employment training.

ii. Unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits and other terms and conditions of employment.

iii. Access to licenses and registrations necessary to or supportive of conducting work.

iv. Access to unions and union programs and activities which are applicable and discriminatory behavior by a union.

v. Social patterns or pressures, which have channeled the individual into non-professional or non-business fields.

c. Business History

i. Unequal access to credit or capital.

ii. Obtaining credit or capital under commercially unfavorable circumstances

iii. Unequal treatment in opportunities for government contracts or other work.

iv. Unequal treatment by potential customers and business associates.

v. Exclusion from business or professional organizations.

d. Living Environment

i. Access to housing.

ii. Access to social institutions such as transportation, shopping facilities, places of worship and medical care.

Once social disadvantage is established, economic disadvantaged status must be demonstrated and documented.

b. Economic Disadvantage

General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. This determination requires submission of the following narrative and financial information:

1. Submission of narrative and financial information.

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

If married, an individual claiming economic disadvantage also must submit separate financial information on his spouse, unless the individual and the spouse are legally separated.

2. Economic disadvantage includes, but is not limited to:

Access to capital and credit opportunities.
Access to bonding.

3. MDOT may consider data from the following sources:
tax records; financial statements; business or contracting opportunities compared to non-disadvantaged firms in the same line of work (i.e. competitiveness); credit availability; and bonding availability.

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

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

Not included will be assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries and retirements.

In determining an individual's access to capital and credit, any assets may be considered that the individual transferred within such two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities.)

Evidence submitted must clearly demonstrate that the economic disadvantage stems from the social disadvantage. People with disabilities are not a group presumed to be disadvantaged. Consideration is given to individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria. It is noted 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 people with disabilities, especially persons with severe disabilities (e.g., significant mobility, vision or hearing impairments) may be socially and economically disadvantaged. The social and economic disadvantage based on a disability, which the individual has personally suffered, must be shown to be chronic, longstanding and substantial. This must be done by a stringent case-by-case review.

Once an individual is determined to be a member of one of the specified disadvantaged classifications, after certain tests for membership are applied, that individual's status as

socially and economically disadvantaged is established as a fact until the presumption is effectively rebutted. Because of the presumption, the individual applying for certification cannot be required to prove his/her disadvantaged status unless reasonable evidence to rebut the presumption is otherwise available to the certifying agency.

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.

Individual determinations of social and economic disadvantage will be conducted on a case-by-case basis. All decisions concerning membership in a designated group are subject to the certification appeals procedure.

A determination of social and economic disadvantage, standing alone, does not mean that a firm is eligible. The MDOT must also determine that the firm is at least 51 percent owned by socially and economically disadvantaged individuals and that these individuals control the firm. In determining control, MDOT shall continue to follow 26.61-26.73 of Subpart D of 49 CFR, Part 26, as stated above.

3. Ownership

a. In determining whether the socially and economically disadvantaged participants in a firm own the firm, MDOT shall consider all the facts in the record, viewed as a whole.

b. To be an eligible DBE, a firm must be at least 51 percent owned by a socially and economically disadvantaged individual(s).

(1) In the case of a corporation, such individual(s) must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding,

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individual(s). Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individual(s).

c. The firm's ownership by socially and economically disadvantaged individual(s) must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits

commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

d. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

e. The contribution(s) of capital or expertise by the socially and economically disadvantaged owner(s) to acquire their ownership interest must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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

1. The owner's expertise must be:

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

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

g. MDOT will always deem as held by a socially and economically

disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:

1. As the result of a final property settlement or court order in a a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

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

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

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

2. Involved in the same or a similar line of business; or

3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

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

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

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

j. MDOT will apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, MDOT shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse

irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. MDOT shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

k. The following factors will be used to determine the ownership of a firm, however, a contribution of capital will not be regarded as failing to be real and substantial, or find a firm ineligible, solely because:

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph B.8 of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, MDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

4. Control

a. In determining whether socially and economically disadvantaged owners control a firm, MDOT will consider all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

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

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

(3) MDOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

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

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

c. The socially and economically disadvantaged owner(s) 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.

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

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

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

g. If the State of Maryland requires the person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If the State of Maryland does not require such a person to have such a license or credential to own and/or control a firm, MDOT shall not deny certification solely on the ground that the person lacks the license or credential. However, MDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owner(s) actually control the firm.

h. MDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. MDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, MDOT may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

i. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

j. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity.

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

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

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

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

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

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

m. MDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. The types of work a firm can perform (whether on initial certification or when a new type of work is added) will be described in terms of the most specific available NAICS code for that type of work. The plain meaning of NAICS code descriptions will be relied on in determining the scope of a firm's certification. If appropriate, in addition to applying the appropriate NAICS code, MDOT may also apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services that the firm would provide to the State. Multiple NAICS codes may be assigned where appropriate. (See MDOT DBE Certification Application Process).

To become certified in an additional type of work, the firm need demonstrate to MDOT that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work.

MDOT will not, in this situation, require that the firm be recertified or submit a new application for certification, but the MDOT shall verify the disadvantaged owner's control of the firm in the additional type of work. (See DBE Certification Process and Procedure - Expansion of Services).

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

affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

o. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

p. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

5. Special Circumstances

In addition to the above standards, MDOT will consider the following circumstances in determining eligibility:

a. Newly formed firms and firms whose ownership and/or control has changed recently are to be closely scrutinized to determine the reasons for the timing of the formation of or change in the businesses;

b. A previous and/or continuing employer-employee relationship between or among present owners must be carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities;

c. Any relationship between a DBE and a business which is not a DBE which has an interest in the DBE is to be carefully reviewed to determine if the interest of the non-DBE conflicts with ownership and control requirements;

B. JOINT VENTURES

1. A joint venture is eligible to receive DBE credit for a specific contract if the DBE partner of a joint venture meets the standards for an eligible DBE and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. Joint ventures require special analysis to determine what percentage of the dollar value of the prime contract should be credited toward a contract DBE goal.

2. Because a joint venture consists of enterprises temporarily brought together, a joint venture itself can never be certified. This is true even if most or all of its component elements are certified DBE businesses.

3. Ordinarily, the amount of money invested in a joint venture reflects the percentage of participation by the parties of a joint venture. The money paid to a certified DBE in a joint venture may be credited toward reaching a DBE goal and the money paid to certified DBEs as subcontractors may also be counted.

4. A joint venture agreement must reveal the scope of the DBE managerial and financial responsibilities. A joint venture cannot serve as a conduit to meet the DBE contract goal in a situation in which the DBEs are not given the opportunity to exercise independent judgments as a viable part of a joint venture. A Maryland Department of Transportation Joint Venture Disclosure Affidavit is required for contract administration for joint ventures for MDOT.

C. FINANCIAL DETERMINATIONS

1. Personal Net Worth (PNW)

NOTE: Federal regulations require that personal financial information of applicants be kept strictly confidential. The MDOT does not take these confidentially requirements lightly and this requirement will not be compromised. MDOT is prohibited to release applicants' PNW related personal financial information, even in the face of Maryland State Freedom of Information or open records laws.

Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must, in addition to the Application, submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. Applicants must use the SBA PNW form in conjunction with the Uniform Certification Application. Additionally, applicants must submit personal tax information as required.

The determination of personal net worth excludes an individual's ownership interest in an applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth.

The personal net worth of an individual claiming to be an Alaskan Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation (ANC): cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

Pension plans and other retirement assets are included in the calculation of PNW. Although retirement assets may not be readily available as sources of financing for business operations, they are part of a person's overall wealth. MDOT shall determine the present value, not the face value or what the individual's return on it may be at some point in the future. MDOT shall then subtract the interest or tax penalties the individual would incur if he or she withdrew the assets today.

The presumption of economic disadvantage is rebutted if an individual's PNW exceeds $1.32 million, as amended from time to time pursuant to 49 CFR §26.67, as that individual will no longer be presumed to be economically disadvantaged and that individual's ownership and control of the firm cannot be used for purposes of establishing eligibility.

Airport concessionaires are also required to submit a PNW Statement under 49 CFR §26.67(a)(2)(I). Thus, concessionaires have to file a PNW Statement and be under the $750,000 cap, as amended from time to time pursuant to 49 CFR §23.35. In calculating the PNW of the owner(s) of an Airport Concessionaire(s), the assets that have in fact been encumbered to support existing financing to enter or expand a concession business at an airport may be excluded up to $3,000,000.

With regard to a firm that is held in trust, in general the trustee(s) holds legal title to the firm and has the ability to control it. The trustee(s) should complete a PNW Statement. All trust documents shall be reviewed on a case-by-case basis before a determination is made.

2. Determination of Business Size

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. MDOT shall apply current SBA business size standard(s) found in 13 CFR, Part 121

appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts.

Even if the DBE meets the requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR §121.104), over the firm's previous three fiscal years, in excess of the amount set forth at 49 CFR, Part 26.65.

Under §26.65(a), if a firm meets the size standard for one type of work (e.g., as a general contractor), it should continue to be certified and receive DBE credit for that type of work, even if it has exceeded the size standard for another type of work (e.g., as a specialty subcontractor). When one of its service areas exceeds particular size standards, the firm will not remain eligible and receive DBE credit for this type of activity, but will retain its certification for its other areas that remain DBE eligible.

Annually, during recertification, the size of each business is reviewed to determine continued eligibility under these provisions.

D. OTHER ELIGIBILITY CONSIDERATIONS

1. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in the next paragraph of this section, MDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

   MDOT may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

2. MDOT will evaluate the eligibility of a firm on the basis of present circumstances. MDOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor will MDOT refuse to certify a firm solely on the basis that it is a newly formed firm.

3. DBE firms and firms seeking DBE certification shall cooperate fully with MDOT requests (and U.S. DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

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

5. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm-even a DBE firm-cannot be an eligible DBE.

   a. If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, MDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

   b. MDOT will certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals as provided in §26.71.

6. Only firms which, by operation of law, are eligible to do business in Maryland shall be certified as a DBE

E. APPEALS – SOCIAL AND ECONOMIC DISADVANTAGE DETERMINATIONS

49 CFR §26.89 addresses appeals of denials of certification as a DBE. Any firm which is denied certification can make an administrative appeal to USDOT. The appeal must be written, signed, dated and shall be filed no later than 90 days after the date of denial or removal of certification. The appeal shall contain information and arguments as to why the decision should be reversed, the name and address of other recipients who have

certified the firm, those who have denied or removed certification within the year prior to the appeal, and any recipients before which an application is pending. (See DBE Certification Process and Procedures - Rules of Appeal to USDOT).

If a firm or other party believes that MDOT's social and economic disadvantage determination is in error, the firm or party may challenge that determination in accordance with 49 CFR §26.87.

# PART VI
# DISADVANTAGED/AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
# CERTIFICATION PROCESS AND PROCEDURE

To assure that only bona fide DBE companies participate in the DBE Program, the State of Maryland has a comprehensive certification program design so only those firms that are owned and controlled by socially and economically disadvantaged individuals are certified.

## A. CERTIFICATION APPLICATION FORMS

All applicants seeking DBE certification must complete the Uniform Certification Application Form. This form was created to provide a single, uniform, nationwide form that all DOTs must use without modification for DBE eligibility.

1. Uniform Certification Application Form

   MDOT will require supplemental information to meet the additional information requirements.

   Please also see Part V- DBE Certification Standards- Financial Determinations.

2. U.S. Small Business Administration (SBA) Certification Application Forms

   In accordance with 49 CFR, Part 26.84-85, MDOT will accept a firm's application package submitted to the SBA in lieu of requiring the applicant to fill out the Uniform Certification Application Form. Information must be current (within 2 years) and an on-site review will be conducted.

   If additional information is requested, it will be transmitted within forty-five days after the receipt of the request. A reasonable fee may be charged for photocopying to defray some of the costs.

   If MDOT discovers, typically in the course of the on-site review, additional information from which it could reasonably conclude that the SBA certified firm is not an eligible DBE, MDOT may decline to certify the firm. 49 CFR §26.83 requires MDOT to make a decision within ninety days of receiving all of the required information, including any additional information requested, whether it is from the applicant or the SBA.

   If MDOT denies certification to a firm certified by the SBA, or if MDOT

removes the DBE eligibility of a firm known to be certified by SBA, MDOT will forward a copy of the denial or loss of certification letter to the SBA.

3. ACDBE Application

Applicants seeking ACDBE certification must complete the Uniform Certification Application Form designated for ACDBEs.

B. MDOT DBE CERTIFICATION APPLICATION PROCESS

1. Obtaining an Application Form

An Application may be obtained from any of the following sources as well as business outreach events of MDOT or the State:

- Maryland Department of Transportation
  Office of Minority Business Enterprise
  7201 Corporate Center Drive
  Hanover, Maryland 21076
  General Number: 410-865-1269
  Toll Free Phone: 1-800-544-6056
  Fax: 410-865-1309

- On the internet at www.mdot.maryland.gov

Applications will be received and reviewed by the Office of MBE.

2. Administrative Closure

An administrative closure is a denial of certification under 49 CFR Part 26. An Application for certification may be administratively closed for the following reasons:

a. An applicant fails to timely submit/submit to any of the following:

1. A complete Application and supporting documents;

2. An interview by a DBE Certification Officer at the site of the DBE office or job site;

3. An interview by the MBEAC; or

4. Any other information requested by MDOT.

b. The business, by operation of law, is not eligible to do business in Maryland;

c. The business is not an existing small business as defined by Small Business Administration standards;

d. The business refuses to permit MDOT inquiries of bonding companies, banking institutions, credit agencies, contractors, clients, or other appropriate private agencies or persons to ascertain the history of the firm's financial responsibility and qualifications;

e. The business, or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification as a disadvantaged business enterprise or to participate in the DBE Program;

f. Disadvantaged person(s) own less than 51 percent of the business entity, based on clearly presented information in the application;

g. The business exceeds the size standards for each area of work or exceeds the maximum size allowed for participation in the DBE Program;

h. The applicant is not a citizen or lawfully admitted permanent resident of the United States;

i. The disadvantaged owner(s)' Personal Net Worth exceeds the eligibility threshold set forth under 49 CFR 26.67;

j. Other reason(s) as appropriate (to include, but not be limited to, death of applicant, sale of business after application, etc.).

When an application for certification is closed for any of the reasons stated in a through j above, an applicant may not reapply to MDOT sooner than twelve (12) months from the date of the letter administratively closing the application.

3. Investigative Process

All applications (and supporting documents) for DBE certification will be evaluated as of the date of the Application and must contain a notarized signature of the applicant.

a. An investigation of each firm applying for certification will be conducted in accordance with the provisions of 49 CFR 26.83. The investigation will include an on-site visit at the business location, and/or a job site and warehouse if necessary, to evaluate the company in relation to the

certification criteria. The results of the investigation will be prepared as an Investigative Report to be presented to the MBEAC.

b. A firm requesting certification is evaluated for particular areas of work identified by NAICS Codes, supported by equipment, staffing, experience and/or other resources necessary to provide services or goods within the NAICS Code. Certifications are approved for specific products and services encompassed by NAICS Codes that the MBEAC considers appropriate. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation. If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that MDOT supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified.

c. The Director or his/her designee may have an audit conducted at anytime during the period of application for certification or after certification. The audit will be conducted by MDOT in accordance with the Generally Accepted Accounting Principles (GAAP) or the Generally Accepted Auditing Standards (GAAS) of the accounting/financial records of a business seeking certification. Permission for an audit is granted by the applicant owner(s) by requesting DBE certification.

4. MBEAC/IRC Process

a. Cases deemed by the DBE Certification Officer(s) to have met all of the eligibility requirements shall be referred to the MBE Internal Review Committee. The members of the committee will review the documents, the file and the requested NAICS Codes to ensure that all of the eligibility requirements have been met. Only firms that receive unanimous approval by the members will be recommended to the MBE Advisory Committee for certification. If there is any opposition voiced at the MBE Internal Review Committee Meeting, the case will be remanded and heard at a subsequent MBEAC Meeting.

b. Prior to a regularly scheduled MBEAC hearing, the Chair/MBEAC or his/her designee will provide committee members with a copy of the investigative summary prepared for those applicants being considered for certification. Upon request, the Chair/MBEAC or his/her designee may provide MBEAC members with additional information upon which the investigative summary was prepared.

c. The MBEAC, having received a copy of this summary, examines the facts regarding the applicant meeting the certification criteria. However, no summary report should be presented to the MBEAC until all essential documents requested from the applicant have been received. 51% disadvantaged ownership must be represented at the hearing to answer any questions raised by any member of the MBEAC. During the MBEAC hearing the members of the MBEAC review the investigative summary and all relevant documents. Afterwards, during the executive session, the committee members will advise the Chair or his/her designee of their recommendations regarding each applicant.

5. Decision of the MBEAC Chair

The MBEAC will hear and consider all information regarding applications for certification. After consideration of all information, and the advice of the MBEAC, the Chair/MBEAC will issue a decision to the applicant and, upon request, to other interested parties in accordance with Maryland Public Information Act. The decision will be signed by the Chair/MBEAC. In the case of a denial, a summary of reasons will accompany the decision. A favorable decision will state the products or services (NAICS Codes) for which certification has been approved and firms approved for DBE certification will be listed in the MDOT DBE Directory of certified firms.

6. Availability of Decisions

All decisions are available to the public in accordance with the Maryland Public Information Act (MPIA), Maryland Code Annotated, State Government Article §10-611 *et seq.* The Chair/MBEAC or his/her designee, as appropriate, will provide upon request access to any decision with respect to any applicant for certification when requested through Maryland's Public Information Act. Notwithstanding the MPIA, MDOT is prohibited from releasing personal financial information submitted in response to the personal net worth requirement of 49 CFR §26.67(a)(2).

7. Notice of Decision

Applicants certified or denied certification will receive notification within ninety (90) business days subsequent to the date of MBEAC review or receipt of supplemental information subsequent to the MBEAC review. All decisions will be sent to the applicant firm by U.S. and/or electronic mail. Notification of certification will include a DBE certification number.

Applicants denied certification may either appeal the decision to USDOT pursuant to the procedures under 49 CFR §26.89 or reapply to MDOT not sooner than twelve (12) months from the date of the decision by MDOT or by USDOT if an appeal is filed and the denial upheld.

8. Notice of Withdrawal

At any time, an applicant for certification may request in writing to the Director, Office of MBE, that the application be withdrawn. If the request for withdrawal is received after the Officer's on-site visit, the applicant is required to wait not less than twelve (12) months from the date of an approved withdrawal before reapplying for certification.

9. Interstate Certification

a. An application for certification submitted by an out of state DBE firm currently certified in its home state will be reviewed in accordance with the provisions of 49 CFR 26.85(c) for interstate certification. The firm will be required to provide the following:

A complete copy of the application form, including all supporting documents, and any other information submitted to the firm's home state or any other state related to the firm's certification;

All affidavits of no change and any notices of changes submitted to a firm's home state, as well as any correspondence with the firm's home state or any other state relating to the firm's status as an applicant or certified DBE (e.g. denial of certification or subject to decertification actions);

If a firm filed a certification appeal with USDOT in accordance with 49 CFR 26.89, the firm must provide a copy of the firm's letter of appeal and USDOT's response; and

An affidavit sworn to by the firm's owners before a person authorized by state law to administer such oaths or an unsworn declaration under penalty of perjury affirming that all information has been submitted as required by 49 CFR 26.85(c) and the information is complete and an identical copy of the information submitted to the home state. If the firm's on-site report is more than three years old, MDOT may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

b. When MDOT receives all of the information listed above in paragraph 9(a), of this section, MDOT shall within seven days request from the firm's home state a copy of the on-site report, any updates and any evaluations of the firm from the site visit. In accordance with 49 CFR 26.85(d) the home state shall transmit this information to MDOT within seven days of receiving the request.

c. MDOT shall determine if there is good cause to believe that the home state's certification of the firm is erroneous or should not apply based upon the following:

Evidence that certification in the home state was obtained by fraud;

New information not available to the home state at the time of certification, showing that the firm does not meet all eligibility criteria;

The home state's certification was factually erroneous or was inconsistent with the requirements of the federal regulations;

Maryland law requires a different result from that of the home state;

The information provided by the firm does not meet the requirements of 49 CFR 26.85(c) (described above).

d. Unless MDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Maryland, MDOT shall, no later than sixty days from the date on which it receives from the applicant firm all of the information required by paragraph (a) of this section, send to the applicant firm a notice that it is certified and place the firm on the directory of certified firms.

e. If MDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Maryland, MDOT shall, no later than sixty days from the date on which it receives from the applicant firm all of the information required by paragraph (a) of this section, send to the applicant firm a notice stating the reasons for its determination.

The notice shall state with particularity the specific reasons why MDOT believes that the firm does not meet the DBE eligibility requirements and offer the firm an opportunity to respond to MDOT with respect to those reasons.

The firm may elect to respond in writing and/or request an in-person meeting with MDOT's decision maker to discuss MDOT's objections to the firm's eligibility. If the firm requests a meeting MDOT shall schedule the meeting within thirty days of receiving the firm's request.

The firm bears the burden of proof of demonstrating, by a preponderance of the evidence, that it meets the eligibility requirements with respect to the particularized issues raised by MDOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to MDOT.

The decision maker shall be a person thoroughly familiar with the DBE eligibility provisions for certification.

MDOT shall issue a written decision within thirty days of receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

The firm's application for certification is stayed pending the outcome of this process.

A decision under this section may be appealed to the Departmental Office of Civil Rights in accordance with 49 CFR 26.89.

C. APPLICATION SUPPORTING DOCUMENTATION

In order to be considered for certification by MDOT, the applicant must supply all of the requested documentation and information. Failure to supply all requested documentation and information is grounds for denial of certification. Further, a material misstatement of fact shall constitute grounds for a denial of certification.

The list of documents that must be submitted for each specific type of corporate entity are set forth in MDOT Document Checklists which are available online or by request to the Office of MBE. Generally, documents requested in support of certification include, but are not limited to:

1. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

2. Copies of firm's federal corporate tax returns, including all schedules, for the most current three years, signed;

3. Resumes of the principals and key individuals of a company to include the dates of education, training, names of employers with dates, duties and responsibilities of past employment. Key individuals shall include owners, directors, senior project managers, operating managers, administrators, etc.;

4. Copy of license(s) to do business in Maryland, if applicable (Professional if required);

5. Copy of Certificate of Incorporation and /or registration in Maryland as a Foreign Corporation, if applicable;

6. Copy of Articles of Incorporation;

7. Copy of minutes of first corporate organizational meeting and most recent corporate meeting;

8. Copy of Corporation By-Laws;

9. Copy of each stock certificate issued (not a specimen copy);

10. Copy of stock ledger;

11. Proof of stock purchase (e.g. canceled checks used to purchase stock or bank deposit slips reflecting money paid for stock or if goods/services were given for stock in lieu of cash, copies of appropriate corporate records reflecting this action). This demonstrates independent personal investment into the corporation;

12. Copies of third party agreements, such as rental or management service agreements or any other formal written agreement entered into by the disadvantaged owner(s) and any other party that may affect the operation of the business;

13. Copies of titles and registrations and current insurance carriers and policy numbers for all vehicles used in the business;

14. Copies of vehicle and business insurance in effect;

15. Proof of socially disadvantaged status, e.g., copy of birth certificate, driver's license, and, where applicable, a Certificate of Naturalization, a tribal registration, passport, and/or such documents showing ethnic heritage;

16. Copies of all DBE certifications/denials from other agencies/jurisdictions;

17. Copy of current Home State Certification and On-Site Report (to be requested from home state certifying agency) for firms whose principal place of business is outside of Maryland;

18. Copies of three job contracts;

19. A Business Plan for a corporation in business for less than one year to include how the business is to be operated over the coming year, goals for the business, roles for key personnel and other pertinent information;

20. Social Security numbers for all principals and key employees;

21. Evidence of the manner of acquiring and financing business vehicles & equipment, e.g., loan agreements, private party transactions, etc.;

22. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance Reports with employee names and compensation);

23. A Personal Net Worth Form is required for each individual who is counted as a part of the 51 percent disadvantaged ownership of the applicant business;

24. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form; and

25. Any other documents deemed necessary by the Director of the OMBE.

## D. MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE (MBEAC)

The Minority Business Enterprise Advisory Committee (MBEAC) will make recommendations to the Chair of the MBEAC or his/her designee on behalf of the Secretary of Transportation regarding DBE certification.

### 1. Maryland Business Enterprise Advisory Committee (MBEAC) Procedures

There will be regularly scheduled MBEAC meetings. All owners, directors and employees as requested by MDOT shall attend the appropriate MBEAC meeting. A firm must be represented at the MBEAC by disadvantaged persons representing a minimum of 51 percent of the ownership of the firm.

Two occurrences of failure to appear before this committee will result in denial of certification. Applicants who are denied may not reapply for certification before twelve (12) months from the date of denial.

The Chair/MBEAC or his/her designee will preside at all meetings. The following procedures shall apply at the regular MBEAC meetings:

a. Rules of evidence will not apply;

b. Only one person will be allowed to address the MBEAC at any one time;

c. Subject to recognition by the Chair of the MBEAC or his/her designee, the applicant or any interested party may participate in the discussion except when the committee is in Executive Session;

d. Presentation of the disadvantaged owner's name, his or her position with the firm, and the MDOT investigative summary will normally be the first order of business;

e. Additional information may be requested at the discretion of the Chair of the MBEAC or members of MBEAC;

f. Members of the public may be given an opportunity to comment after being recognized by the Chair or his/her designee. Based on available time, however, only comments that relate specifically to the bona fides of the applicant's business will be heard;

g. Additional information may be requested from the applicant. A date for the information to be provided and a listing of the information items will be provided to the applicant at the MBEAC;

h. MBEAC proceedings will be recorded in accordance with Title 10, Section 10-509 of the State Government Article of the Annotated Code of Maryland.

i. Appropriate auxiliary aids and services for individuals with disabilities will be provided upon request.

2. Membership and Tenure

The MBEAC Advisory Committee shall consist of twelve (12) members, including:

a. A Chairperson and two additional members from the Department of Transportation, one being from the State Highway Administration, are designated by the Secretary of Transportation;

b. One member from the Department of General Services designated by Secretary, General Services;

c. One member from the University of Maryland System, designated by the Chancellor;

d. One member from the Department of Public Safety & Correctional Services, designated by the Secretary, Public Safety & Correctional Services;

e. One member from the Department of Budget & Management, designated by the Secretary, Department of Budget & Management;

f. One member from the Governor's Office of Minority Affairs (GOMA), designated by the Special Secretary of GOMA; and

g. Four (4) members representing the general public, designated by the Secretary of Transportation.

h. General public committee members shall serve a one year term which may be revoked by the Secretary of Transportation prior to the completion of the term. All other committee members shall serve at the pleasure of the designating authority.

3. Restrictions on Participation

In accordance with State Ethics law, committee members, including the Chairperson, may not participate in the deliberations regarding a firm in which he or she or certain relatives (spouse, father, mother, sister, brother, child), are employees or members of the firm, have any legal or equitable interest, contingent compensation arrangement, contractual or creditor relationship with the applicant that may impair the member's impartiality and independence of judgment. MDOT may establish additional policies and/or procedures for MBEAC committee members in accordance with the State Ethics Law.

4. Business Meetings of the MBEAC

a. Public Notice: The meetings of the MBEAC will be open to the public and publicly announced. At the discretion of the Chair/MBEAC, portions of the meetings may be closed to the public to receive advice from counsel or reports from counsel on the status of pending matters.

b. Records and Reports: Department personnel, acting as official custodians of the records and documents submitted by applicants for DBE certification, shall provide MBEAC members with a staff summary and analysis of those records and documents. The actual records and documents upon which the summary and analysis was based shall be available to the MBEAC members during the meeting that the applicant is being reviewed by the MBEAC.

c. Public Participation: Upon recognition by the Chair/MBEAC or his/her designee, members of the general public may address the MBEAC.

E. MBEAC RULES OF OPERATION

The Chair and the MBEAC will consider the investigative summary and written or oral statements of the owners or interested members of the public concerning the business, as well as any additional information.

A disadvantaged owner may be required, under penalty of perjury, to give sworn statements. The disadvantaged owner will permit inquiries of bonding companies,

banking institutions, credit agencies, contractors and clients to obtain information on the firm's management and operations. Failure to permit such inquiries will be grounds for denial of certification.

F. Minority Business Enterprise Internal Review Committee (MBEIRC)

To assist the Department in the certification process and to reduce processing time, the Minority Business Enterprise Internal Review Committee (MBEIRC) has been created.

There will be regularly scheduled MBE Internal Review Committee meetings.

The following procedures shall apply at the MBEIRC meetings:

a. The MBEIRC will be comprised of five (5) persons, two MDOT MBE Managers, two MDOT MBE Supervisors, and a representative from one of the MDOT modal administrations and/or the Maryland Transportation Authority.

b. The MBEIRC shall review those cases that meet all of the eligibility requirements as set forth in 49 CFR, Part 26, and have been recommended for certification by a DBE Investigative Officer and a DBE Supervisors.

c. A copy of the Investigative Report for each proposed case will be provided to each MBEIRC member. The applicant's case file will also be made available to the members should a review of the related documents become necessary.

d. The Investigative Report will be reviewed to determine whether that the requisite documents are contained in the applicant's case file, that the firm has been issued the proper NAICS Codes, and that all of the eligibility requirements have been met.

e. Members are encouraged to ask questions and raise concerns to clarify issues. MBEIRC members review case file documents to address and clarify any issues deemed necessary.

f. After discussion, each member shall make a recommendation regarding certification status. If there is not unanimous approval, the applicant will be notified and asked to appear before one of the regularly scheduled MBEAC Meetings.

g. Only firms that receive unanimous approval of all MBEIRC members present based on criteria as set forth in CFR 49, Part 26 will be recommended by the MBEIRC to the MBEAC for certification.

h. The list of firms "*Proposed to be Certified*" will be entered into the record of the MBEAC. The MBEAC will have the opportunity to question and/or comment on any aspect of the applicant firm's application and/or documentation in accordance with the requirements set forth in 49 CFR, Part 26.

i. The Chair/MBEAC retains the right to require any applicant seeking DBE certification that has been reviewed by the MBEIRC to appear before the MBEAC.

G. Airport Concessions

The procedures and standards of 49 CFR, Part 26, specifically §26.61-91, applies to the certification of Airport Concession Disadvantaged Business Enterprises (ACDBEs) to participate in the concessions program.
Additionally, in accordance with 49 CFR §23.31(c)(2):

An Airport Concession Disadvantaged Business Enterprise (ACDBE) must meet the requirements of a small business and if its gross receipts, averaged over the firm's previous three fiscal years, exceeds $30 million, or the current value set forth in 49 CFR Part 23, the firm is not eligible for certification.

The personal net worth standard used in determining eligibility for purposes of 49 CFR, Part 23 is $1,320,000, or the current value set forth in 49 CFR Part 23. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged. In calculating the PNW of the owner(s) of an Airport Concessionaire, the assets that have in fact been encumbered to support existing financing to enter into or expand a concessions business at an airport may be excluded up to $3,000,000.

The following types of businesses have size standards that differ from the standard set above. They include:

1. Banks and financial institutions: $275 million in assets;
2. Car Rental companies: $40 million average annual gross receipts over the firm's three previous fiscal years; and
3. Pay telephones: 1,500 employees

Joint Ventures described in 49 CFR §23.53(d) are not eligible for ACDBE certification.

Businesses operating under the following arrangements are not eligible for certification as a DBE Airport Concessionaire:

1. Limited partnerships, in which a non-DBE is the general partner.

2. Other arrangements that do not provide ownership and control by the socially and economically disadvantaged owners.

## H. ANNUAL REVIEW

### 1. Required Notice of Change in Ownership and/or Control

Whenever there is any change in circumstances affecting a DBE's ability to meet size, disadvantaged status, ownership, or control requirements of the DBE Program (e.g., new by-laws, owners, directors, officers, or officer powers, etc.), or any material change in the information provided in the DBE's application form, the DBE shall submit a written statement noting the effective changes with supporting documents. The failure of the DBE to do so within 30 days of the change(s) shall constitute grounds for loss of certification.

### 2. Annual Review Process

In accordance with 49 CFR §26.83(h), (i) and (j), the Office of MBE administers the following annual certification review for DBEs. Upon written notice by the Director of the OMBE or his/her designee, an MDOT certified DBE shall provide updated information annually in order to maintain its certification.

The Director, Office of MBE, or his/her designee, will send a request for information to each certified business approximately sixty (60) days prior to the anniversary date of certification. The request will be accompanied by instructions and a No Change Affidavit. The business shall complete and submit the appropriate documents to the Office of MBE within thirty (30) days of the date of the notice of annual review letter. If no response is received within 30 days, a second notice will be sent. If no response is received from the second notice within 30 days, a third notice, in the form of a "Show Cause", will be sent to the business. If the DBE does not respond to the third notice by the date specified in the correspondence, the DBE will lose its certification for failure to submit the requested documents.

The specified documents will be evaluated for completeness and accuracy to determine whether or not any changes may have occurred which affect the eligibility of the business. In addition, the annual review may include inquiries by the Director, Office of MBE or his/her designee, of the applicant firm, bonding companies, banking institutions, credit agencies, contractors, and clients to obtain updated financial/business records and any other information necessary to substantiate the firm's continued eligibility for DBE certification.

### 3. Required Documents

All certified DBE firms are required to submit documentation annually to maintain eligibility for the DBE Program. The DBE must submit a statement, in the form of a No

Change Affidavit to affirm that 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 to the information provided in the application form (except for changes previously provided). The DBE will also submit the firm's most recently completed fiscal year business tax return, with supporting documentation, in order to determine the firm's continued eligibility as determined by the size standards established by the Small Business Administration. If any of the DBE's certified service areas are capped by the number of employees (as compared to gross receipts), the Office of MBE may also require the firm to submit wage reports for the last twelve months. All information will be reviewed as of the date of the signed and notarized Affidavit.

If a business is found to be in compliance with the DBE requirements, it will continue to be certified, and the Director of the Office of OMBE, or his/her designee, will notify the disadvantaged owner in writing that certification has been continued.

Notwithstanding the above, the Office of MBE may conduct a certification review, including a new on-site review, if appropriate in light of changed circumstances, a complaint, or other information concerning the firm's eligibility.

## I. EXPANSION OF SERVICES

Any certified DBE that wishes to add one or more products and services and/or NAICS Codes to its certification must submit in writing a request to the Office of MBE for an expansion of service for those additional Codes.

The written request shall include, but not be limited to, the following:

1. Items of work to be added including NAICS Codes;
2. Explanation of the firm's ability to perform these additional services;
3. Copies of any contractual agreements wherein the firm has provided these services; and
4. If applicable, copies of appropriate licenses to provide these services.

An out-of-state firm must have the new requested areas of work included in its Home State Certification before requesting those areas via an expansion of services in Maryland. An out-of-state firm must provide a copy of its Home State Certification.

The Office of DBE will conduct an on-site visit and evaluate the ability of the business to carry out the work based on the certification criteria for DBE certification. All of the certification processes and information requirements established in these regulations apply to the expansion of service process. An expansion of service process is necessary to determine that a DBE has the necessary resources or equipment, staff, expertise, etc., to carry out work in the NAICS Codes for which it was not previously certified and that the disadvantaged owner(s) has the ability to exercise control over and critically evaluate the additional work area(s).

The DBE Certification Officer shall evaluate the expansion of service request and submit an Investigative Report to the MBEAC and/or MBEIRC. The disadvantaged owner(s) of the DBE, representing at least 51 percent ownership, must appear at the meeting of the MBEAC to discuss the expansion request unless previously recommended by the MBEIRC.

If a request for expansion of services is approved, the applicant will receive a letter detailing the new areas of work for certification.

If a request for expansion of services is denied, an applicant will receive a written denial within 90 days of the MBEAC date or the receipt of necessary additional information. The appeals process for the denial of expansion of services is the same as the appeals process for the denial of initial certification pursuant to the procedures set forth under 49 CFR §26.89.

A DBE may not reapply for the same expansion of services for twelve (12) months following a denial of the expansion of service request, based on the date of the letter of denial, or if appealed, may not apply for twelve (12) months following the date of the upheld decision by the USDOT.

J. Loss of Certification

1. Reasons for loss of certification

MDOT shall remove the DBE eligibility of any firm that does not meet standards for certification as a DBE. Reasons for removal include, but are not limited to, the following:

a. The owners, directors, officers, and/or their powers or the by-laws have changed from those as stated in the application and represented in the application process and the DBE has failed to inform MDOT of the change(s) within thirty (30) days of the changes.

b. The business does not meet the criteria of a small business as specified in 13 CFR, Part 121, by NAICS Code and 49 CFR Part 23 or 26.

c. The disadvantaged owner(s) personal net worth exceeds the amount set forth in 49 CFR Part 23 or 26.

d. The business does not meet DBE eligibility criteria established for certification as a disadvantaged or minority business enterprise.

e. The business, by operation of law, is not eligible to do business in Maryland.

f. The business is not an existing small business as defined by Small Business Administration standards.

g. The business has failed or refused to permit MDOT inquiries on bonding companies, banking institutions, credit agencies, contractors, clients, or other appropriate agencies or persons to ascertain the history of the firm's financial responsibility and qualifications.

h. The business has refused to provide documents and/or information requested by MDOT, including but not limited to, the following:

1. a complete Application and supporting documents;

2. an interview by a DBE Certification Officer;

3. an interview by the MBEAC;

4. documents requested pursuant to recertification; or

5. any other documents requested by MDOT

i. any other documents requested by MDOT.

j. The business, or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification and/or recertification as a disadvantaged or minority business enterprise or to participate in the DBE Program.

k. The business was mistakenly certified and/or recertified.

l. The business has failed to comply with DBE contract compliance regulations and/or procedures established by MDOT.

m. The business or any of its officers, directors, and/or employees has violated provisions of 49 CFR, Parts 23 and 26.

n. The business has failed to perform as an independent business concern

o. The business has performed as a "conduit" or "broker" for pass though contract(s).

p. The business has been debarred by the federal government or State of Maryland.

q. The business or any of its officers and/or directors has violated State or federal antitrust laws or has been found guilty of a similar violation in another State.

If the Director, Office of MBE, determines that grounds exist to remove a firm's DBE eligibility, he/she will send a Notice of Intent to Remove DBE Eligibility to the DBE. The Notice of Intent to Remove DBE Eligibility shall include:

a. The reason(s) for removal of DBE eligibility;

b. The entitlement to a contested case hearing in accordance with the Maryland Administrative Procedure Act, upon a timely request; and

c. A statement that the DBE will lose its DBE eligibility if no request for a hearing is received within fifteen (15) days of the date of the DBEs's receipt of the Notice of Intent to Remove DBE Eligibility.

If the DBE fails to request a hearing within the 15 days, the Director of the Office of MBE or his/her designee shall issue a letter of final decision removing DBE eligibility of the firm.

If the DBE fails to request a hearing within 15 days, the firm is immediately ineligible to participate as a DBE and will be removed from the MDOT DBE Directory of certified firms.

An operating administration of USDOT may direct MDOT to initiate a proceeding to remove the firm's certification in accordance with 49 CFR §26.87.

2. Loss of Certification Hearings

a. A certified DBE is entitled upon timely request to a contested case hearing in accordance with the Maryland Administrative Procedure Act before its certification may be removed.

b. If the DBE requests a hearing within fifteen (15) days of receipt of the Notice of Intent to Remove DBE Eligibility, the matter shall be referred to the Office of Administrative Hearings for a contested case hearing in accordance with the Maryland Administrative Procedure Act.

c. In the case of a hearing, and after the conclusion of a hearing, the Office of Administrative Hearings shall prepare proposed findings of fact and conclusions of law, and a proposed decision, which shall be mailed to the affected firm and provided to the Department. Parties adversely affected by a decision shall be afforded an opportunity, within fifteen (15) days after receipt of a decision, to file exceptions and request the opportunity to present argument to the Secretary or the Secretary's designee.

d. The Secretary or the Secretary's designee may adopt, modify, or rewrite the Administrative Law Judge's proposed findings of fact, conclusions of law, and/or proposed decisions. The final decision, findings of fact, and conclusions of law of the Secretary or his/her designee shall be promptly delivered or mailed to all parties or their attorneys.

e. A firm whose DBE eligibility has been removed in accordance with the above procedures or, voluntarily agrees to its deletion from the DBE Directory as a certified DBE, it may not reapply for certification prior to twelve (12) months from the date of the final order or its removal.

3. Impact of Loss of Certification

a. When a prime contractor has made a commitment to use a DBE that has lost its certification but the subcontract has not been executed prior to the issuance of the notice of loss of certification, the prime contractor is required to obtain an eligible, certified DBE for the contract or demonstrate to MDOT that it has made a good faith effort to do so.

b. When a prime contractor has executed a contract with a DBE subcontractor before the notice of loss of certification, the prime contractor may continue to use the firm on the contract and may continue to receive credit towards its DBE goal, i.e., contract goal, for the work of that subcontractor.

c. The work carried out by a DBE prime contractor or subcontractor would be counted by MDOT up to the loss of certification. The work performed after the loss of certification would not be considered DBE participation.

d. When a DBE subcontractor has lost its certification, MDOT may not continue to count the DBE participation, which takes place after the loss of certification, as DBE work when counting participation towards the Overall Goal of the modal administration or the Department. MDOT may count such participation toward the contract goal.

e. If a DBE's loss of certification is solely the result of exceeding the size standards while performing on a contract, the DBE participation may be counted for both the contract goal and the Overall Goal.

4. Non-renewal of Certification

The certification of a currently certified DBE will not be renewed during the recertification review period or any other time period if MDOT determines that the firm no longer meets the standards for certification as a DBE. See Loss of Certification.

5. Sanctions

In the case of actions, which are causes for loss of certification, either prior to, simultaneous to, or subsequent to loss of certification, a DBE may be:

a. Referred to the Office of the Attorney General for investigation, review and initiation of suspension, debarment or criminal proceedings and/or;

b. Subjected to any other action as appropriate.

K. Challenge Procedure/Ineligibility Complaints

MDOT is required under 49 CFR §26.87 to establish a challenge procedure regarding complaints on eligibility of a firm currently certified as an eligible DBE.

The MDOT's challenge procedure is as follows:

1. Any third party may challenge the eligibility of a certified DBE during or after certification (See Chapter X Complaints A.1.). The challenge shall be made in writing to the MDOT Office of MBE.

2. With its challenge, the challenging party shall include specific reasons relevant to a determination as to whether or not the challenged business is eligible to be a certified DBE. General allegations may not be accepted.

3. The MDOT shall determine whether or not there is reason to believe that the challenged business is eligible as a certified DBE through a review of records, other available information, by requesting additional information or conducting any other investigation deemed necessary.

   If MDOT determines that the challenged business is eligible to be certified as a DBE, MDOT shall so inform the challenging party in writing with the reasons for the determination and thereby terminate the proceedings.

   If MDOT determines that there is reason to believe that the challenged business is not eligible to be certified as a DBE, MDOT shall begin proceedings as provided below.

4. The Director, Office of MBE or designee shall notify the challenged business in writing that MDOT proposes to find the firm ineligible as a certified DBE, setting forth the reasons. The notice shall also require the challenged business to provide MDOT, within a reasonable period of time, information sufficient to permit the MDOT to evaluate the challenged business eligibility as a certified DBE.

5. The challenging party's identity shall be maintained as confidential.

6. The challenged firm, within fifteen (15) days of receiving notice that MDOT proposes to remove its DBE certification may request an informal hearing before the Office of Administrative Hearings at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

   In such a proceeding, MDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

   After the conclusion of a hearing, the Office of Administrative Hearings shall prepare proposed findings of fact and conclusions of law and a proposed decision which shall be mailed to the challenged firm and provided to MDOT. Parties adversely affected by a decision shall be afforded an opportunity, within fifteen (15) days after receipt of a decision, to file exceptions and request the opportunity to present argument to the Secretary or the Secretary's designee.

The Secretary or the Secretary designee may adopt, modify, or rewrite the Administrative Law Judge's proposed findings of fact, conclusions of law, and/or decisions. The final decision, findings of fact, and conclusions of law of the Secretary or his/her designee shall be promptly delivered or mailed to all parties or their attorneys.

Alternately, the challenged firm may elect to present information and arguments in writing without going to a hearing.

7. The Director, Office of MBE, or designee shall evaluate all available information and make a determination concerning the eligibility of the challenged business. The Director or designee shall notify both parties of the determination in writing, setting forth the reasons for the determination.

8. In making the determination called for above, the Director or designee shall use the standards set forth in Appendix E to 49 CFR, Part 26.

9. During the pendency of a challenge, the presumption that the challenged business is eligible to be certified as a DBE shall remain in effect.

10. In accordance with 49 CFR §26.87(c), a USDOT concerned operating administration may immediately direct MDOT to initiate a proceeding to remove a firm's certification. If the concerned operating administration finds reason to believe that a firm MDOT has certified does not meet the eligibility criteria, the concerned operating administration shall provide a notice to MDOT and to the firm outlining the reasons for the directive including any relevant information and documentation. .

11. A firm which has a loss of certification as a result of ineligibility complaint shall be subject to the same requirements and rights as stated in the Loss of Certification section of this Manual.

## L. Rules of Appeal to USDOT

### 1. Denial of Certification

49 CFR §26.89 addresses appeals of denials of certification as a DBE and states in part: any business which believes it has been wrongly denied certification or expansion of services as a DBE under Subpart D by MDOT may file an appeal in writing, signed and dated, to USDOT. The appeal shall be filed no later than 90 days after the date of denial of certification. The appeal shall contain information and arguments as to why the decision should be reversed, the name and address of other recipients who have certified the firm, those who have denied or removed certification within the year prior to the appeal, and any recipients before which an application is pending.

Any sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which has received a final order from the Maryland Department of Transportation denying certification or an expansion of services, not renewing certification or being decertified as a DBE for the purposes of USDOT assisted contracts, may appeal that decision pursuant to 49 CFR §26.89 to:

Associate Director, External Civil Rights Programs Division
U.S. Department of Transportation
1200 New Jersey Avenue, SE, W78-340
Washington, D.C. 20590

If the USDOT Office of Civil Rights sustains a final order denying certification, that business may reapply to the MDOT for certification as a bona fide disadvantaged business enterprise not sooner than twelve (12) months after the decision of the USDOT, Office of Civil Rights. A new DBE Application with supporting documentation must be submitted as if the business were requesting initial certification.

If the USDOT, Office of Civil Rights, sustains a final order to remove the DBE eligibility of a firm, the period of loss of certification shall begin on the date of the decision of the USDOT, Office of Civil Rights.

2. Challenges/Ineligibility Complaints

If a firm or other party believes that MDOT's determination of a firm's eligibility is in error, the firm or party may challenge that determination in accordance with 49 CFR §26.87. (See Challenge Procedure/Ineligibility Complaints section in this Manual.)

M. Administrative Procedures for Enforcement

If in order to meet DBE eligibility requirements, DBE contract goals or other DBE program requirements, a firm uses or attempts to use documents or information that is false, fraudulent, misleading, or deceitful, or otherwise acts under circumstances indicating a serious lack of business integrity or honesty, that firm shall be referred to the MDOT Office of MBE, the MDOT Office of General Counsel and/or the U.S. Department of Transportation for appropriate action.

Under State law, such conduct may also result in referral to the Attorney General's Office for review for debarment or for criminal prosecution.

In accordance with 49 CFR §26.107, such conduct may also result in:

1. initiation of suspension or debarment proceedings under 49 CFR, Part 29;

2. initiation of an enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies; or
3. referral to the Department of Justice for prosecution under 18 U.S.C. §1001 or other applicable provisions of law.

## PART VII
## CONTRACT APPROVAL PROCESS

### A. GENERALLY

MDOT has adopted the following contract approval processes for those contracts in which DBE participation is required.

### B. WRITTEN SOLICITATION LANGUAGE

All Administrations will include the following provisions in their solicitations.

1. Special Notice to Contractors.

   A "Special Notice to Contractors" shall be included in all solicitations. The notice informs all bidders/offerors to furnish the names and addresses of the firms that submitted quotes with their bids/proposals. The Administration will contact the firms requesting the age of the firm and the annual gross receipts or revenues.

**NOTE:** The annual gross receipts or revenues and the age of the firm may have been obtained previously and may not require a request to the prospective or actual subcontractors each time they appear on a contract list.

2. DBE Goal.

   All MDOT procurements that have a DBE goal higher than 0% will have the following language:

   "FOR PURPOSES OF THIS CONTRACT, A GOAL OF __ PERCENT HAS BEEN ESTABLISHED FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION."

3. Definition of Disadvantaged:

   All solicitations will include the following information:

   "The Maryland Department of Transportation (MDOT) hereby notifies all bidders/offerors that in regard to any contract entered into pursuant to this advertisement, whenever the term 'disadvantaged' or 'minority' is used, it is understood to include women. The terms 'disadvantaged' and 'minority' include certified female owned businesses, which will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.

It is the goal of MDOT that disadvantaged business enterprises participate in all federal-aid contracts. Each contract will be evaluated for the placement of a goal for DBE participation on a contract-by-contract basis."

C. DBE NOTIFICATION OF CONTRACT OPPORTUNITIES

The procedure for the Administration to notify the DBE business community of contract opportunities will be as follows:

1. Notices of Invitation to Bid/Request for Proposals/Expressions of Interest

DBE firms listed in the MDOT DBE Directory certified in the work being advertised may, upon request, be sent a Notice of Invitation to Bid/Request for Proposals/Expression of Interest. Notices will be published in eMaryland Marketplace. (https://ebidmarketplace.com)

2. Plans and Specifications

Plans and specifications on all projects will be made available, upon request, to minority contractor associations and trade organizations. The names of firms requesting bid documents will be made available upon request to those DBEs listed in the MDOT DBE Directory who indicate interest in the subcontract work to be performed.

D. PRE-BID/PRE-PROPOSAL CONFERENCE

At each Pre-Bid/Pre-Proposal Conference, an Administration's representative will review the appropriate contract goal for each federal-aid contract and DBE compliance requirements.

E. CONTRACT AWARD

Each bidder/offeror shall seek commitments from certified businesses by subcontract or otherwise, for supplies and services, the combined value of which equals or exceeds the DBE participation goal established for that specific contract. In order to be counted towards the participation goal, the firm must be certified as a DBE for the specific work to be performed. The fact that the firm has a pending expansion of services application with OMBE does not constitute certification. The DBE must also be certified in the proposed scope of work/service. A bidder/offeror may count toward its DBE goal expenditures for materials and supplies obtained from certified DBE suppliers/regular dealer/wholesaler, provided that the certified DBE assumes the actual and contractual responsibility for the provision of the materials and supplies. The bidder/offeror may count its entire expenditure to a certified DBE manufacturer produces goods from raw materials or that substantially alters goods before resale. The bidder/offeror may count

60 percent of the expenditures to certified DBE suppliers who are not manufacturers towards its DBE goal.

Certified DBE firms must perform a commercially useful function on any contract. A certified DBE firm 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 carries out its responsibilities by actually performing, managing and supervising the work involved.

1. Review of Bids/Proposals

(a) All bidders/offerors will be required to submit documentation indicating participation by certified DBEs in a contract. In accordance with 49 CFR §26.53, the bidder/offeror shall submit to the Procurement Officer the following information *with its bid or offer*:

1) A completed Certified DBE Utilization and Fair Solicitation Affidavit whereby the bidder/offeror provides information regarding the bidder's/offeror's proposed DBE participation goal, commitment to make a good faith effort to achieve the goal, treatment of DBE subcontractors in the solicitation process, and any waiver request, if necessary.

2) A completed DBE Participation Schedule whereby the bidder/offeror identifies the specific commitment of certified DBEs at the time of bid submission. The bidder/offeror shall specify the price and/or the percentage of contract value associated with each DBE subcontractor identified on the DBE Participation Schedule.

*If the bidder/offeror fails to submit the documents described (1) – (2) above with the bid/ offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.*

(b) Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer:

1) The name of the employee designated as the bidder's/offeror's DBE liaison officer;

2) Subcontractor Participation Statement completed and signed by the prime contractor and the DBE for each DBE listed in the DBE Participation Schedule;

3) A Joint Venture Disclosure Affidavit, if applicable, signed by all parties;

4) An Outreach Efforts Compliance statement;

5) If the bidder's/offeror's proposed DBE Participation Schedule does not meet the DBE contract goals, the bidder/offeror shall submit information to support any request for waiver of the DBE participation goal or portion thereof by providing information sufficient to demonstrate good faith efforts to reach the goal; and

6) Any other documentation required by the Procurement Officer to ascertain the bidder/offeror responsibility in connection with the DBE participation goal.

*If the bidder/offeror fails to submit the documents described (1) – (6) above as required, the Procurement Officer shall deem the bidder/offeror is not responsible and therefore, not eligible for award. If the contract has already been awarded, the award is voidable.*

2. Requests for Waiver of DBE Goal and Review Procedures

(a) If, for any reason, at the time of bid, the contractor is unable to meet the goals specified in the contract, the contractor may request, in writing, a waiver of the DBE goal or a portion thereof. The request for a waiver shall include, without limitation, the following information:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified DBE firms, in order to increase the likelihood of achieving the stated goal.

(2) A detailed statement of the efforts made to contact and negotiate with DBEs including:

(i) The names, addresses, dates and telephone numbers of the DBEs who were contacted; and

(ii) A description of the information provided to DBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed.

(3) For DBE firms that submitted a subcontractor quotation/offer that the contractor considers not to be acceptable, a detailed statement of the reasons for the contractor's conclusion;

(4) A list of DBE firms contacted but found to be unavailable should be accompanied by a Subcontractor Unavailability Certificate either signed by the DBE contractor or containing a statement from the bidder/offeror that the DBE contractor refused to sign the Subcontractor Unavailability Certificate.

(b) In order for a waiver to be granted, the bidder/offeror must show that it took all necessary and reasonable steps to achieve the DBE goal based on the guidance provided in 49 CFR, Part 26, Appendix A, 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.

(c) All waiver request determinations must be in writing and approved by the Secretary or his/her designee..

3. Denial of Waiver Request

If the Administration denies the waiver request, the Administration will notify the bidder/offeror in writing of its decision and provide the bidder/offeror an opportunity for reconsideration.

As part of this reconsideration, the bidder/offeror will have an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. This information must be submitted within ten (10) days of receipt of the waiver decision. The bidder/offeror will have the opportunity to meet in person with a representative from the Administration to discuss the issue of the waiver request. The Administration's representative in this circumstance will be an official who did not take part in the original waiver request determination.

The result of the reconsideration process is not administratively appealable to USDOT.

4. Amendment for Unforeseen Circumstances

If at any time after bid submission but before contract award, an apparent low bidder/offeror believes or has reason to believe that a certified DBE listed on its DBE Participation Schedule is unable to perform or has become unqualified or unavailable, the apparent successful bidder/offeror low bidder will immediately notify the Procurement Officer who shall inform the DBE Compliance Officer. The apparent successful bidder/offeror must make good faith efforts to amend its DBE Participation Schedule to the extent necessary to achieve the contract goal for DBE participation. Failure to make such efforts may result in a determination that the apparent successful bidder/offeror is not eligible for award of the contract. Any desired change in the DBE Participation schedule shall be approved in advance by the Procurement Officer and DBE Compliance Officer and shall indicate the contractor's efforts to substitute another certified DBE firm to perform the work/services. Desired changes occurring after the date of contract execution may occur only upon written approval by the Administration and subsequently by contract amendment.

5. Changes to the DBE Participation Schedule after Contract Award

The contractor shall notify the designated DBE and the Contract Manager immediately if, at any time after contract award, the contractor determines that:

(a) any items listed in the original DBE Participation Schedule (including items of work to be sublet, materials or services obtained) need to changed;

(b) a designated DBE has or will become unavailable;

(c) a designated DBE fails to complete its work on the contract for any reason; or

(d) a designated DBE is to be terminated by the contractor.

The Contract Manager shall immediately inform the DBE Compliance Officer of this notice. If the contractor's notice is a proposed termination, the designated DBE shall respond to the contractor within five (5) days, with a copy to the Contract Manager. The designated DBE's response shall include an explanation as to why it objects to the proposed termination of its subcontract and why the requested action by the contractor should not be approved. The Contract Manager shall provide the DBE Compliance Officer with a copy of the designated DBE's response. The contractor must make good faith efforts to find another DBE subcontractor to substitute the original DBE. These good faith efforts shall be directed at finding another DBE to perform at the least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Administration established for the procurement. Any change in the DBE Participation Schedule must be approved in advance and in writing by the Administration DBE Compliance Officer, after consideration of the notice, response and any other information the Contract Manager or DBE Compliance Officer deem necessary, and shall indicate the contractor's good faith efforts to substitute another certified DBE subcontractor to perform the work.

The contractor may not terminate for convenience a DBE subcontractor listed in the DBE Participation Schedule (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the prior written consent of the Administration DBE Compliance Officer.

## PART VIII
## DBE CONTRACT COMPLIANCE

A. Review of Compliance Requirements

Compliance requirements are to be included in the contract proposal and may be reviewed with potential bidders/offerors at the pre-bid/pre-proposal meeting and with the contractor once the Notice to Proceed is issued.

1. Pre-Bid/Pre-Proposal Meeting – The contract goal and program guidelines may be reviewed by the Administration's DBE Compliance Officer or procurement staff at the pre-bid or pre-proposal meeting.

2. Notice to Proceed – Upon receipt of this notice, the Administration's DBE Compliance Officer shall contact the contractor and provide information regarding the compliance process, its time frames, required reports and forms and other materials.

3. Pre-Construction Meeting/Task Assignment Meeting/Pre-Work Meeting – The Administration's DBE Compliance Officer may review with the contractor the approved DBE participation plan, any changes, the reporting requirements, the estimated time schedules for the DBE portions of the work and outline the compliance process.

B. Required Contract Clauses

1. Retainage

In accordance with 49 CFR, Part 26, Section 26.29, MDOT has selected Option Three to hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the prime contracts, and ultimate payment to the primes/subs based on those acceptances.

Option Three allows:

MDOT to hold retainage from prime contractors but make incremental inspections and approvals of the prime contractor's work at various stages of the project (MDOT would pay the prime contractor the portion of the retainage based on these approvals), and the prime contractor, in turn, would be required to promptly pay all retainage owed to the subcontractor for satisfactory completion of the approved work.

2. Prompt Payment. Pursuant to 49 CFR §26.29, MDOT shall ensure that a clause is placed in every USDOT-assisted contract to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30

days from receipt of each payment that MDOT makes to the prime contractor. To the extent that it is not inconsistent with federal law, all prime contractors shall also comply with all Maryland laws and regulations regarding the prompt payment to subcontractors.

3. Statement of Non-Discrimination

In accordance with 49 CFR §26.13, the following statement must be included in every contract between MDOT and a contractor and in every subcontract of that contract:

"The contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in 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 MDOT deems appropriate."

C. Contract Monitoring

All Maryland Department of Transportation compliance monitoring of approved DBE participation plans may include, without limitation, the following monitoring activities:

1. Pre-Construction and Progress Meetings

The Administration's DBE Compliance Officer may participate in these meetings and may periodically review records maintained at the project site concerning work being done on the project.

2. DBE Participation Reports

Each month, the contractor shall submit the DBE Participation Report to the DBE Compliance Officer, which shall include, without limitation:

a. Identification of the DBEs and, if requested, non-DBEs participating on the project;
b. Type of work being done by each DBE;
c. Percentage of completion of work on project and of each DBE contract;
d. Dollar amount of project and for dollars awarded to each DBE and, if requested, for non-DBE subcontracts;
e. Actual monies paid during the reporting period and to date to each DBE and, if requested, to non-DBE subcontractors;
f. Work Force roster of the Prime contractor;
g. Comments by the contractor.

3. Compliance Review

To ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, on-site compliance reviews will be conducted on all USDOT assisted contracts with DBE participation. Specifically, the Administration DBE Compliance Officer or his/her designee will issue a written certification that he/she has reviewed contracting records and monitored work sites to ensure compliance with DBE participation goals. The review may include, but not be limited to, field visits, review of documents, and/or financial review.

a. Scheduled Document Review - The Administration's DBE Compliance Officer shall provide prior written notification to the contractor for purposes of a scheduled on-site document review. This notification shall inform the contractor of the date, time and location of the review. For this review, the contractor shall have the following documents available for inspection to the Administration's representative:

1. Copies of purchase orders and subcontracts.

2. Records to indicate the names of the DBEs working on the Project, the type of work, the dollar value of the subcontracts, scheduled times for each DBE to be on the site, the amount of money paid to date and financial records to verify (i.e. invoices, cancelled checks, bank records, etc); percentage of budget expended to date and the amounts billed by DBE firms compared to the amounts billed to non-DBE firms (consulting); resumes, payroll records, accounts receivable, accounts payable, ledgers, bank records, job costing records and correspondence.

3. Any other appropriate documents requested to establish and verify compliance.

b. Other Compliance Reviews – On-site verification and interviews may be conducted by the Administration's DBE Compliance Officer and may include, but is not be limited to, the following:

1. Meeting(s) of the Administration's DBE Compliance Officer with the contractor's DBE liaison officer and project personnel to explain the objectives of the visit.

2. Administration's DBE Compliance Officer tour of the job site.

3. Administration's DBE Compliance Officer interviews with
4. employees of the contractor and subcontractors and
5. review of all of the project records and documents

6. pertaining to the subcontractors, suppliers, etc...

7. A conference with the contractor's DBE liaison officer, project supervisor, and/or management staff including the Administration's engineering and/or project staff to discuss any deficiencies noted and advise of corrective actions to be taken.

8. Review of all records pertaining to the contract from the contractor and subcontractor including, without limitation, invoices, payroll records, accounts receivable, accounts payable, ledgers, bank records, job costing records, correspondence and any other appropriate documents requested to establish and verify compliance.

c. Review of Records – A compliance review may include, but not be limited to, a review of the financial records of the contractor and the DBE subcontractors. The Administration's DBE Compliance Officer may review records pertaining to the contract including invoices, payroll records, accounts receivable, accounts payable, ledgers, bank records, job costing records and correspondence.

D. Compliance Results – Finding of Compliance/Non-Compliance

Based on the information obtained from the documents presented by the contractor, the DBE subcontractor, and suppliers, the Administration's DBE Compliance Officer may determine if the contractor is in compliance with requirements of the DBE Program.

1. Finding of Compliance - If it is determined that a contractor is in compliance, the Administration's DBE Compliance Officer may advise the contractor in writing and continue to monitor the project.

2. Finding of Non-Compliance - If it is determined that a contractor is not in compliance, the Administration's DBE Compliance Officer may so advise the contractor in writing, citing the deficiencies and defining the corrective actions to be taken. The contractor and the Administration's DBE Compliance Officer may meet informally to discuss any problems of compliance. Suggestions and recommendations may be made to the contractor concerning ways the deficiencies may be corrected. In the event the contractor fails or refuses to take corrective action within a timely manner, the Administration's DBE Compliance Officer may inform the Administrator that the contractor is in non-compliance. The Administrator may issue a "Show Cause Notice" which shall delineate the deficiencies noted in the findings, outline the administrative actions to be taken, and provide a forum for the contractor to show that it is in compliance. If it is verified that the contractor has corrected the deficiencies, the "Show Cause Notice" shall be rescinded and the contractor will be notified in writing. If the contractor fails or refuses to take the steps necessary to correct the deficiencies, within the prescribed timeframe, the Administrator may begin administrative action against the contractor and may

recommend imposing administrative sanctions. A report of non-compliance will be prepared, with recommendations for sanctions to be submitted to the Administrator. The report may recommend, but not be limited to, one or more of the sanctions listed below:

a. Suspension of work on a project, pending correction;

b. Withholding payment or a percentage thereof, pending correction;

c. Termination of the contract:

d. Referral of DBEs to MDOT Office of MBE for review for loss of certification or minority business fraud investigation;

e. Referral to MDOT OMBE for review or further action. OMBE may refer the findings to the Maryland Attorney General's Office and/or the USDOT Office of Inspector General for further action including initiation of suspension, debarment, and/or criminal prosecution;

f. Any other action as appropriate.

The Administrator shall determine which sanction(s) should be imposed in order to promote the purpose of the MDOT DBE Program. The Secretary will have final approval of all administrative sanctions imposed on contractors for non-compliance. In those instances where the Board of Public Works has the final authority, the Secretary will initiate proceedings to bring the matter before the Board of Public Works.

A finding of suspected DBE fraud may not be shared with the contractor, or with the DBE. The available information shall be given to the MDOT Office of MBE, the MDOT Office of General Counsel, USDOT, and the appropriate federal operating administration's regional division office.

E. Specific Compliance Standards

Credit toward DBE goals shall be awarded only for the portion of work performed by the DBE and when payments, including retainage payments, have been made to the DBE.

1. Commercially Useful Function

MDOT counts towards its DBE goals only the expenditures to DBEs that perform a Commercial Useful Function on contracts as defined in 49 CFR Part 26. A firm is considered to perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a Commercially Useful Function, the DBE must also be responsible, with respect to materials and supplies used on a contract, for negotiating price,, determining quality

and quantity, ordering the material, and installing (where applicable) and paying for the material itself. (See 49 CFR §26.55.)

2. Counting DBE Participation

a. Generally: When a DBE participates in a contract, MDOT will:

1. Count only the value of the work actually performed by the DBE toward DBE goals;

2. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (iii) herein) that is performed by the DBEs own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except those purchased or leased from the prime contractor or its affiliate);

3. Count the entire amount of fees and commissions charged by a DBE firm for providing bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of USDOT-assisted contract toward DBE goals, provided MDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

4. Count the work a DBE subcontracts to another firm only if it is performed by another DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. Credit Percentages: Credit toward meeting the contract goal will be given in accordance with 49 CFR, Part 26. Credit varies with the type of DBE firm as follows:

1. DBE Prime Contractors. DBE prime contractors that supply labor and materials to perform a distinct element of the work will be given credit only to the portion of the work performed by the DBE.

2. DBE Manufacturers. DBE manufacturers that operate or maintain a factory or establishment that produces on the premises the materials or supplies obtained by the contractor will be given 100 percent credit. The DBE manufacturer is considered to be performing Commercially Useful Function if the requirements set forth in 49 CFR §26.55 are met.

3. DBE Equipment Rental Firms. DBE equipment rental firms will be given 100 percent credit if the equipment is owned by and registered to the DBE.

4. DBE Regular Dealer/Supplier. DBE regular dealers/suppliers are firms that own, operate, or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. For these firms, 60 percent credit will be given of the contract value. A DBE Regular Dealer is considered to be performing Commercially Useful Function if the requirements set forth in 49 CFR §26.55 are met.

5. DBE Brokers, Packagers, Manufacturers Representatives, DBE That are Not Manufacturers or Regular Dealer/Suppliers. Fees and commissions only (no credit for materials, transportation or other costs) may be counted by a contractor towards its DBE goals provided that the fee or commission is determined by MDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

6. DBE Joint Venture. A joint venture is 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. When a DBE performs as a participant in a joint venture, only the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces may be counted towards the DBE goal.

7. DBE Trucking Company. A DBE trucking company must perform a commercially useful function (that is, responsible for the execution of a distinct element of work of a contract and carrying out its responsibilities by performing, managing and supervising the work involved). The DBE trucker, in the light of industry practice and other relevant considerations, must have a necessary and useful role in a transaction for which there is a market outside of the context of the DBE Program. The firm's role cannot be a superfluous step added in an attempt to obtain credit goals. The DBE must be responsible for the management and control of the contract on a project, without any contrived arrangement to meet DBE goals. Control includes the DBE trucker being responsible for scheduling, dispatching, paying employees, maintaining the trucks and keeping complete and accurate business records. The DBE receives credit for the total value of transportation

services it provides using trucks it owns insures and operates using drivers it employs. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE may lease trucks from another DBE firm, including owner/operators who are DBEs. Credit shall be given for total value of the transportation services the DBE provides as the subcontractor on a project. The DBE may also lease trucks from a non-DBE firm. In this situation, the DBE receives credit only for the total value of transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by the non-DBE lessees received credit only for the fee and/or commission it receives as a result of the lease agreement. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

3. Use of Joint Checks.

With respect to the use of joint checks by the prime contractor, MDOT follows USDOT Guidance on Use of Joint Checks Under the DBE Program dated August 30, 2006. Double-payee checks are prohibited except for purchase of supplies and materials. Two part checks are allowable only in the following situation:

a. The other party acts solely as a guarantor,

b. The funds do not come from the other party,

c. It is a commonly-recognized way of doing business, and

d. Must be approved in advance by the Administration's DBE Compliance Officer.

4. Revenue Generating Contracts

Procurements by an Administration, when a resulting procurement contract may involve no expenditure by the State and may produce revenue for the State for services that are to be provided for the benefit of the public at a State transportation facility involves:

a. A license, permit, or similar permission to use State facilities for activities related to the movement of passengers or goods, or providing goods or services to passengers, patrons, or tenants at transportation facility, or for advertising or promotional purposes;

b. A lease of State property, (under State Finance and Procurement Article, Title 10, Subtitle 3, Annotated Code of Maryland).

The Maryland Aviation Administration procures revenue generating contracts under its Airport Concessions Program and as an airport operator must comply with federal regulations for Participation by Disadvantaged Business Enterprise In Airport Concessions under 49 CFR, Parts 23 and 26.

*A concession is defined as a for-profit business enterprise, located on an airport subject to 49 CFR, Part 2, Subpart F, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the Maryland Aviation Administration. Businesses that conduct aeronautical activity are not considered concessionaires.*

F. Other MDOT DBE Policies

In as much as MDOT is a consolidated agency, all Administrations are subject to the policies included under this section. These policies have been established to ensure that there will be one uniform and consistent DBE Program implemented within the Maryland Department of Transportation.

## PART IX
## DBE GOAL SETTING PROCEDURES

### A. GENERALLY

Pursuant to 49 CFR §26.45, an Overall Goal is established every three years for each of Maryland's federally funded transportation modes (SHA, MTA and MAA.) Individual contract goals are set based upon numerous factors, including, without limitation, the dollar value of the project, the availability of DBE firms to perform the work which is to be subcontracted, and the availability of certified DBE firms in the location where the work is to be done.

### B. OVERALL GOALS FOR FEDERALLY ASSISTED CONTRACTS

The Maryland Department of Transportation shall establish Overall Goals for the State Highway Administration, the Maryland Transit Administration and the Maryland Aviation Administration in three-year intervals in accordance with 49 CFR §§ 26.45 through 26.51. The Overall Goal for each of these three modal administrations shall be submitted to the appropriate Operating Administration of USDOT by August 1 of the year in which the USDOT operating administration requires submission.

In summary, the federal regulations clarify the statutory goal of 10 percent as an inspirational goal, not a requirement for all recipients of USDOT assistance. MDOT will set Overall Goals based on its specific programs and market to determine the amount of participation that would result in the absence of discrimination and the effects of past discrimination. The federal regulations present three alternate formulas to use for measuring availability of ready, willing and able DBE firms in the local market so that the program remains narrowly tailored and strives to create a level playing field.

In developing the Overall Goal, participation of ethnic minority, women and general contractor groups, community organizations and other appropriate organizations shall be included. A notice shall be published of the proposed Overall Goal, informing the public that the proposed Overall Goal and its rationale are available for inspection during normal business hours at the MDOT Office of MBE for 30 days following the notice. The public shall be informed that comments on the goals will be accepted for 45 days from the date of the notice. The notice shall be published in general circulation media, available minority focused media and trade association publications.

C. OVER CONCENTRATION

If it is determined that there is an over concentration of DBE firms in a certain type of work so as to unduly burden the opportunities of non-DBE firms in that work, appropriate measures must be devised to alleviate the over concentration. MDOT may consider if contract goals unfairly prevent non-DBE from competing on subcontracts.

The determination of over concentration shall be made through assessments of contracting information in the three federally financed MDOT administrations. Corrective measures are enumerated in 49 CFR, Part 26.33 and are available as are other appropriate measures tailored to specific circumstances at the time of the determination of over concentration. Other provisions of 49 CFR, Part 26 which are not included in this summary continue to apply.

These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBE firms in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to unsure that non-DBE firms are not unfairly prevented from competing for subcontracts.

The approval of the concerned DOT operating administration must be obtained, for the determination of over concentration and the measures devised to address it.

D. RACE AND GENDER NEUTRAL ALTERNATIVES

Many activities undertaken by the Department in carrying out the spirit of the DBE Programs are race and gender-neutral. The requirements of 49 CFR § 26.51 reemphasize the use of race and gender neutral alternatives to race and gender specific actions. As a reference source, a variety of race and gender neutral activities, processes and programs are presented here. This list is not exhaustive of all race and gender-neutral alternatives that may exist or be utilized.

49 CFR § 26.51 enumerates the following race and gender-neutral options.

1. Competitive Procurement System

A DBE contractor or proposer receives a contract in a competitive environment without regard to race or gender or wins a subcontract when there is no DBE goal or a subcontract when other subcontracts have fully satisfied the contract goal requirements is race and gender neutral.

Within this system, specific actions that are race and gender neutral include arranging quantities and delivery schedules that facilitate participation in the procurement process.

Other actions include unbundling large contracts, increasing accessibility of contracts to small businesses and encouraging subcontracting by primes beyond the required subcontracting.

2. Bonding and Financing

An agency may assist firms in overcoming limitations which result in the inability to obtain bonding and/or financing by simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help small businesses to obtain bonding and financing.

3. Technical Assistance

Providing a variety of technical assistance to firms, usually in the field of operations, is a race and gender-neutral activity.

4. Information

Race-neutral means include, but are not limited to carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBE firms and other small businesses), on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate.

5. Support Services

Providing support services to develop and improve the short and long term business management, record keeping, accounting capability and other general business support is a race and gender-neutral activity.

6. Business Development

Providing long term support in business development, increasing opportunities in a variety of work specialties, and/or strengthening the firm's ability to contract for increasingly significant projects and become self sufficient from specific business programs is a race and gender neutral activity.

7. Start-up Support

Provide a program to assist new firms with starting operations, particularly in non-traditional fields of work.

8. Directory

Maintain and ensure a wide distribution of a DBE Directory.

9. Technology

Assist DBEs and other small firms to develop the capability to utilize existing and newly emerging technology in their business and to conduct business through electronic media.

## E. CONTRACT-BY-CONTRACT GOALS

The following guidelines will be used when setting contract goals on USDOT-assisted contracts:

1. Only those USDOT-assisted contracts that have subcontracting opportunities will be considered for setting individual DBE contract goals.

2. There is no requirement to set a contract goal on every USDOT-assisted contract. The goal for a specific contract may be higher or lower than that percentage level of the Overall Goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBE firms for the work of the particular contract.

3. The contract goals must provide for participation by all certified DBE firms and must not be subdivided into group-specific goals.

In accordance with State of Maryland Regulations and MDOT policy, each Administration is required to establish a Procurement Review Group (PRG). The Chairman of the PRG shall be the Chief Procurement Officer or its designee. The PRG shall be composed of the following three members: (1) Chief Procurement Officer or a higher level procurement official; (2) DBE Compliance Officer for the Administration or a high level DBE official; and (3) Project/Operations Manager or its designee. The voting members of the PRG must have at least one alternate in the event that they cannot attend a meeting.

The PRG must review all proposed procurement solicitations, proposals to exercise contract options, and proposals to award sole-source contracts when the expected contract is expected to exceed $200,000.00. All Administrations are encouraged to review contracts below this threshold. It is recommended that a representative from the Office of the Attorney General, State of Maryland, attend each meeting to provide legal support and advice to the PRG.

Some of the factors to consider when reviewing the list of available DBEs include, but are not limited, to the following: (a) specialty work; (b) complexity of job; (c) geographical limitations; (d) specific licensing/insurance requirements; (e) equipment requirements; and (f) market availability. All PRG recommendations must be

documented in writing, and submitted to the Procurement Officer. The recommendation must be in narrative form explaining the subcontracting opportunities, potentially-available DBEs per subcontracting item, and the reasoning behind the approved DBE Goal. DBE Goals should be based on the circumstances surrounding the specific procurement, not on a set percentage. PRG recommendations must be approved by the Administrator of the respective Administration (or his/her designee).

## F. USE OF DBE FINANCIAL INSTITUTIONS

In accordance with 49 CFR 26.27, MDOT encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals. MDOT will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals during the certification process. On a semi-annual basis, the Office of MBE will develop a list of certified DBE financial institutions appearing in the DBE directory and provide this information to its modal administrations. This information will also be posted on the MDOT and modal administrations' websites.

## G. TRACKING DBE PARTICIPATION AND SHORTFALL ANALYSIS

DBE participation will be monitored throughout each federal fiscal year to determine whether the DBE participation meets the overall DBE goal. On a quarterly basis, the appropriate modal administration shall prepare, in consultation with MDOT, an internal report reflecting race conscious and race neutral DBE participation for federally funded contracts. The internal quarterly reports shall be evaluated to determine whether any adjustment to the contract goals is necessary based on the DBE participation to date.

If it is determined that the awards and commitments at the end of any fiscal year are less than the overall DBE goal applicable to that fiscal year, the appropriate modal administration, in consultation with MDOT, will analyze the reasons for the difference in that fiscal year and establish a plan to correct any identified problems in the new fiscal year. The analysis and corrective action plan shall be submitted to the appropriate federal operating administration within ninety (90) days of the end of the fiscal year for approval.

PART X

## COMPLAINTS

The following guidelines are established to provide guidance to MDOT and its modal administrations on how complaints and/or allegations of fraud against Maryland certified Disadvantaged Business Enterprises are to be accepted, investigated, assessed and reported on and should not be interpreted as implying any due process rights. A complaint received by a MDOT modal administration shall be forwarded to the MDOT Office of Minority Business Enterprise (OMBE) or Office of Diversity and Equity (ODE) as described below. The forwarded complaint shall include appropriate documentation regarding the nature of the complaint.

A. Types of Complaints

1. Third Party Certification Challenges

   In accordance with 49 CFR § 26.87, any third party may challenge the eligibility of a certified DBE. Such a challenge is to be made in writing to OMBE and the procedures are the same as detailed in the Part VI-DBE/ACDBE Certification Process and Procedures-M-Challenge Procedure/Ineligibility Complaints. The State's final decision regarding a third party challenge may be appealed to USDOT.

2. DBE Compliance Complaints

   Any person who suspects a violation of the DBE Program procedures outlined in Part VIII. DBE Contract Compliance Procedures during the administration of a contract let by MDOT and/or its modal administrations may file a complaint with the MDOT ODE. Such complaints can be made via telephone to 410-865-1156 or in writing to the MDOT ODE.

3. Complaints against MDOT

   Any individual who believes that MDOT has failed to comply with its obligations under 49 CFR Parts 23 and 26 may file a written complaint with the U.S. Department of Transportation Office of Civil Rights. (See 49 CFR §26.103.)

4. Complaints against MDOT Personnel

   Complaints against a staff member of OMBE, ODE or other MDOT personnel may be reported by phone to:

   Maryland Department of Transportation
   Office of Audits
   410-684-7059

5. All Other Type Complaints

Any person who believes himself or herself, another person or any specific class of individuals to be affected by a violation of MDOT's Disadvantaged Business Enterprise Program may file a complaint via telephone to the Fraud Hotline (1-800-544-6056) or in writing, signed and dated, to the MDOT Office of Minority Business Enterprise. The complaint must be filed within 180 days of the date of an alleged violation or the dates on which a continuing violation was known to the complainant.

B. Complaint Process

1. Initiating a Complaint

a. Written complaints or complaints taken over the telephone shall be forwarded to the Director of OMBE or ODE for appropriate handling. Anonymous complaints shall be evaluated on a case-by-case basis for appropriate investigation and follow-up action.

If sufficient and reasonable evidence cannot be obtained from the complainant(s), the complaint investigation may not proceed. Appropriate records will be maintained regarding the dispositions of all cases. Documentation on all complaints shall be maintained.

Unless prohibited by federal law, the identity of the complainant shall be confidential for complaints involving certified DBEs or involving federally financed contracts.

If the confidentiality of a complainant would hinder the investigations, 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 confidentiality. In some circumstances, failure to waive confidentiality may result in closure of the investigation.

2. Determinations

a. Upon completion of the investigation, the Director of OMBE or ODE, or his/her designee, will inform the respondent and complainant of the results of the investigation, in writing. If the investigation indicates a failure to comply with the requirements of the DBE Program, the Director or his/her designee will make a final report which may recommend the imposition of one or more of the sanctions below:

i. Removal of DBE certification;

ii. Suspension of work on the project pending correction;

iii. Termination of contract;

iv. Withholding payment or a percentage thereof;

v. Any other action as appropriate;

b. The Director may initiate one or more of the following sanctions:

i. Referral to the MDOT Office of General Counsel, Attorney General's Office for initiation of loss of certification proceedings;

ii. Referral to the MDOT Office of General Counsel, Attorney General's Office for initiation of suspension and/or debarment proceedings in accordance with COMAR regulations;

iii. Referral to the MDOT Office of General Counsel, Attorney General's Office for consideration of criminal prosecution;

iv. Any other action as appropriate.

c. The Office of General Counsel, Attorney General's Office, may refer a firm to the U.S. Department of Justice for prosecution of any person who makes a false or fraudulent statement in connection with participation of any DBE in any USDOT assisted program or otherwise violates applicable federal statutes. (49 CFR §26.107.)

3. Intimidation or Retaliation

a. No contractor or other person shall intimidate, coerce, threaten, or discriminate against any individual or firm to interfere with any right or privilege secured by participation in the DBE Program, by filing a complaint or by testifying, assisting or participating in an investigation, proceeding or hearing.

## PART XI
## RECORDS AND REPORTS

A. MDOT – Bidders List

In accordance with USDOT and State of Maryland Regulations during the course of the contract, MDOT will create and maintain a bidders' list, consisting of firms bidding on prime contracts and bidding or quoting on subcontracts on USDOT-assisted projects. 49 CFR §26.11(c).

B. Reporting Matrix

*Below is a list of DBE-related reports that MDOT and its modal administrations must regularly submit to USDOT.*

| Reporting Agency | Title of Report | Report Recipient | Due Date |
|---|---|---|---|
| MDOT | Three Year Overall ACDBE/DBE Goal & Methodology | FHWA, FTA, FAA | August 1 at three-year intervals |
| SHA | Uniformed Report – DBE Awards Or Commitments and Payments | FHWA | First six months June 1 (Oct 1-Mar 31) |
| | Uniformed Report - DBE Awards Or Commitments and Payments | FHWA | Second six months December 1 (Apr 1-Sept 30) |
| MTA | Uniformed Report DBE Awards Or Commitments and Payments | FTA | First six months June 1 (Oct 1-Mar 31) |
| | Uniformed Report DBE Awards Or Commitments and Payments | FTA | Second six months December 1 (Apr 1-Sept 30) |
| MAA | Annual Concession Contracts By Airport | FAA | February 2 |
| | Uniformed Report DBE Awards Or Commitments and Payments | FAA | (October 1 – September 30) |

C. Secretary's Policy Statement

The Secretary's Policy Statement has been circulated throughout the Maryland Department of Transportation. The Statement has also been sent to minority and non-minority business associations that work with MDOT with a request that they circulate it to their membership and to businesses, DBE and non-DBE firms, who are involved in contracts with MDOT.

## PART XII
## DBE REQUIREMENTS SPECIFIC TO MDOT ADMINISTRATIONS

A. DBE Requirements For Airport Concessions

The Maryland Aviation Administration (MAA), as a recipient of Federal Aviation Administration (FAA) grants, shall abide by 49 CFR, Parts 23 and 26 with respect to the participation of disadvantaged business enterprise in airport concessions.

1. General Requirements

a. The MAA (also referred to as the sponsor) shall abide by the non-discrimination requirements in of 49 CFR §26.7 with respect to the award and performance of any concession agreement.

b. The following statements shall be included in all concessions agreements:

"This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR, Part 23, Subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR, Part 23, Subpart F.

The concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c. The MAA, as a sponsor of a primary airport, shall implement a DBE concession plan containing elements listed in 49 CFR §23.95.

d. The plan shall be reviewed and updated annually, and submitted to the FAA Regional Office for approval. The plan shall include goals and accomplishments.

2. Certification Procedures and Standards

The certification procedures and standards set forth in 49 CFR, Part 26 are applicable to the MAA concessions program. Only those firms that have been certified in accordance with procedures will count toward the Overall Goal.

3. Overall DBE Goals

The MAA shall establish an annual Overall Goal for the participation of DBEs in concessions from October 1 to September 30 (federal fiscal year). The goal setting process for setting overall concession goals shall be consistent with process in 49 CFR §26.45.

B. DBE Requirements for The Maryland Transit Administration

The MTA DBE Requirements are included in Section XIV - Supplement II to this Program Manual.

## PART XIII
## GLOSSARY OF TERMS

The following explanation of terms has been provided to insure proper interpretation of key words and terms associated with the MDOT DBE Program.

ACDBE - A certified Airport Concessionaire Disadvantaged Business Enterprise.

ACT - The Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), Intermodal Surface Transportation Efficiency Act of 1991, and Transportation Equity Act of 1998 (TEA-21), Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003: A legacy for users (SAFETEA-LW).

ADMINISTRATION - Any one of the Administrations within the Maryland Department of Transportation (Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Maryland Transit Administration, Motor Vehicle Administration, Office of the Secretary) and the Maryland Transportation Authority.

ADMINISTRATIVE LAW JUDGE - An official of the State Office of Administrative Hearings who has been delegated the authority to preside over contested loss of certification hearings.

ADMINISTRATOR - The chief executive of an Administration who is charged with the implementation of the DBE Program for his/her individual administration.

AFFILIATION - Except as otherwise provided in 13 CFR, Part 121, concerns are affiliates of each other when, either directly or indirectly: (i) one concern controls or has the power to control the other; or (ii) a third party or parties controls or has the power to control both; or (iii) an identity of interest between or among parties exists such that affiliation may be found.

AFFIRMATIVE ACTIONS - Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs that receive USDOT assistance.

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

ALASKAN NATIVE - A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a

Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

ANNUAL RECEIPTS (ALSO GROSS RECEIPTS) - For the purpose of determining annual receipts of a business concern, MDOT is incorporating into this manual by reference 13 CFR, Part 121 Section 121.104 Annual Receipts.

APPLICANT - A business which has applied to MDOT for certification as a bona fide DBE.

APPLICATION - The Uniform Certification Application as established by the U.S. Department of Transportation, which must be completed by an applicant for MDOT certification or for recertification. (see also SBA application)

BROKER - An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

BUSINESS - A for-profit legal entity, which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, limited liability company, corporation) to engage in lawful commercial transactions.

CERTIFICATION - The process by which a business is determined to be a bona fide DBE.

CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE - A business which by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE. MDOT certification does not equate to a pre-qualification status.

CHAIR/MBEAC - The Director of the Office of MBE, the Deputy Director of the Office of MBE, or other person designated to preside over meetings of the Minority Business Enterprise Advisory Committee.

COMMERCIALLY USEFUL FUNCTION – A certified business is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work of a contract and carries out its responsibilities by actually performing, managing and supervision the work involved.

COMMISSION - Represents monies charged for commercially useful and bona fide services. (Fee)

COMPLIANCE - A recipient has correctly implemented the requirements of the DBE Program and the contractor and the DBE have correctly implemented the requirements of the DBE Program.

CONSULTANT - See Contractor/Subcontractor

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. For purposes of this part, a lease is considered a contract.

CONTRACT MANAGER- An MDOT Agency and/or the Maryland Transportation Authority employee responsible for monitoring MDOT contracts to ensure compliance with ensuring compliance with the terms and conditions of that contract, as well as documenting and agreeing on any changes that may arise during its implementation.

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

CONTRACTOR/SUBCONTRACTOR - One who participates through a prime contract, tier subcontract, consultant agreement, or lease agreement, in any matter covered by this Program.

CONTROL - The power of the business owner(s) to direct the management and operation of a business enterprise.

CORPORATION - An artificial person or legal entity created by or under the authority of the laws of the Corporations and Associations Article, Md. Code Annotated, or under the laws of any other state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including trade, commerce, manufacturing, mining, banking, insurance, transportation and other forms of commercial or industrial activity where the purpose of the organization is profit.

DAY - Any day: workday, weekend or legal holiday.

DBE - DISADVANTAGED BUSINESS ENTERPRISE - For federal-aid contracts under 49 CFR, Part 26, Subpart A through F: a for-profit small business concern as defined pursuant to Section 3 of the Small Business Act (15 USC 637)(a) and implementing regulation (49 CFR, Part 26), which is owned and controlled by one or more socially and economically disadvantaged persons.

DBE DIRECTORY - A compilation of businesses certified by MDOT as owned and controlled by socially and economically disadvantaged individuals. It shall be provided in electronic format when requested and on the Internet and updated as changes are made at www.mdot.maryland.gov.

DBE COMPLIANCE OFFICER - An individual that is responsible for coordinating agency outreach efforts to the DBE business community, reviewing agency contracting procedures to ensure compliance, assisting in the resolution of contracting issues, and submitting required program reports.

DBE CERTIFICATION OFFICER - A staff member of the Office of Minority Business Enterprise who conducts investigations in response to both initial requests for DBE certification and DBE recertification; duties include conducting on-site visits and preparing investigation reports.

DBE OVERALL GOAL - Goals established by MDOT for the State Highway Administration, the Maryland Transit Administration, and the Maryland Aviation Administration according to 49 CFR §§26.45 through 26.51.

DBE PARTICIPATION PACKET - The documents submitted by the bidder or proposer which evidences its commitment to use certified DBEs to participate on the contact.

DEPARTMENT - The Maryland Department of Transportation.

EXPANSION OF SERVICES – A process by which a certified firm becomes certified for additional areas of work/services and/or North American Industrial Classification Codes, (NAICS Codes).

FEDERAL-AID CONTRACT - Any contract awarded to any contractor by MDOT funded in whole or in part with USDOT financial assistance. This also includes consultant agreements, modification of contracts, and leases.

FEE - A fee is money charged for providing a commercially useful and bona fide service.

GOAL (OVERALL) - An Overall Goal is established every three years for each MDOT administration, which receives USDOT assistance. Overall Goal under 49 CFR, Part 26 is established every three years for the State Highway Administration, the Maryland Transit Administration and the Maryland Aviation Administration. These are discussed in greater detail within this Manual.

GOOD FAITH EFFORT – Efforts to achieve a DBE goal, which by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirement in accordance with the guidelines in 49 CFR, Part 26, Appendix A and to the extent not inconsistent with federal law COMAR 21.11.03.09.

GRADUATION - The process by which a certified business is deemed to be no longer eligible to participate in the DBE Program due to its 3 year average of gross annual revenues or average number of employees during the preceding 12 month period.

GROSS REVENUE - See Annual Receipts/Gross Receipts

HOME-STATE CERTIFICATION - A DBE certification held by an out-of-state applicant, which certification has been granted by a governmental agency located within the state in which the applicant has its principal place of business.

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

INDIAN TRIBE - Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaskan Native Corporations (ANC), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. (see definition of "tribally-owned concern")

IN-STATE FIRM - A firm that has its principal place of business in the State of Maryland.

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.

LESSEE - A business or a person who leases, or is negotiating to lease, property from the MDOT or the USDOT on a MDOT or a USDOT facility for the purpose of operating a transportation-related activity or for the provision of goods or services to a facility or to the public on a facility.

LIMITED LIABILITY COMPANY (LLC) - A permitted form of unincorporated business organization which is organized and existing under Title 4A, Corporations and Associations Article, Md. Code Annotated, or under the laws of any other state of the United States, the District of Columbia or a territory or commonwealth of the United States.

LIMITED LIABILITY PARTNERSHIP (LLP) - A partnership created pursuant to Subtitle 10, Title 9A, of the Corporations and Associations Article of the Annotated Code of Maryland or under the laws of any other state of the United States, the District of Columbia or a territory or commonwealth of the United States.

LOSS OF CERTIFICATION - Specific administrative steps taken to remove the certification from a business, which had been previously certified by the certifying agency.

MANUFACTURER - A firm that produces a product from raw materials or substantially alters a previously manufactured product by operating or maintaining a factory or establishment that produces or alters on the premises.

MANUFACTURER REPRESENTATIVE - A business that transfers title of a product from a manufacturer to an ultimate purchaser (e.g., a sales representative who invoices a product from the producing company to the contractors).

MBE (MINORITY BUSINESS ENTERPRISE) - State of Maryland minority business certification for participation on state funded contracts. An MBE is any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more socially and economically disadvantaged persons or a non-profit entity organized to promote the interests of the physically or mentally disabled.

MBEAC - As designated in COMAR 21.11.03.16, the Minority Business Enterprise Advisory Committee (MBEAC) makes recommendations to the Chair of the MBEAC or his/her designee on behalf of the Secretary of Transportation concerning DBE certification.

MBEIRC - MINORITY BUSINESS ENTERPRISE INTERNAL REVIEW COMMITTEE - An internal MDOT Committee created to make recommendations to the chair of the MBEAC regarding the bona fides of firms seeking MBE/DBE certification.

MDOT - Maryland Department of Transportation.

NATIVE HAWAIIAN - Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

NATIVE HAWAIIAN ORGANIZATION - Any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) -The codes established by the federal government to categorize all economic activities in the U.S. by product or service. All firms are certified in particular areas of work categorized by NAICS Codes.

OMBE - Office of Minority Business Enterprise of the Maryland Department of Transportation.

OUT-OF-STATE FIRM - A firm whose principal place of business is in a state or location other than Maryland.

OVERCONCENTRATION - A market condition described in 49 CFR, Part 26 in which the number of DBEs and their business activities in an area of work causes an undue economic burden to non-DBE firms that participate in this area of work.

OWNERSHIP - See Section on Eligibility.

PARTNERSHIP - An unincorporated association of two or more persons to carry on as co-owners of a business for profit.

PERSONAL NET WORTH (PNW) - The net value of the assets of an individual remaining after total liabilities are deducted.

PRIMARY INDUSTRY CLASSIFICATION - The North American Industry Classification System (NAICS) code designation that best describes the primary business of a firm.

PRIMARY RECIPIENT- A recipient that receives USDOT financial assistance and passes some or all of it on to another recipient.

PRINCIPAL PLACE OF BUSINESS - The location from which the owners of a firm manage, control and operate the firm on a consistent basis and where business records are maintained. The principal place of business is the location generally recognized by employees, customers, suppliers, etc., as the central or headquarters operation.

PROCUREMENT OFFICER - An individual who acquires equipment, services, construction, supplies, information technology, and other items for the Department or any of its Administrations, which must be obtained through the competitive or negotiated procurement process.

PROCUREMENT REVIEW GROUP (PRG) - Group that reviews contract solicitations, proposed sole-source contracts, and contract renewal options and waiver requests.

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

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

RECERTIFICATION - The process to assess whether the certified firm continues to meet DBE program eligibility standards.

RECIPIENT - Any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the Federal Aviation Administration, Federal Highway Administration or Federal Transit Administration, or who has applied for such assistance.

REGULAR DEALER - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

SBA/DOT MEMORANDUM OF UNDERSTANDING - Refers to the agreement signed on November 23, 1999, between the U.S. Department of Transportation (USDOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development [8(a) BD] and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) programs for small and disadvantaged businesses.

SECRETARY - The Secretary of the Maryland Department of Transportation, or his/her designated representative.

SIZE ELIGIBILITY PROVISIONS AND STANDARDS - For the purpose of determining size eligibility of a business concern to participate as a DBE, the Maryland Department of Transportation is incorporating into this manual by reference the Small Business Administration regulations set forth at 13 CFR, Part 121, Subpart A-Size Eligibility Provisions and Standards.

SMALL BUSINESS ADMINISTRATION (SBA) - The United States Small Business Administration.

SMALL BUSINESS ADMINISTRATION (SBA) APPLICATION - When an SBA-certified firm applies for certification pursuant to the DOT-SBA Memorandum of Understanding (MOU), MDOT will accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) Business Development (BD) or Small Disadvantaged Business (SDB) programs, in lieu of requiring the applicant firm to complete the MDOT application forms and packages.

SMALL BUSINESS ADMINISTRATION CERTIFIED FIRMS - SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) Business Development or Small Disadvantaged Business (SDB) programs.

SMALL BUSINESS ADMINISTRATION (SBA) 8(a) CERTIFICATION - The SBA 8(a) Certification Program is a federal program, which establishes firms as disadvantaged and eligible for participation in the federal government contracting.

SMALL BUSINESS ADMINISTRATION SDB CERTIFICATION - SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the Small Disadvantaged Business (SDB) Program.

SMALL BUSINESS CONCERN - For a federally aided project, a small business is defined in Section 3 of the Small Business Act and regulations promulgated pursuant thereto.

SOLE PROPRIETORSHIP - A for-profit business owned and operated by a disadvantaged person in his or her individual capacity.

SUBCONTRACTOR - One who has contracted with a prime contractor for the performance of part of the work or services, which the prime contractor has a contract with MDOT to perform.

SUPPLIER - A regular dealer, who owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are placed, kept in stock, and regularly sold to the public in the usual course of business.

TIME - In computing any period of time prescribed by the DBE Program or by the Chair/MBEAC, the day on which the act or event begins is not computed, but the last day of the period is computed.

TRIBALLY OWNED CONCERN - Any concern at least 51 percent owned by an Indian tribe as defined in the DBE Program.

UNIFORM CERTIFICATION APPLICATION - Certification application form as established by the U.S. Department of Transportation.

UNIFORM CERTIFICATION PROCESS - The process required in 49 CFR, Part 26 for one process for the certification of disadvantaged business enterprises within a State receiving USDOT funds. In Maryland, MDOT has had a Uniform Certification Process since 1978.

USDOT - U.S. Department of Transportation.

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

**Supplement I**
**2012 Disadvantaged Business Enterprise Program Manual**
**DBE SMALL BUSINESS ENTERPRISE (SBE) PROGRAM**

## A. SBE PROGRAM OVERVIEW

This Supplement I is a part of the 2012 Disadvantaged Business Enterprise Program Manual to which it is attached, and sets forth additional DBE Program requirements applicable to the SBE Program. The Maryland Department of Transportation (MDOT), in accordance with 49 CFR Sections 26.39 and 26.51, seeks to enhance contracting opportunities for DBEs by establishing a race and gender neutral Small Business Enterprise (SBE) Program for federal-aid projects. The SBE Program applies only to the State Highway Administration (SHA), Maryland Transit Administration (MTA), and Maryland Aviation Administration (MAA) contracts that are funded in whole or in part with United States Department of Transportation (USDOT) funds. The program is not applicable to MDOT contracts that are completely State funded or receive funding from federal agencies other than USDOT.

The goals of the SBE Program are to facilitate competition, eliminate obstacles, and increase opportunities for small businesses, including DBEs, to participate as prime contractors on MDOT contracts without competing with larger, more established businesses. Successful bidders will gain practical experience and develop expertise that will enable them to better compete on successive projects as prime contractors and expand their business opportunities.

## B. SBE PROGRAM ELIGIBILITY

1. A firm must be a small business as defined by the standards prescribed by the U.S. Small Business Administration (SBA). MDOT shall apply current SBA business size standards found in 13 CFR Part 121 that are applicable to the type of work the firm seeks to perform in USDOT-assisted contracts.

2. The firm's average annual gross receipts, as defined by SBA regulations, during the firm's previous three fiscal years cannot exceed the amount set forth in 49 CFR 26.65.

3. If a business has not existed for 3 years, the employment and gross sales shall be the average(s) for each year or part of year during which the business has been in existence.

4. At least 51% of the firm's ownership must be held by individuals who meet the personal net worth (PNW) cap prescribed by 49 CFR 26.67.

## C. SBE PROGRAM CERTIFICATION

1. Firms meeting the eligibility requirements must be certified by the MDOT Office of Minority Business Enterprise (OMBE) to participate in the SBE Program.

2. Firms that are currently certified by the SBA must apply for SBE certification and submit a copy of their most recent SBA certification letter to the OMBE, along with a completed Personal Financial Statement form and supporting documentation to demonstrate that the individuals owning 51% of the firm meet the personal net worth (PNW) cap prescribed by 49 CFR 26.67.

3. Firms that are currently certified as DBEs will automatically be certified as SBEs and need take no further action.

4. Firms that hold only a Maryland MBE certification must apply for SBE certification and submit a completed Personal Financial Statement form and supporting documentation to demonstrate that the individuals owning 51% of the firm meet the PNW cap prescribed by 49 CFR 26.67.

5. MDOT's OMBE will review all documentation submitted to determine whether the applicant firm meets the SBE program eligibility criteria set forth in Section B above.

6. The MDOT DBE Directory of certified firms shall be modified to include a listing of SBE certified firms for use by MDOT personnel in identifying firms eligible to participate in procurements designated for the SBE Program.

7. Continued eligibility for certified SBE firms will be evaluated each year.

   a. In order to maintain a certification in the SBE Program, the firm must continue to meet the eligibility requirements set forth in Section B above, including applicable business size standards and PNW requirements.

   b. Each firm certified in the SBE Program must annually submit an affidavit to the OMBE affirming its continued eligibility to participate in the SBE Program.

   c. If a firm is also MDOT certified as a DBE, only one affidavit will be required for continued eligibility and certification in the DBE and SBE Programs.

D. SBE CONTRACT SELECTION CRITERIA

1. MAA, MTA and SHA will each, in consultation with MDOT's Director of the Office of Minority Business Enterprise and Chief Procurement Officer, or their respective designees, set aside an overall percentage of its annual total dollar value of USDOT-assisted contracts directly to SBEs.

2. MAA, MTA and SHA will each, in consultation with MDOT's Office of Minority Business Enterprise and Chief Procurement Officer or their respective designees,

establish its overall SBE Program percentage at the beginning of each federal fiscal year. The factors to be considered in establishing the annual SBE Program overall goal include, without limitation, the following:

a. availability of ready, willing, and able SBEs to participate on USDOT-assisted contracts;

b. USDOT-assisted contracts potentially suitable for SBE participation; and

c. current overall DBE Program goal, including both the race-conscious and race-neutral components.

3. MAA, MTA and SHA will evaluate all USDOT-assisted contracts to determine their suitability for designation as a contract in the SBE Program using the following criteria:

a. the estimated value of the contract based on the engineers' estimate;

b. whether the project can be unbundled to facilitate its suitability for the SBE Program;

c. the identification of a reasonable number of SBE firms in the MDOT directory certified to perform the products and/or services to be provided under the contract; and

d. the geographical proximity, when relevant, of certified SBE firms identified from MDOT's directory under subparagraph (c) above to the location of the work to be performed.

4. SBE contracts shall be evaluated on a case by case basis to determine whether DBE goals should apply.

**Supplement II**
**2012 Disadvantaged Business Enterprise Program Manual**
**Maryland Transit Administration**

This Supplement II is a part of the 2012 Disadvantaged Business Enterprise Program Manual to which it is attached, and sets forth additional DBE Program requirements applicable to the Maryland Transit Administration (MTA). The Office of Fair Practices (OFP) is a unit within MTA, and the Director of the OFP is the Disadvantaged Business Enterprise (DBE) Compliance Officer at MTA. The Director/DBE Compliance Officer is responsible for coordinating MTA outreach efforts to the DBE business community, reviewing MTA contracting procedures to ensure compliance, assisting in the resolution of contracting issues, and submitting required DBE Program reports. The Director/DBE Compliance Officer has direct access to the MTA Administrator and the MDOT DBE Liaison Officer (i.e., the Assistant Secretary of Administration at MDOT).

A. Transit Vehicle Manufacturers Procedures

1. MTA requires that each transit vehicle manufacturer (TVM) that bids or quotes on a FTA assisted transit vehicle procurement in Maryland must certify that it has complied with this section, consistent with 49 CFR 26.49.

2. Each TVM must establish and submit for FTA approval an overall DBE percentage goal in accordance with 49 CFR 26.49 and using 49 CFR 26.45 as guidance. MDOT may, with FTA approval, establish contract specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the procedures of this section.

3. Each TVM must submit to the OLTS a copy of the certification that FTA has approved the TVM's overall and/or contract specific goal.

4. The Maryland Aviation Administration and the Maryland State Highway Administration, with FAA or FHWA approval, may use the procedures of this section with respect to procurements of vehicles or specialized equipment. If chosen, the manufacturers of this equipment must meet the same requirements (including goal approval by FAA and FHWA) as TVMs must meet in FTA assisted procurements.

5. The Regional Planners, staff members in MTA's Office of Local Transit Systems (OLTS) will ensure that any transit vehicle purchased by a subrecipient complies with 49 CFR 26.49 by requiring all subrecipients to submit to OLTS the bidder's certification that it has complied with the FTA's DBE requirements. MTA concurrence to advertise is contingent upon the OLTS review and receipt of the bidder's certification and the OLTS Regional Planner verifying the bidder's certification.

B. Bidder's List

MTA collects information consistent with 49 CFR 26.11 from potential bidders through an online registration with MTA's Office of Procurement prior to a potential bidder receiving information regarding solicitations.

C. Subrecipient Procedures

1. Locally Operated Transit Systems (LOTS) are subrecipients of MTA that receive federal assistance.

2. LOTS are required to fully comply with 49 CFR Part 26 and the 2012 DBE Program Manual, including any supplements.

3. Regional Planners, staff members in MTA's Office of Local Transit Systems (OLTS), shall work in consultation with the Director/DBE Compliance Officer to monitor the LOTS for compliance with DBE Program requirements.

4. Each LOTS shall forward a copy of all DBE compliance letters, forms and documents sent and received from contractors and subcontractors to the Regional Planner. The Regional Planner shall forward these documents to the Director/DBE Compliance Officer, or his/her designee, for review and approval.

5. The Regional Planner shall work with the Director/DBE Compliance Officer, or his/her designee, to address any issues of non-compliance with the DBE Program.