Georgia Department of Human Services

Disadvantaged Business Enterprise Program Plan

Submitted to the Federal Transit Administration
For
July 2014-2017

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the GDHS to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

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

James T. Bricker, Director, GDHS Office of Facilities and Support Services, has been designated as the DBE Liaison Officer. In that capacity, James T. Bricker is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the GDHS in its financial assistance agreements with the Department of Transportation.

GDHS has disseminated this policy statement to the DHS Commissioner and other components of our organization. We will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Each GDHS transportation contractor will receive a copy of this policy and it will be posted on the GDHS website.

Keith Horton

Keith Horton, Commissioner
Georgia Department of Human Services

29 July 14
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

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

Section 26.3 Applicability

The GDHS is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L.105-178.

Section 26.5 Definitions

The GDHS will adopt the definitions contained in Section 26.5 of Part 26 for this program.

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

   (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

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

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

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

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

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

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

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

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

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

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

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

   (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

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

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

10. *DOT/SBA Memorandum of Understanding or MOU,* refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) 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) program for small and disadvantaged businesses.

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

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

13. *Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

14. *Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

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

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

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

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

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

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

21. *Primary industry classification* means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: http://www.ntis.gov/product/naics.htm.

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

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

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

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

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

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

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

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

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

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

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

33. *Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

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

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

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

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

(vi) Women;

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

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

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

GDHS will add and include any new/amended definitions as they are provided by USDOT and will not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

GDHS will report DBE participation to the *FTA* using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

The GDHS will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder's list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

This information is collected in the following ways:

A tracking document is maintained to monitor procurements of all DOT-assisted contracts. Information on all bidders is maintained. Procurement practices and policies of firms receiving FTA funds are reviewed annually.

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

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

Section 26.13 Assurances

Federal Financial Assistance Agreement

GDHS has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

> GDHS 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 sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with

subrecipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

> The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the GDHS has received a grant of $250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.25 DEB Liaison Officer (DBELO)

-The Director of the Office of Facilities and Support Services (OFSS) (current incumbent is Mr. James T. Bricker) has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the OFSS Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the GDHS in its financial assistance agreements with the Department of Transportation.

James T. Bricker can be reached at 404-656-4427. Please send correspondence to:

Grantee ID# 5423
Georgia Department of Human Services
Office of Facilities and Support Services
2 Peachtree Street, Room 29.490
Atlanta, Georgia, 30303
Jtbricker@dhr.state.ga.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the GDHS complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the GDHS Commissioner concerning DBE program matters. *An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.*

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
6. Analyzes the Department of Human Services' progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Georgia.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the GDHS updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the GDHS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We will make the following efforts to identify and use such institutions: the GDOT DBE listing will be reviewed annually to identify such institutions and that information shared with contractors in order to complete this requirement.

Prompt Payment: 26.29(a)

The GDHS will include the following clause in each DOT-assisted prime contract:

> The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from GDHS. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the GDHS. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

> The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the GDHS. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

The GDHS has established mechanisms to monitor and enforce that prompt payment and return of retainage is in fact occurring. Through internal review, the prompt payment practices of prime contractors are monitored for compliance. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.37. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Section 26.31 Directory

The Georgia Department of Transportation Equal Opportunity Division is the lead agency responsible for State of Georgia DBE Unified Certification Program (UCP), which includes the application, certification, decertification, and recertification, on-sites, appeals and directory. GDOT maintains a directory identifying all firms eligible to participate as DBEs. GDHS will refer to this list as the "DBE Directory". The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. The Directory may be found at www.dot.ga.gov.

Section 26.33 Overconcentration

GDHS has not identified that overconcentration exists in the types of work that DBEs perform.

We will re-evaluate for overconcentration every 24 months.

Section 26.35 Business Development Programs

GDHS has not established a business development program. We will re-evaluate the need for such a program every 24 months.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. We will consider similar action under our own legal authorities, including responsibility determination in future contracts.

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by annual reviews conducted at the time of contract renewals.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation

The GDHS has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): We publish availability of opportunities in newspapers and online and encourage prime contractors to fulfill commitments to use small businesses and do not dismiss small businesses without good cause. We developed and maintain records showing specific efforts to identify and award DOT-assisted contracts to small businesses and established an internal monitoring system to ensure that all contractors comply with contract specifications related to small business utilization by recording procurements and bids received along with pertinent information on bidders to monitor small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The GDHS does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45, the GDHS will submit its triennial overall DBE goal to the *FTA* on August 1 of the year specified by *FTA*.

GDHS will also request use of project-specific DBE goals as appropriate, and/or will establish project- specific DBE goals as directed by *FTA*.

The process generally used by GDHS to establish overall DBE goals is as follows:

> Before establishing the overall goal each year, GDHS will consult with the FTA DBE Officer, GDOT, our contractors, and supported organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Department of Human Services efforts to establish a level playing field for the participation of DBEs.
>
> Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be published on the GDHS website and published in newspapers of general circulation. Normally, we will issue this notice by June 1 or each year.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race- neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and

comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. . Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on *GDHS* Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis;
3. GDHS is not a state DOT and is not one of the 50 largest transits.

Section 26.49 Transit Vehicle Manufacturers Goals

In the event that GDHS plans to purchase transit vehicles, the GDHS will require transit vehicle manufacturers (TVM) to provide a certification, as a condition to bidding on transit vehicle purchases funded by FTA that it has complied with requirements. The TVM will certify to the GDHS that:

- They have submitted the required annual overall DBE goals to FTA; and that
- FTA has either approved their annual goals, or that FTA has not disapproved their annual overall goals.

Section 26.51 (a-c) Break out of Estimated Race- Neutral & Race-Conscious Participation

GDHS will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. We estimate that, in meeting our overall goal of 2% we will obtain 2 % from race-neutral participation.

Overall Goal/Method

Step One: 90 (Ready, willing and able DBEs) / 2,090 (All firms ready, willing, and able including DBEs and non-DBEs) = 4.31 %. Based on the above method used, we believe we can accomplish our goal. The method is based on the total number of ready, willing and able registered DBEs in the Directory as well as DOAS Team Georgia Marketplace Minority Business Enterprise Listing.

Step 2: The percentage is lower because there was a significant increase of registered DBEs.

Section 26.51 Meeting Overall Goals/Contract Goals

GDHS will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, GDHS will track and report race neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract a DBE obtains through customary competitive procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award. Data will be maintained separately on DBE achievements in those contracts with and without contract goals.

The GDHS will use contract goals to meet any portion of the overall goal GDHS does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

> We will express our contract goals as a percentage of the total amount of FTA funding to be received by GDHS for both operating and capital improvements and the dollar value of these funds available for contracting purposes.

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, GDHS will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as *responsible*.

The process used to determine whether good faith efforts have been made by a bidder are as follows:

We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, we

will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

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

Information to be Submitted: 26.53(b)

GDHS treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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

Administrative Reconsideration: 26.53(d)

Within 30 days of being informed by GDHS that it is not *responsible* because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

GDHS OFSS
D. Frank Billard
2 Peachtree Street, 29th floor
Atlanta, GA 30303
dfbillard@dhr.state.ga.us

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in

person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or

make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transpiration.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

GDHS requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without GDHS' prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to GDHS its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to GDHS prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise GDHS of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, GDHS will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

> The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [*Name of Recipient*] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 9.1% percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.
>
> The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of
>
> the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the

contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.81 Unified Certification Programs

GDHS is the member of a Unified Certification Program (GUCP) administered by GDOT and the Metropolitan Rapid Transit Authority. The UCP will meet all of the requirements of this section. GDHS will use and count for DBE credit only those DBE firms certified by the GDOT/MARTA.

Any firm or complainant may appeal a GUCP decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave.
SE West Building, 7th
Floor Washington,
D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

Resort to this system is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payment to DBEs

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

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

ATTACHMENTS

Attachment 1: Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies

Attachment 4: Goal Setting Methodology

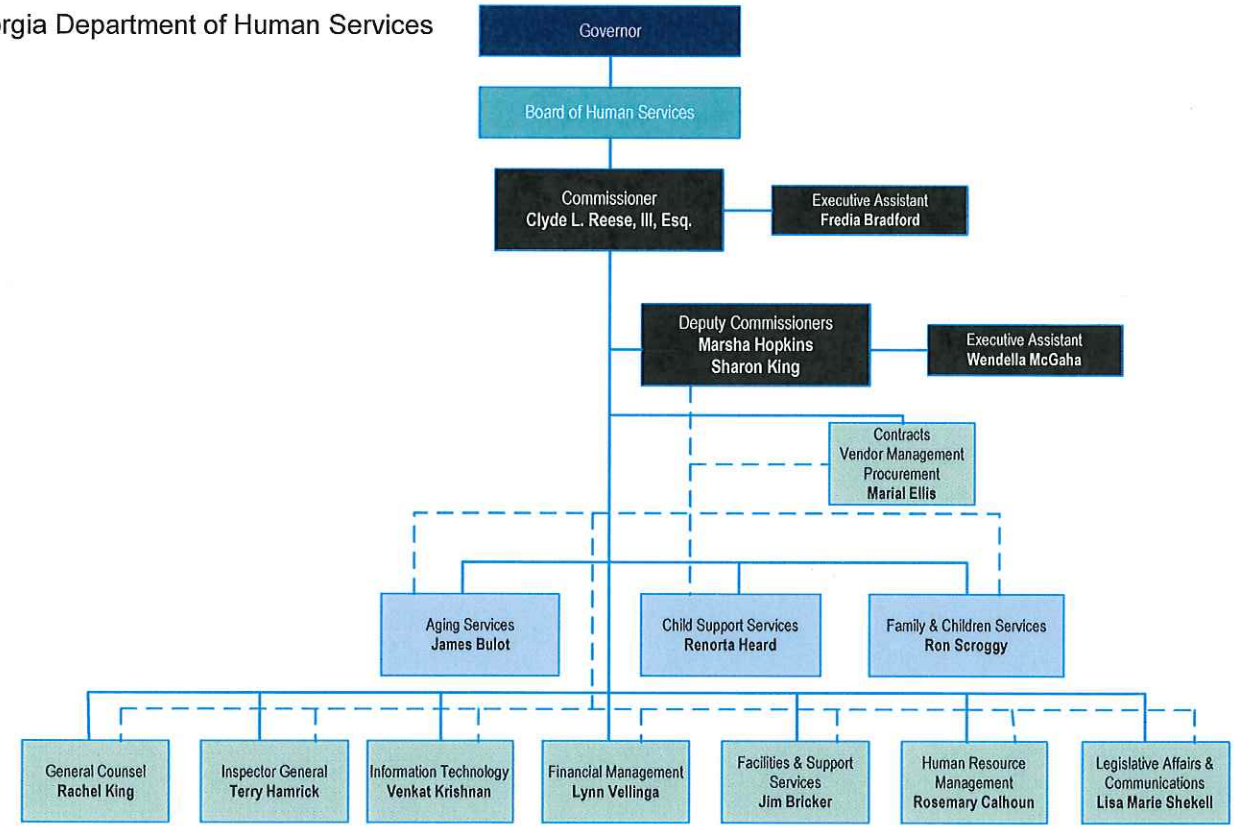
Attachment 5: Good Faith Efforts

Attachment 6: DBE Regulation, 49 CFR Part 26

Attachment 1

DHS Organizational Chart

Georgia Department of Human Services



Program Division
Enterprise Function
Commissioner's Office

June 1, 2013

Attachment 2

State of Georgia UCP Plan and DBE Directory
Georgia Department of Transportation

GDOT maintains the GUCP directory identifying all firms eligible to participate as DBEs. The DBE directory is updated as changes occur. The current DBE directory is available online at: http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/rptDBE_Directory_CA_New.pdf

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

The GDHS has established mechanisms to monitor and enforce that prompt payment and return of retainage is in fact occurring. Through internal review, the prompt payment practices of prime contractors are monitored for compliance. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.37. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment 4

Overall Goal Calculation and Method

Step One: 90 (Ready, willing and able DBEs) / 2,090 (All firms ready, willing, and able including DBEs and non-DBEs) = 4.31 %. Based on the above method used, we believe we can accomplish our goal. The method is based on the total number of ready, willing and able registered DBEs in the Directory as well as DOAS Team Georgia Marketplace Minority Business Enterprise Listing.

Step 2: The percentage is lower because there was a significant increase of registered DBEs.

Attachment 5

Good Faith Effort Forms – Samples of Information in Forms

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

____ The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

____ The bidder/offeror (if unable to meet the DBE goal of ____%) is committed to a minimum of ____% DBE utilization on this contract submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm:

State Registration Number:

By _____

(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm:

Address:

City:

State:

Zip:

Name of DBE firm:

Address:

City:

State:

Zip:

Telephone:

Description of work to be performed by DBE firm:

- -

- -

- -

- -

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is $ ___________.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By ____

(Signature) Title

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Attachment 6

Regulations: 49 CFR Part 26

The Federal Transit Administration website can be accessed via:
www.fta.dot.gov

49 CFR Part 26 can be accessed in full via:
http://www.fta.dot.gov/legislation_law/12316_3304.html