

Policy: PLC-5

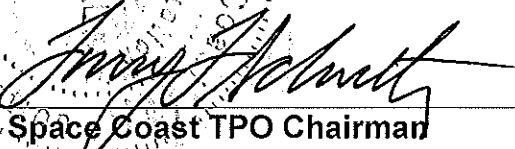
Approved:

December 9, 2010

Title: Title VI and Related Nondiscrimination
Requirements

Revised:

Approval Signature:



James H. Smith
Space Coast TPO Chairman

Purpose: The Space Coast Transportation Planning Organization (TPO) assures that no person shall, on the grounds of race, color, national origin, gender, age, disability or income status, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity.

More specifically, the TPO further assures that every effort will be made to ensure nondiscrimination in all of its programs, policies and activities, whether those programs and activities are federally funded or not.

The Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports and other Space Coast TPO related responsibilities, as required.

This policy (PLC-05) has been developed in four sections:

Section 1 Title VI Plan

Section 2 Complaint Resolution

Section 3 Limited English Proficiency Plan (LEPP)

Section 4 Disadvantaged Business Enterprise (DBE)

Section 1: SPACE COAST TRANSPORTATION PLANNING ORGANIZATION TITLE VI PLAN

The Space Coast Transportation Planning Organization (TPO) has a goal not to discriminate against any person with respect to a TPO program, activity or service. The purpose of this document is to outline the TPO's plan for addressing the Federal non-discrimination requirements under Title VI and other related regulations and statutes.

The general objective of the Plan is to ensure full and fair participation by all potentially affected individuals, groups and communities in the transportation decision-making process.

AUTHORITIES:

Title VI of the Civil Rights Act of 1964 and related statutes require Federal agencies to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, national origin, income, gender, age, and disability.

The National Environmental Policy Act of 1969 (NEPA) stresses the importance of providing for "all Americans safe, healthful, productive and anesthetically pleasing surroundings" and provides a requirement for taking a "systematic, interdisciplinary approach" to aid in considering environmental and community factors in decision making.

The Civil Rights Restoration Act of 1987 further expanded Title VI to include all programs and activities of Federal-aid recipients, sub-recipients and contractors whether those programs and activities are federally funded or not.

Executive Order 12898, signed by President Clinton on February 11, 1994, directed every Federal agency to make Environmental Justice part of its mission by identifying and addressing all programs, policies and activities that affect human health or the environment so as to identify and avoid disproportionately high and adverse effects on minority populations and low-income populations.

In April 1997, the U. S. Department of Transportation issued an **Order on Environmental Justice (DOT Order 5610.2)**, which summarized and expanded upon the requirements of **Executive Order 12898** to include all policies, programs and other activities that are undertaken, funded or approved

by the Federal Highway Administration, the Federal Transit Administration or other U.S. Department of Transportation components.

In December 1997, the FHWA issued the **FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order 6640.23)**, which mandated the FHWA and all its subsidiaries to implement the principles of Executive Order 12898 and U. S. DOT Order 5610.2 into all of its programs, policies and activities.

On October 7, 1999, the Federal Highway Administration and the Federal Transit Administration issued a memorandum with the subject: **ACTION: Implementing Title VI Requirements in Metropolitan and Statewide Planning**. This memorandum provides information for planning officials to understand that environmental justice is equally important during the planning stages as it is during the project development states.

TITLE VI DELEGATION: ORGANIZATION AND STAFFING

The Space Coast Transportation Planning Organization Director is responsible for ensuring the implementation of the TPO's Title VI Program. The Title VI Coordinator, on behalf of the Director, is responsible for the overall management and day-to-day administration of the Title VI program, plan and assurances. The Title VI Coordinator serves under the direct supervision of the Director.

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Title VI Coordinator

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GENERAL RESPONSIBILITIES OF THE TITLE VI COORDINATOR:

The Title VI Coordinator is responsible for implementing, monitoring and ensuring the TPO's compliance with Title VI regulations. The Title VI Coordinator will:

- Identify, investigate and eliminate discrimination when found to exist.
- Ensure that any complaint be resolved as outlined in TPO Policy: PLC-5, Section II: **Complaint Resolution**.
- Review the TPO **Complaint Resolution** policy, as scheduled or when necessary, and make adjustment(s)/revision(s), as needed.
- Collect and maintain statistical data (i.e. race, color, gender, language) of participants in TPO programs (including affected citizens and impacted communities).
- Meet with other TPO staff, as needed, to train, monitor and discuss progress, implementation and compliance issues.
- Periodically review the TPO's Title VI Plan to assess if administrative procedures are effective, staffing is appropriate and adequate resources are available to ensure compliance.
- Assure consultants under contract to the TPO are in compliance with Title VI.
- Review important Title VI-related issues with the TPO Director, as needed.
- Work with appropriate staff and assure communications and public participation strategies provide adequate participation from impacted Title VI protected groups.
- Address language needs, as appropriate.

TITLE VI PROGRAM ADMINISTRATION – GENERAL RESPONSIBILITIES:

A. Complaints

Any individual or group wishing to file a complaint regarding any policy, procedure or action of the Space Coast TPO or any of its advisory committees for any reason, including, but not limited to, the belief that any policy, procedure or action has negatively impacted or caused undue burden to a specific minority group, disabled individual(s), lower-income population, or the traditionally underserved or a belief that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964, as amended, or any other Federal or State law that individual or group may exercise their right to file a complaint with the TPO, as outlined in TPO Policy: PLC-5, Complaint Resolution.

B. Data

Demographic data will be used to develop public outreach efforts and program evaluation. The data will be reviewed regularly to ensure sufficiency of the data in meeting the requirements of the Title VI program administration.

C. Title VI Program Reviews

The TPO's Title VI Program reviews will be performed annually by the Title VI Coordinator to assure compliance with Title VI. In addition, the Coordinator will review agency operational guidelines and publications, including those for consultants and other subrecipients of FDOT's federal funds to ensure compliance with Title VI provisions, as appropriate.

The Title VI Plan will be reviewed annually, or as appropriate, to assure compliance with any changes (in policies, regulations, procedures, etc.).

D. Training programs

The TPO will work with FHWA, FTA and FDOT to have training available to provide staff with comprehensive information on Title VI provisions, application to program operations and identification of Title VI issues and resolution of complaints.

E. Public Dissemination of Information Related to the Title VI Program

The Title VI Coordinator will disseminate Title VI Program information to TPO employees and consultants. This information will be posted on the TPO website for access by the public, and will be available in other languages, when required.

Section 2: COMPLAINT RESOLUTION POLICY

Purpose: Any individual or group wishing to file a complaint regarding any policy, procedure or action of the Space Coast TPO or any of its advisory committees, including, but not limited to, the Technical Advisory Committee (TAC), Citizens Advisory Committee (CAC), Bicycle, Pedestrian & Trails Advisory Committee (BPTAC) or Traffic Operations Committee (TOC), for any reason including, but not limited to, the belief that any policy, procedure or action has negatively impacted or caused undue burden to a specific minority group, disabled individual(s), lower-income population, or the traditionally underserved or a belief that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964, as amended, or any other Federal or State law, shall:

Submit a written statement (complaint) with the TPO at its offices located at:

Space Coast Transportation Planning Organization
2725 Judge Fran Jamieson Way
Building B, Room 105
Viera, FL 32940
(Phone: 321-690-6890)
(Fax: 321-690-6827)

The statement shall include, at a minimum, the following:

1. The name, address and phone number of the person(s) filing the complaint (the Complainant). Multiple individuals submitting a complaint as a group are strongly encouraged, but not required, to appoint a single person to represent the group throughout the Informal Resolution process.
2. A statement describing as fully as possible the procedure, policy or action taken by the TPO or Advisory Committee, the date the action occurred and the relief being sought.
3. The names of any witnesses to the action or copies of any supporting documentation.
4. Signature of the complainant(s).

In cases where the complainant is unable or incapable of providing a written statement, a verbal complaint may be made to the TPO Clerk by calling 321-690-6890. If necessary the Clerk will assist the complainant in converting verbal complaints to writing. All complaints must, however, be signed by the complainant or his/her representative.

Any complaint of discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964, as amended, and related statutes, shall be forwarded to the FDOT's District Five Title VI Coordinator within five (5) calendar days for

processing in accordance with approved State procedures (See Exhibit A). For all other complaints, TPO staff will notify the complainant of receipt of the complaint and within fourteen (14) business days of receiving the complaint, shall initiate the following TPO Complaint Resolution process:

- A. **Informal Resolution.** The TPO Executive Director and/or Chairman of the advisory committee named in the complaint will meet with the complainant to review the complaint and the relief being sought. The meeting may be in person at a location convenient to all parties, or via teleconference, as agreed upon by all parties. Within fourteen (14) days of the meeting, or such other time as may be reasonable under the circumstances, the Executive Director or advisory committee Chairman shall provide a written decision regarding the grievance to the Complainant. The Executive Director or committee Chairman's decision shall be in the form of a recommendation to TPO Governing Board to uphold, rescind or modify the act or omission which is the basis of the grievance or propose any other appropriate resolution.
- B. **Executive Committee Hearing.** If the Complainant is not satisfied with the decision of the Executive Director or advisory committee Chairman, the Complainant may, within ten (10) calendar days of the decision, submit a written request to the TPO office for a formal hearing with the TPO Executive Committee.

The Executive Committee shall conduct a hearing on the complaint within forty-five (45) calendar days of the request to appeal the Executive Director's decision. The Complainant and his/her legal counsel, if retained, shall have the right to present their case to the Executive Committee, including witnesses and documents in support of the complaint. Likewise, the Executive Director or his or her designee and any retained legal counsel shall have the right to present witnesses, testimony and documents in defense of the TPO's challenged position. The Executive Committee may during the course of the hearing question the parties and witnesses. The hearing will be audio taped and open to the public. At its discretion, the Committee may adopt such other rules of procedure as may allow the Committee to provide a fair and adequate hearing on the complaint.

- C. Within thirty (30) days of the close of the Executive Committee Hearing, or such other time as may be required under the circumstances, the Committee shall render a decision based upon a majority vote, which shall be final unless appealed by the Complainant to the full TPO Board. The Executive Committee's decision shall be in the form of a recommendation to the full TPO Governing Board to uphold, rescind or modify the act or omission which is the basis of the grievance or propose any other appropriate resolution.

- D. TPO Governing Board Hearing. Any Complainant dissatisfied with the decision of the Executive Committee shall file a written notice of appeal with the TPO Governing Board within twenty (20) days of the date of the Committee's decision. The TPO Governing Board shall meet to hear the appeal, within sixty (60) days of the date the appeal is filed. The TPO will not conduct a new evidentiary hearing on the appeal but shall instead review the record presented to the Executive Committee. The Complainant shall be permitted an opportunity to address the Board as to why he or she believes the Executive Committee's decision was in error. Similarly, the Staff Director and/or advisory committee Chairman shall be permitted to address the TPO Governing Board. The TPO Governing Board in rendering its decision shall review all the documents in evidence including the Staff Director or advisory committee Chairman's decision, the Executive Committee's decision, and the tapes of the Executive Committee's hearing. A written decision shall be issued within thirty (30) days of the appeal hearing date. The TPO Governing Board shall uphold, rescind, or modify the decision of the Executive Committee in whole or in part and may order any resolution within its power and authority.

Nothing in this complaint procedure will prevent an interested party, dissatisfied with the complaint resolution, from submitting the same complaint to the Federal Highway Administration, Federal Transit Administration or Florida Department of Transportation for investigation under State or Federal regulations, as may be appropriate to the nature of the complaint.

EXHIBIT A

FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TPO DISCRIMINATION COMPLAINT PROCEDURE

1. Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by the Title VI of the Civil Rights Act of 1964, as amended, and related statutes, may file a written complaint. All written complaints received by the Space Coast Transportation Planning Organization (TPO) shall be referred immediately by the TPO to the FDOT's District Five Title VI Coordinator for processing in accordance with approved State procedures.
2. Verbal and non-written complaints received by the TPO shall be resolved informally by TPO staff. If the issue has not been satisfactorily resolved through informal means, or if at any time the person(s) request(s) to file a formal written complaint, the TPO staff shall refer the Complainant to the FDOT's District Five Title VI Coordinator for processing in accordance with approved State procedures.
3. The TPO staff will advise the FDOT's District Five Title VI Coordinator within five (5) calendar days of receipt of the allegations. The following information will be included in every notification to the FDOT's District Title VI Coordinator:
 - (a) Name, address, and phone number of the Complainant.
 - (b) Name(s) and address(es) of Respondent.
 - (c) Basis of complaint (i.e., race, color, national origin, sex, age, disability, religion, familial status or retaliation).
 - (d) Date of alleged discriminatory act(s).
 - (e) Date of complaint received by the TPO.
 - (f) A statement of the complaint.
 - (g) Other agencies (state, local or Federal) where the complaint has been filed.
 - (h) An explanation of the actions the TPO has taken or proposed to resolve the allegation(s) raised in the complaint.
4. Within ten (10) calendar days, the TPO staff will acknowledge receipt of the allegation(s), inform the Complainant of action taken or proposed action to

process the allegation(s), and advise the Complainant of other avenues of redress available, such as the FDOT's Equal Opportunity Office (EOO).

5. Within sixty (60) calendar days, the TPO staff will conduct and complete a review of the verbal or non-written allegation(s) and based on the information obtained, will render a recommendation for action in a report of findings to the TPO Executive Director and Chairman.
6. Within ninety (90) calendar days of the verbal or non-written allegation(s) receipt, the TPO Executive Director will notify the Complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the Complainant of said complainant's right to file a formal complaint with the FDOT's EOO, if they are dissatisfied with the final decision rendered by the recipient. The TPO Executive Director will also provide the FDOT's District Title VI Coordinator with a copy of this decision and summary of findings.
7. The TPO Staff will maintain a log of all verbal and non-written complaints received by the recipient. The log will include the following information:
 - a. Name of Complainant.
 - b. Name of Respondent.
 - c. Basis of Complaint (i.e., race, color, national origin, sex, age, disability, religion, familial status or retaliation)
 - d. Date verbal or non-written complaint was received by the recipient.
 - e. Date recipient notified the FDOT's District Title VI Coordinator of the verbal or non-written complaint.
 - f. Explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.

Section 3: LIMITED ENGLISH PROFICIENCY PLAN (LEPP)

POLICY STATEMENT

It is the Space Coast Transportation Planning Organization's policy to provide meaningful access to all its programs and services to all individuals, including those who are limited in English proficiency.

OVERVIEW

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. The 2000 census shows that 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

As a recipient of federal funding, the TPO is committed to taking reasonable efforts to assure that individuals are not excluded from participating in programs simply because they face challenges communicating in English.

The purpose of this Limited English Proficiency (LEP) Plan is to establish the steps that the TPO will take to provide language assistance for LEP persons seeking meaningful access to TPO programs. The production of multilingual publications and documents and/or interpretation at meetings/events will be provided to the degree that funding permits and based on current laws and regulations. As available, educational material (i.e. safety brochures) provided free-of-charge from various entities (i.e. National Highway Traffic Safety Administration) will be ordered and distributed at TPO public participation events.

DETERMINING THE NEED

As a recipient of federal funding, the TPO must take reasonable steps to ensure meaningful access to the information and services it provides. Following guidance from the U. S. Department of Transportation, a review of four factors serve as the developmental foundation of this LEP.

- 1. The number or proportion of LEP persons eligible in the service area or likely to encounter a TPO program, activity or service.**

According to the 2000 Census, 2.63% of the Brevard County population do not speak English “very well”¹. The language spoken most often among this segment of the population is Asian (44.15%).

LANGUAGE SPOKEN AT HOME, 2000

	<u>NUMBER</u>	<u>PERCENT</u>
Only English	412,102	91.26%
Spanish	18,210	4.06%
Other Indo-European ²	14,656	3.25%
Asian Language ³	4,689	1.04%
Other	<u>1,786</u>	<u>.40%</u>
Total Population Age 5+	451,553	100.00%

POPULATION SPEAKING ENGLISH LESS THAN “VERY WELL” IN 2000

<u>LANGUAGE</u>	<u>NUMBER</u>	<u>PERCENT</u>
Spanish	5,872	32.05%
Other Indo-European ²	3,358	22.91%
Asian Language ³	2,070	44.15%
Other Language	<u>569</u>	<u>31.86%</u>
Total	11,869	2.63%

¹ NOTE: the ability to speak English “very well” is based on the self-assessment of those responding to Census questions, not on a test of language ability.

² “Other Indo-European” excludes English and Spanish. “Indo-European” is not synonymous with “European.” French, German, Hindi, and Persian are all classified as Indo-European. Hungarian, on the other hand, is lumped into “other Language.”

³ “Asian Language” includes languages indigenous to Asia and Pacific Islands areas that are not also Indo-European languages. Chinese, Japanese, Telugu, and Hawaiian are all classified here.

2. The frequency with which LEP individuals come into contact with a TPO program.

The TPO maintains records of public meetings and phone inquiries in order to assess the frequency with which staff has possibly been in contact with LEP

persons. TPO staff have no record of receiving a request for an interpreter nor has there been any request for translated TPO documents.

3. The nature and importance of the program, activity or service provided by the TPO to the LEP population.

The TPO does not provide any transportation services, per se. It is responsible for the federal transportation funding that reaches our communities and ensuring that there is public participation in how that funding is spent.

The Transportation Disadvantaged Local Coordinating Board (TDLCB) is an independent Board, supported and appointments made by the TPO Board. A TPO Governing Board member serves as the Chairman of the TDLCB. The purpose of the TDLCB is to evaluate service levels, safety and other issues of transit operations provided by Space Coast Area Transit serving the elderly, people with disabilities, or otherwise disadvantaged citizens, such as those with low income.

Outreach programs, particularly in the area of bicycle and pedestrian safety education, include the distribution of educational material. When available, copies of brochures, coloring books, and similar documents, in other languages (generally Spanish if available) are secured and distributed at events which are held throughout Brevard County.

Citizen involvement with the TPO and/or its Committees is voluntary. The TPO does provide opportunities for the public to comment on the use of Federal funds; specifically, during open comment periods and/or public meetings for: the bi-annual Unified Planning Work Program (UPWP), a five-year (developed annually) Transportation Improvement Program, and the Long Range Transportation Plan (LRTP).

It is recognized that the impacts of transportation projects have an impact on all residents, so efforts are made to encourage an understanding of the process and promote opportunities to comment.

4. The resources available to the TPO and overall costs to provide LEP assistance.

Translation of all TPO plans and materials is not possible due to cost restrictions. Further, the LEP population in the County is not of a significant proportion to warrant such expenses.

1. Space Coast TPO Website: A free service, Microsoft powered by Translator, allows users allows to choose from 30 languages, including:

Chinese Simplified, Chinese Traditional, Thai, Japanese, Italian, Spanish and Russian. The translation service is available by clicking the link at the top right side of each page of the TPO website.

2. Outreach Materials – Spanish and any other available language outreach materials from organizations such as Federal, State and local agencies will be utilized, whenever possible. Current TPO-produced materials will not be translated at this time.

After analyzing the four factors, the TPO developed the LEP Plan, as outlined below:

LEP IMPLEMENTATION PLAN

LANGUAGE ASSISTANCE MEASURES

The TPO has not received inquiries in a language other than English. Should someone call for assistance, staff should take the name and contact information of the person and work with available services, as outlined below.

As of May, 2010, the TPO has identified two Brevard County employees who have volunteered their translation services:

Spanish: Ms. Miriam Fuentes
Natural Resources Secretary
Brevard County Natural Resources Management Office
Telephone: 321-633-2058
Email: Miriam.Fuentes@brevardcounty.us

German: Ms. Marina Nebel
Licensing Regulation and Enforcement Investigator
Brevard County Planning and Development: Contractor Licensing
and Regulations Section
Telephone: 321-633-2058
Email: Marina.Nebel@brevardcounty.us

Additionally, the Brevard County Sheriff's Department utilizes a translation service that is available 24 hours a day, and it has worked well for them. Initial contacts have been made, and should the need arise for a language other than Spanish and German, we will pursue this avenue. The name of the company is Language Line Services, Inc. located at one Lower Ragsdale Drive; Bldg. 2; Monterey, CA 93940; www.LanguageLine.com.

MONITORING AND UPDATING THE LEP PLAN

This plan is designed to be flexible and is one that can be updated easily. Updates will examine all Plan components, including:

- How to identify persons who may need language assistance.
- Examine past records from past meetings and events for requests for language assistance in order to anticipate possible need for assistance at upcoming meetings (tracking system).
- Review to determine staff training needs.

The TPO will posted the LEP Plan on its website at

www.spacecoasttpo.com

Any person, including social service, non-profit, and law enforcement agencies and other community partners with internet access will be able to access the Plan. Printed copies will be made available, as requested.

Any questions or comments regarding this Plan should be directed to:

Space Coast Transportation Planning Organization
2725 Judge Fran Jamieson Way
Building B
Viera, FL 32940
Telephone: 321-690-6890
FAX: 321-690-6827
e-mail: tpostaff@spacecoasttpo.com

Section 4: DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Purpose: To comply with 49 CFR part 26 when expending U. S. Department of Transportation Federal Highway Administration funds.

General Procedures:

The Space Coast TPO 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 TPO has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the TPO has signed an assurance that it will comply with 49 CFR Part 26.

The Florida Department of Transportation Disadvantaged Business Enterprise Program Plan and the Florida Department of Transportation Methodology for Determining DBE Goal (49 CFR part 26.45), as adopted and amended from time to time, shall be the umbrella under which the Space Coast TPO will function in the award of applicable contracts incurring the expenditure of federal transportation funds. The FDOT DBE program, Attachment A, is hereby included and made a part of this policy.

It is the policy of the TPO to ensure that DBEs, as defined in 49 CFR part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the TPO's policy:

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.
- d. To ensure that only firms that fully meet 49 CFR part 26 eligibility standards are permitted participate as DBEs;
- e. To help remove barriers to the participation of DBEs in US DOT-assisted contracts; and,
- f. To assist the development of firms so that they can compete successfully in the market place outside the DBE Program.

The finance and personnel manager for the TPO staff shall act as the DBE liaison with FDOT to provide all appropriate materials and assistance necessary for the FDOT to carryout the provisions of the DBE program on behalf of the Space Coast TPO.



FINAL

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM PLAN

JUNE 6, 2000

**Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399**

Phone: (850) 414-4747

**FLORIDA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR § 26.5.

Objectives/Policy Statement (§§ 26.1, 26.23)

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

It is the policy of the Department to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy --

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

The Manager of the Department's Equal Opportunity Office has been designated as the DBE Liaison Officer. In that capacity, the Manager of the Department's Equal Opportunity Office is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Department in its financial assistance agreements with the USDOT.

Once the policy statement is signed, the Department will disseminate it to the Executive Committee, the Florida Transportation Commission, the Governor of the State of Florida and all of the components of our organization. This statement will be distributed to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through mailouts to all certified DBEs, prime contractors and consultants.

Nondiscrimination. (§ 26.7)

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

In administering its DBE program, the Department 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.

DBE Program Updates (§ 26.21)

As authorized, we will continue to carry out this program until all funds from USDOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program.

Quotas (§ 26.43)

We do not use quotas in any way in the administration of this DBE Program.

DBE Liaison Officer (DBELO) (§ 26.25)

We have designated the following individual as our DBE Liaison Officer (DBELO): Ruth B. Dillard, Manager, Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747, www.ruth.dillard@dot.state.fl.us. In that capacity, Ms. Dillard is responsible for implementing all aspects of the DBE program and ensuring that the Department complies with all provisions of 49 CFR Part 26. Ms. Dillard has direct, independent access to the Secretary of the Florida Department of Transportation concerning DBE Program matters. The Equal Opportunity Office has four sections responsible for administration: Reports and Records Management; Contract Compliance; DBE Certification; and Equal Employment Opportunity/Affirmative Action.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by USDOT.
2. Work with the Department's Office of the General Counsel as required in reviewing third party contracts and purchase requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Work with the Contracts Administration Office to ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contract and procurement opportunities so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitor results.
6. Analyze the Department's progress toward goal attainment and identify ways to

- improve progress.
- 7. Advise the Secretary of the Florida Department of Transportation and the Department's Executive Committee on matters impacting DBE policy and achievement.
- 8. Participate with the legal counsel and project director to determine contractor compliance with good faith efforts.
- 9. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- 10. Plan and participate in DBE training seminars.
- 11. Certify DBEs according to the criteria set by USDOT and will act as liaison to the Uniform Certification Process in Florida.
- 12. Provide outreach to DBEs and community organizations to advise them of contracting opportunities.
- 13. Maintain the Department's updated directory of certified DBEs.

The Assistant Manager is responsible for the following duties with respect to administration of the DBE program:

- 1. Develop processes and procedures for gathering and reporting statistical data and other information as required by USDOT and the Department, including all new requirements under the federal regulations.
- 2. Provide DBEs with information and assistance in preparing bids, obtaining bonding financial assistance and insurance.
- 3. Plan and participate in DBE training seminars and workshops.
- 4. Maintain the Department's updated directory of certified DBEs.
- 5. Administer and coordinate the Department's DBE Supportive Service Program providing assistance in the form of managerial and technical training and providing outreach to DBEs and community organizations.
- 6. Serve as a liaison with DBEs and prime contractors.
- 7. Administer a special Native American Outreach Program to attract Native American businesses, address training needs and identify contracting opportunities.

The DBE Certification Manager is responsible for the following duties with respect to administration of the DBE program:

- 1. Ensure all applications for DBE certification are timely processed pursuant to Rule Chapter 14-78, Florida Administrative Code.
- 2. Develop policies, procedures, rules and guidelines for DBE certification.
- 3. Chair the DBE Certification Committee and make recommendations to the Manager, Equal Opportunity Office concerning certification of applicants as DBEs.
- 4. Timely assign DBE applications to the DBE Certification staff and coordinate on site reviews.
- 5. Timely review Personal Net Worth Statements and gross receipts, evaluate a firm's continued eligibility to participate in the DBE program, and make recommendations to the DBE Certification Committee and the Manager of the Equal Opportunity Office to commence decertification proceedings if the firm no longer satisfies eligibility criteria.
- 6. Timely notify certified DBEs to submit updated size standard, gross receipts and personal net worth statements annually on the anniversary date of the firm's initial certification as a

DBE.

7. Coordinate with the Department's Office of General Counsel on all DBE certification hearings.
8. Supervise the DBE Certification staff and provide guidance on certification issues.

The Contract Compliance Manager reports directly to the Manager of the Equal Opportunity Office. The Contract Compliance Manager's responsibilities include:

1. Develop policies, procedures, rules and guidelines for use in conducting comprehensive EEO compliance reviews on Department projects.
2. Maintain current information on regulations and laws concerning compliance with Federal and State DBE programs.
3. Provide District personnel with the necessary guidance, technical assistance and training on compliance issues. Project compliance is the responsibility of the District offices.
4. Monitor District compliance efforts by performing Quality Assurance Reviews (QARs) of all District Compliance Offices and select Resident Compliance Offices and /or CEI firms
5. Assist in investigations of non-compliance allegations.
6. Act as a liaison between the Department, the Federal Highway Administration (FHWA) and contractors in compliance matters.
7. Assist with overall goal setting for the Department and determine if the Department will achieve this goal using race-neutral, race conscious methods or a combination of both.

Federal Financial Assistance Agreement Assurance (§ 26.13)

The Department will sign the following assurance, applicable to all USDOT-assisted contracts and their administration.

The Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Department 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.).

DBE Financial Institutions

It is the policy of the Department to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. The Department has contacted the following Agencies:

FEDERAL DEPOSIT INSURANCE
CORPORATION (FDIC)
1201 W. PEACHTREE ST. NE
SUITE 1800
ATLANTA, GA 30309-4515
(404) 817-1300
WWW.FDIC.GOV

BLACK BUSINESS INVESTMENT BOARD
1711 S. GADSDEN ST.
TALLAHASSEE, FL 32301
(850) 487-4850

LEON COUNTY WOMEN & MINORITY
BUSINESS ENTERPRISE PROGRAM (W/MBE)
LEON COUNTY COURTHOUSE
SUITE 502
TALLAHASSEE, FL 32301
(850) 488-9962

FLORIDA BANKERS ASSOCIATION
1001 THOMASVILLE RD.
TALLAHASSEE, FL 32303
(850) 224-2265

To date we have identified the following such financial institutions:

METRO SAVINGS
715 S. GOLDWIND AVE.
ORLANDO, FL 32805
(407) 293-7320

HAMILTON BANK N.A.
3750 N.W. 87TH AVE.
MIAMI, FL 33178
(305) 717-5536

PEOPLES BANK
3275 N.W. 79TH ST.
MIAMI, FL 33147
(305) 696-0700

FLORIDA A & M UNIVERSITY
FEDERAL CREDIT UNION
1550 MELVIN ST.
TALLAHASSEE, FL 32301
(850) 222-4545

Information on the current availability of such institutions can be obtained from the DBE Liaison Officer.

Directory (§ 26.31)

The Department maintains a Directory identifying all firms eligible to participate as DBEs. The Directory lists the firm's name, address, telephone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory monthly. We make the Directory available as follows: by sending DBE Directories every month to all prequalified contractors and consultants; sending multiple copies of the DBE Directory every month to each of the District Contract Compliance Officers for distribution to interested contractors and consultants in their geographic districts; and by sending current DBE Directories to interested parties who contact the Department's Equal Opportunity Office requesting copies of the Directory. Interested parties may contact the Equal Opportunity Office at 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747 to obtain a current copy of the DBE Directory.

Overconcentration (§ 26.33)

Since the new regulations were published in February, 1999, the Department has received information raising the issue of overconcentration in the areas of geotechnical work and surveying. At this point, the Department has established the criteria for identifying overconcentration in a particular area as written notification from a contractor or consultant to the Department with specific statements of injury as defined in 49 CFR Part 26.

The Department has solicited input and has received requests from the industry to participate in a task team to review the issues relating to overconcentration of firms in the geotechnical and surveying areas. Once the task team has completed its findings and recommendations, the Department will issue its finding of whether overconcentration exists. If the Department determines that overconcentration does exist, it will make recommendations as to how the issue will be addressed in a race conscious program. Those recommendations will be submitted to USDOT for approval.

Business Development Programs (§ 26.35)

The Department does not currently propose a Business Development component of its DBE Plan.

Required Contract Clauses (§§ 26.13, 26.29)

Contract Assurance

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

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

Prompt Payment

The Department currently has statutory requirements which state the following:

(A) Every contract let by the department for the performance of work shall contain a provision requiring the prime contractor, before receipt of any progress payment under the provisions of such contract, to certify that the prime contractor has disbursed to all subcontractors and suppliers having an interest in the contract their pro rata shares of the payment out of previous progress payments received by the prime contractor for all work completed and materials furnished in the previous period, less any retainage withheld by the prime contractor pursuant to an agreement with a subcontractor, as approved by the Department for payment. The department shall not make any such progress payment before receipt of such certification, unless the contractor demonstrates good cause for not making any such required payment and furnishes written notification of any such good cause to both the department and the affected subcontractors and suppliers.

(B) Every contract let by the Department for the performance of work shall contain a provision requiring the prime contractor, within 30 days of receipt of the final progress payment or any other payments received thereafter except the final payment to pay all subcontractors and suppliers having an interest in the contract their pro rata shares of the payment for all work completed and materials furnished, unless the contractor demonstrates good cause for not making any such required payment and furnishes written notification of any such good cause to both the Department and the affected subcontractors or suppliers within such 30-day period.

These requirements are mandated by §§ 337.11 (10)(a) and (b), Florida Statutes. While § 337.11(10)(a), Florida Statutes, addresses progress payments to subcontractors throughout the life of a contract, § 337.11(10)(b), Florida Statutes, addresses the final payment to the subcontractors upon completion and final acceptance of the project. Neither the Department nor the industry have interpreted or enforced § 337.11(10)(a) to require payment of pro rata shares of progress payments to subcontractors within 30 days after the prime contractor receives this progress payment from the Department. Contractors are required to certify payment to subcontractors prior to receipt of their next progress payment.

Both the Department and the industry have interpreted and enforced §337.11(10)(b) as requiring prime contractors to pay the pro rata shares of the final payment to subcontractors within 30 days of the receipt of this final payment from the Department.

The Department will require prompt payment by the prime contractor of both progress and final payments to subcontractors within 30 days of being paid by the Department in compliance with 49 CFR Part 26. The Department will further comply with 49 CFR Part 26.49 and have a contractual provision in its contracts with prime contractors which states that contractors will be required to pay subcontractors both progress and final payments within 30 days of being paid by the Department. Thirty days will be used since the Department pays on a 30 day cycle for billings received. The Department will seek amendments to these statutes if deemed necessary by the General Counsel's Office.

The Department will begin working on implementation of this provision in October of 1999 and will implement a monitoring process of the information on a monthly basis.

The Department will further comply with 49 CFR Part 26.29 of the federal regulations by requiring prompt payment to all subcontractors at all tiers.

Retainage

The Department will also comply with 49 CFR Part 26.29 and have a contractual provision in its contracts with prime contractors which states that contractors will return retainage payment to all subcontractors within 30 days after the subcontractor's work has been deemed satisfactorily completed. Satisfactory completion will be determined by the Department. However it is noted that approval of the Department's Plan will be predicated on not having a broad permission of a testing and maintenance provision. The inclusion of work item specific test and maintenance provisions will be submitted to FHWA for approval prior to implementation.

As the Department revises Rule Chapter 14-78, Florida Administrative Code, to implement this Plan and 49 CFR Part 26, enforcement of this requirement will be addressed in the Rule as well as in the statute, as deemed necessary by the General Counsel's Office.

Monitoring and Enforcement Mechanisms (§ 26.37)

We will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in § 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants lists or revocation of DBE certification if applicable, pursuant to §§ 337.105; 337.16; and 339.0805, Florida Statutes.

Overall Goals (§ 26.45)

Amount of goal

The Department's proposed overall goal for FY 2000 is 8%. The detailed exemptions for Federal Aviation Administration and Federal Transit Administration are listed in specified sections below. The goal was published on the Department's Internet Website and was provided through a faxback system, whereby individuals could call in, input their fax number and have the goal information faxed directly to their fax machine. The goal was also published in The Tallahassee Democrat and The Capitol Outlook, a minority focused newspaper. The location of the goal information was also included in all of the Personal Net Worth Statements mailed to all certified DBE companies.

Florida Department of Transportation

The DBE program as defined in 49 CFR Part 23 provided a liberal definition of DBEs qualified to participate in the program. The policy of the program under that definition also provided for the maximum participation of DBEs which required goals to be set on projects where there were subcontracting opportunities and DBEs were available to work in those specialty areas and in the geographical area. Another major component of the program's goal attainment was the method of counting and reporting DBE participation which allowed for the total DBE contract to count toward the DBE goal as long as at least 51% of the work was done by a DBE.

Under 49 CFR Part 26, all of these major components have changed and potentially affects the availability of DBEs in Florida's market area. In reviewing the options provided by USDOT for the calculation of the overall DBE goal and reviewing the data available, Florida has eliminated utilization of these proposed options for the current year.

Federal Highway Administration (FHWA)

The Department expects to let approximately \$1.4 billion for Federal Fiscal Year 1999-2000. The proposed 8% DBE goal equates to \$112 million.

Method of Attainment

Florida will implement a race neutral program beginning January 1, 2000. Prior to that date, the Department proposes to review the construction projects for October through November using the same goal setting methodology as is currently used. October 1, 1999 begins the new federal fiscal year. Lettings are scheduled for October 27, 1999 and December 2, 1999. Proposals for professional and contractual services due from October through December would be evaluated using preference points.

Race neutral under the construction program would be defined as not setting race or gender specific goals on the individual projects, but counting all participation of DBE subcontractors utilized by contractors on projects. Race neutral under the consultant or professional services program would be defined as not assigning race or gender preference points on projects for prime consultants who were either DBEs or who utilized DBEs for a certain percentage of work but counting all participation of DBE subconsultants utilized by consultants on projects.

Analysis of Goal for Federal Highway Administration

Methodology

Step One - The Department utilized a two tier calculation process in determining availability.

Subcontracting - The following analysis was used in calculating subcontractor availability.

In 1997 the Department commissioned a Disparity Study for the purpose of determining if disparity and discrimination existed in the Department's market area and if a program was needed to remedy identified discrimination. The disparity study included an availability analysis of DBE

businesses which are available to participate as subcontractors on Department state-funded projects. The availability analysis is relevant to the market area for federal funded construction projects and therefore is one documented source of information for the Department to establish the availability of DBE's in the transportation industry.

The availability of construction firms was based on the following composition:

- Firms prequalified by the Department
- Firms listed on the Department's DBE vendor list
- Contractors and subcontractors who were utilized by the Department during the study period
- Construction firms that are members of the Florida Transportation Builders Association

The availability analysis provided the following finding which was used in step one of the goal setting methodology: 31% of all available subcontractors were DBEs.

Personal Net Worth - A new regulation regarding Personal Net Worth (PNW) has been added to the criteria of being a qualified DBE. The disadvantaged owner(s) of DBE firms must have a PNW of \$750,000 or less in order to be considered economically disadvantaged. Company owners are allowed to deduct their primary residence and their business to calculate PNW. The Department examined the resources available for calculating this financial criteria. Prequalification was examined to determine the extent of information available for consideration. In October of 1999 the Department had approximately 1100 certified DBE firms. By April 2000, the Department had compiled a list of 127 firms who had elected not to return to the DBE program. There had been 14 new firms certified in the same time period for a net loss of 113 firms. This was an increase of firms not reapplying for the same time period the previous year of 62. None of the 113 firms have returned to the program.

Construction: Prequalification of construction firms is governed by § 337.14, Florida Statutes, and Rule Chapter 14-22, Florida Administrative Code. While applicant firms are required to submit audited financial statements pursuant to the statutes and regulations governing prequalification, these statements apply to the applicant firm itself. These statements do not include personal financial information for each of any such firms' owners. Therefore, the Department does not have a pre-existing database of personal net worth information for prequalified road construction contractors.

Consultants: Prequalification of consultant firms which provide professional services to the Department is governed by § 337.105, Florida Statutes, and Rule Chapter 14-75, Florida Administrative Code. While applicant firms are required to submit audited statements of their indirect costs, these audits only apply to the applicant firm. These statements do not include personal financial information for each of the firms' owners. Therefore, the Department does not have a pre-existing database of personal net worth information for prequalified consultants. It should be noted that professional services are defined in § 287.055, Florida Statutes, as architecture, professional engineering, landscape architecture, or registered surveying and mapping. Such professional services do not include contractual services such as bridge tending, security guards, reprographics, janitorial services, etc. There are no Prequalification requirements set forth by the statutes or the Florida Administrative Code for such contractual services.

The Department therefore does not have specific information on the PNW of its currently

certified DBEs. However, the research of the DBE prequalified programs does indicate that in order for prime construction contractors to bid on contracts over \$250,000, they must be prequalified by the Department pursuant to §337.14, Florida Statutes, and Rule Chapter 14-22, Florida Administrative Code. Consultants have two types of prequalification. Technical prequalification is required of all consultants in particular categories such as surveying or geotechnical engineering. As required by Florida law, the second type of prequalification is administrative which requires all companies with contracts over \$250,000 to be prequalified.

In the construction program, with a small business definition allowing gross receipts to average between \$7.5M and \$16.6M over a three year period, the Department has 42 prequalified DBE prime contractors. In Fiscal Year 1998/1999, this group of 42 DBE prime contractors received approximately \$5M in prime contracts. A conservative estimate is that 50% of DBE primes will exceed the new \$750,000 PNW cap. Therefore, it is estimated that the potential loss of these contractors to the Department in DBE dollars would be \$2.5M annually. Although the gross receipts cap is less for DBE consultants, the potential for loss based on PNW is also an issue in the consulting category.

Additional DBEs Who Will Be Lost - In addition to the above, it is estimated that DBEs will be lost because of what will be perceived as intrusive requirements of the new regulations. This includes the requirement of the spouse's PNW information and the proof of the irrevocable transfer of assets where there is legal authority for joint ownership. DBEs may also be lost because they feel the amount of additional information they submit is not warranted compared to the benefits they derive from the program.

Based on current information available regarding the number of DBEs which have been lost from the DBE program, the overall availability base was adjusted to a comparable percentage. The availability for subcontractors was therefore calculated at 20%.

Historical data from the Department's Bid Analysis Management Systems supports subcontract work to be 25% of dollars awarded. Using the availability analysis, the Department calculated its proposed goal based on approximately 20% of the dollars awarded to subcontractors being awarded to DBE subcontractors. This is represented by the following calculation:

$$.20 \times .25 = .05 \text{ or } 5\%$$

Prime Contracting - The following analysis was used in calculating DBE prime contractor availability.

WORK TYPE - The Department considered the number of prequalified contractors based on the factor of "work type". In each "work type," a determination was made of the percentage of prequalified DBE prime contractors. This calculation was made based on a comparison of all prequalified prime contractors to all Department prequalified contractors.

The Department's Production Management Office sampled a seven month letting period. A calculation was completed of the amount of work (based on the dollar volume of lettings) let in construction in each of the "work types". This percentage breakdown was then converted to "work type" of actual lettings by the Department.

Using those two percentages, the percentage of work available to prequalified DBE prime

contractors using "work type" was calculated. This analysis makes a direct connection between the volume of work available and percentage of available DBE prime contractors.

Bridge

26.8% of the planned 99/00 letting

3.4% of DBE prime contractors

Expected awards to DBEs as prime bridge contractors: .034 x .268 = .009

Grading

13.5% of the planned 99/00 letting

5.6% of DBE prime contractors

Expected awards to DBEs as prime grading contractors: .056 x .135 = .008

Flexible Base

8.5% of the planned 99/00 letting

5% of DBE prime contractors

Expected awards to DBEs as flexible base prime contractors: .05 x .085 = .004

Cement

4.2% of the planned 99/00 letting

4.3% of DBE prime contractors

Expected awards to DBEs as cement prime contractors: .043 x .042 = .002

Asphalt

27.4% of planned 99/00 letting

3.2% DBE prime contractors

Expected awards to DBEs as asphalt prime contractors: .032 x .274 = .009

Drainage

16.3% of planned 99/00 letting

5.6% DBE prime contractors

Expected awards to DBEs as drainage prime contractors: .056 x .163 = .009

TOTAL 4.1%

The Department then weighted the DBE prime contractor availability. Since 25% was noted as total work available for subcontractors, 75% was weighted as total work available for prime contractors.

$$.041 \times .75 = .03075 \text{ or } 3.1\%$$

Step One Results:

Subcontractor Availability	5.0%
Prime Contractor Availability	+3.1%

Baseline Goal **8.1% = Rounded to 8% availability**

The results of Step One indicate that 8% is a valid baseline goal under current rules and processes for the determination of availability.

Step Two - In the second tier of its calculation process, the Department assessed the impact of specific factors requiring narrowly tailoring of the DBE program.

Impact to Goal

1. **Counting Work Which Is Subcontracted By a Subcontractor/Subconsultant to Non-DBEs**- Under 49 CFR Part 23, a DBE was allowed to subcontract up to 49% of its contract to a non-DBE while still allowing the agency to report 100% of that amount as DBE participation. Under 49 CFR Part 26, only the amount of work actually performed by the DBE or the amount subcontracted to another DBE may be counted and reported toward DBE participation. The Department conservatively estimates that 25% was subcontracted to non-DBEs which under the new regulations would not be eligible for counting.

Impact to Goal

Work Subcontracted to Non-DBE Second Tier Contractors

5% to Subcontractors
DBEs subcontracted to non-DBEs 25%
.05 x .25 = 1.25 or 1.3%

Subcontract work impact to baseline goal: less 1.3%

2. **Trucking** - In addition to losing participation based on the above counting issues, the new trucking provisions will eliminate a significant amount of participation. Under the new regulations, the work done by independent owner/operators who are not certified as DBEs will not be able to contribute to the DBE s participation amount. The new regulations also require that trucks owned by the DBE must be operating on the project for DBE credit to be given. The Department is unable to ascertain the specific dollar amount of the impact of this change through accessible information; therefore, it will not attempt to assign a specific impact amount. However, it has been determined through industry and Department comments that trucking will be a major factor in DBE participation. A number of industry comments from DBEs as well as prime contractors are included in the transcripts of the DBE statewide meetings which are available for review.

Under the new reporting and tracking requirements, this information should be more available next year for review and to make any necessary adjustments to the Department's overall DBE participation goal.

Impact to Goal

At this time, data is unavailable to support the specific calculation loss.

3. **Over Concentration** - Another change which has the potential to impact the goal is the issue of over concentration. Under 49 CFR Part 26, when the Department determines that DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the Department must devise appropriate measures to address this over concentration.

To date, this issue has been raised with the Department in the areas of geotechnical work and surveying. The impact and findings are unclear at this point. However, since the Department has been put on notice regarding these areas, it is raised as a potential issue affecting the goal. Since an amount, nor potential remedies, if the allegation is substantiated, are available, the Department will not assign an estimate to this potential factor, but will include it in the previous potential factors. Section 26.33 of the Department's DBE Plan explains this issue in more detail and explains how this issue will be addressed.

Impact to Goal

At this time, data is unavailable to support the specific calculation loss.

4. **Under Reporting Utilization** - The issue of under reporting practices has been reviewed in the goal setting process. Reports from industry as well as past comparisons of some utilization commitments compared to actual utilization support that contractors are using DBEs more than is actually reported. The industry reports that DBEs are often used and not reported to the Department for the purpose of counting toward the DBE participation goal. With the new reporting system in place, ALL DBE primes, subcontractors and subconsultants will be reported and this participation will count toward the Department's overall goal and increase the Department's ability to meet the new goal through race neutral means.

Impact to Goal

1% - comparisons of actual to reported and anecdotal

Under reporting impact to baseline goal: plus 1.00%

SUMMARY

Baseline Goal:	8.1%
Goal Adjustments:	
Non DBE Subcontracting	- 1.3%
Under Reporting Utilization	<u>+1.00%</u>
	7.8%*

Proposed DBE Goal

8.00% (*The Department proposes rounding to 8%)

ELIMINATED ALTERNATIVES

In setting the goal for the Department, it is required that the goal setting process is begun by determining a base figure for the relative availability of DBEs. The overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on USDOT-assisted contracts. The goal must reflect the determination of the level of DBE participation expected absent the effect of discrimination. The Department has reviewed the alternatives listed in 49 CFR Part 26 and eliminated them for the current year based on the following reasons.

Setting Goals - Analysis - Alternative 1

Use DBE directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same SIC codes. Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

The Department has some concerns with this methodology which will require extensive evaluation prior to possible utilization. Similar methodology was used by MGT of America, Inc. in a disparity study it prepared for the Department in 1993 for the Department's DBE program for wholly state funded contracts. During the *Phillips & Jordan, Inc.*, court challenge, the court stated the analysis was not narrowly tailored to the actual geographic locations within the Department's Districts, failed to consider contract data from the Department's Central Office and the Districts, failed to identify how firms were categorized in various SIC codes and failed to adequately explain if DBE firms were double and triple counted in the SIC codes. The court in *Phillips & Jordan, Inc.*, implied the methodology employed in that disparity study was flawed for these reasons. Because there was an adverse court ruling specifically related to the Department, this methodology will not be utilized until a review of the court decision, current court opinions and other options are explored. That process will take longer than the time allocated by FHWA for a program to be developed.

Setting Goals - Analysis -Alternative 2

Use a bidders list. Determine the number of DBEs that have bid or quoted on your USDOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

While this analysis would be more likely to withstand the strict scrutiny analysis under the *Phillips & Jordan, Inc.*, and *Adarand Constructors, Inc.*, decisions, the information necessary to complete this analysis is not readily available to the Department through its contracting offices. Without this data, any goals set under this approach would be vulnerable to constitutional challenges or

possibly deemed arbitrary and capricious. The Department, prime contractors, prime consultants, DBE subcontractors nor DBE subconsultants have retained this information. A complete bidder's list would require obtaining information on all successful and unsuccessful prime bidders and all of their successful and unsuccessful subcontractors. The Department will implement a process to gather bidder information under the new program. Initially, the Department will gather and monitor this information manually until a new computer program is acquired and implemented to electronically gather this data.

Setting Goals - Analysis - Alternative 3

Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

The Department is unable to develop a DBE goal based on data from a disparity study because no study has been performed which examines contractor utilization on federally funded contracts. Although Florida has a recently completed disparity study conducted by MGT of America, Inc., that study only focused on non-federally funded contracts.

The Department has also reviewed the fact that while there are a number of other disparity studies that have been conducted in the state of Florida, none have focused on federal construction contracts.

Setting Goals - Analysis - Alternative 4

Use the goal of another USDOT recipient. If another USDOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

The Department is not aware of other USDOT recipients in the same or substantially similar markets. Because this is a new process, other states are still trying to determine the extent of their information and there is insufficient time to review what they have gathered and do an analysis to compare their market with the market of the Department.

However, a poll was conducted of the former Region 4 states and as of July 19, 1999, of the seven southern states, North Carolina, South Carolina, Tennessee, Kentucky, Alabama, nor Mississippi had their goals and methodologies completed, reviewed and adopted by their agency heads. Only Georgia had an approved goal and methodology and that was based on a disparity study conducted specifically for their state; however, that study was conducted over a 13 month time period.

Analysis of Goal for Federal Aviation Administration (FAA)

The Department's overall goal for FY 2000 is the following:

*In reviewing the anticipated dollars for FY 2000 from the FAA, the Department has determined that no dollars are anticipated for new projects.

*0 Dollars for Fiscal Year 2000

Previously Approved Projects

10% for Project: Florida Aviation System Plan (FASP) (From previous approved contract)

36% for Project: Statewide Airport - Storm Water Study (From previous approved contract)

Method of Attainment

The Department anticipates receiving additional funds for the FASP Project, but no commitments have been received from FAA as of the September 1999. This project was submitted to FAA for approval in 1998 with a 10% DBE goal. That goal was approved. The contract is not completed and the anticipated additional funds will be applied to that same contract. The contractor continues to be contractually liable for the 10% goal.

The Department anticipates receiving an additional \$500,000 in fiscal year 2000 for the Storm Water Study. This project was submitted to FAA for approval in 1998 with a 36% DBE goal. That goal was approved. The contract is not completed and the anticipated additional funds will be applied to that same contract. The contractor continues to be contractually liable for the 36% goal.

The Department does not anticipate receiving any funds in fiscal year 2000 which are not already committed to those projects. Therefore there can be no analysis for goal setting. If new funds become available, the Department will complete the methodology process pursuant to 49 CFR Part 26 and submit the analysis and proposed goal to the FAA for review and approval.

Analysis of Goal for Federal Transit Administration (FTA)

The Department's overall goal for Fiscal Year 2000 is the following: 8% of the federal financial assistance we will expend in USDOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles and of other exempt services.

The Department expects to let \$11,033,673 this fiscal year. Because of the nature of the expenditures for the various categories, it is uncertain about the specific amount of dollars which will be eligible for DBE goal setting opportunities.

Method of Attainment

The following is a summary of the method we used to calculate this goal:

The Department reviewed and evaluated the following Federal programs for which we have to report progress to the Federal Transit Administration: 5303, 5310, 5311 and 5313(b).

5303 - The estimated funds for FY 2000 in this category are \$0.

It was noted that 5303 program dollars are allocated to Metropolitan Planning Organizations (MPOs). Because MPOs report directly to the FHWA and capture transit expenditures, those dollars were not counted as potential DBE expenditures. FTA has explained during training that if FTA dollars are captured by another entity, they may be deemed as exempt from the Department's

calculations of potential DBE goals. Those dollars were not calculated in the base FTA dollars.

5310 - The estimated funds for FY 2000 in this category are \$4,613,044.

The 5310 program primarily consists of vehicle purchases made by private, nonprofit transit providers. All other capital costs are considered towards potential DBE contracting. The review concluded that traditionally those other capital costs consisted of purchases of radios and computer purchases. Approximately 97% of those expenditures have historically been used for vehicle purchases. Vehicle purchases are exempt based on the above stated information relating to manufacturers.

5311 - The estimated funds for FY 2000 in this category are \$5,797,875.

The 5311 program primarily consists of capital or operating expenses made by local governments or public transit providers. Vehicle purchases are allowed under this program also. The review concluded that traditionally these funds have been used for administration and labor costs, which are exempt from assigning DBE goals. It is noted that if the provider were to change what has been done historically and contract the transportation service with a private business, the contract would become open to DBE goal setting opportunity.

5313(b)- The estimated funds for FY 2000 in this category are \$611,543.

The 5313(b) program primarily consists of funding for statewide transit planning. Contracts entered into with Universities are exempt from DBE reporting requirements in this program. However, any contracts with private consulting firms will be considered open to DBE goal setting opportunities.

Estimated FTA Total for FY 2000 - \$11,033,572

In reviewing the historical data, the Department anticipates being able to achieve approximately 10% of DBE participation. Based on the dollars which must be exempted from the FTA programs and the new DBE program certification and reporting criteria, the Department anticipates being able to expend 8% of non-exempt dollars with DBEs under its new DBE program.

Transit Vehicle Manufacturers (TVM) (§ 26.49)

The Department will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the Department may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Overall Goal Setting Process

The Department submits its overall goal to USDOT on August 31st of each year except September 1, 1999, and in cases where the Department submits a project goal.

Before establishing the overall goal each year, the Department will consult with minority, women s and general contractor groups, community organizations and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Department s efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Equal Opportunity Office for 30 days following the date of the notice, and informing the public that the Department and USDOT will accept comments on the goals for 45 days from the date of the notice. The Department s goal for the current year was published on the Department s internet web page at <http://www.dot.state.fl.us>, as well as in following newspapers: The Tallahassee Democrat and The Capitol Outlook. Normally we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to USDOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from USDOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Under its method of attainment (pg. 9) Florida has proposed that construction projects and consulting proposals from October 1, 1999 through December 31, 1999 be evaluated for goal setting opportunities. Beginning January 1, 2000, the Department would begin a race neutral program. FHWA has requested that the contracts for which goals were set be assessed a race conscious participation amount.

The Department estimates that, in meeting the overall goal of 8%, we will obtain 1% from race conscious participation. This 1% is based on goals which have been established on construction contracts and preference points which have been assigned to consulting proposals.

The Department estimates that, in meeting our overall goal of 8%, we will obtain 7% from race-neutral participation.

Based upon industry and Department comparatives and input from DBEs, the Department estimates it can achieve 7% of its overall goal using only race neutral means. Since we will use race conscious strategies prior to January 1, 2000, and we will track and report actual 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 which a DBE obtains through customary competitive procurement procedures;

DBE participation through a subcontract on a prime contract that does not carry a 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.

In proposing to meet 7% of its 8% goal through race neutral means beginning January 1, 2000, the Department considered the following information:

1. The Department has reviewed its available construction and consultant contracts reporting information comparing commitment dollars versus actual dollars paid to DBEs. FHWA has allowed states the option of choosing either commitment or actual utilization reporting. Like most states, Florida reports the prime contractor and prime consultants commitments to use DBEs. However, the Department did have access to some database information gathered on previous projects comparing commitment to actual utilization. For example, information was gathered for a public records request in which it was noted that there were DBE payments which exceeded amounts listed on the initial DBE utilization forms. Another example was information regarding DBE utilization on consultant contracts. A review was completed of consultant contracts which indicated additional instances where prime consultants expended more than the 10% goal for which most prime consultants received preference points.

This information supports the ability of the Department and contractors to meet DBE goals outside of race conscious measures.

2. The Department reviewed its DBE utilization from 1989 through 1993 on non federally funded contracts during which its state DBE program was suspended. The suspension of Florida's state DBE program was based on the legal decision of *Cone vs. Florida Department of Transportation* in which the court stated that the use of race conscious measures must be supported by specific findings of disparity by the Legislature before implementing those race conscious measures. During that time period, the Department set no goals on non federally funded contracts, nor was there any attempt in the outreach area to encourage the use of DBEs on those particular contracts. However, the Department still recorded the following amounts as expenditures to DBEs on non federally funded contracts:

1989-1990	\$ 9,361,316	6.5%
1990-1991	\$18,508,469	6.9%
1991-1992	\$18,783,253	5.34%
1992-1993	\$18,858,178	6.57%

The Department therefore averaged 6.3% of documented DBE participation during a time period when goals were not being assigned to projects. This information supports the ability of the Department and contractors to meet DBE goals outside of race conscious measures.

3. The Department reviewed its current non federally funded program. Based on a completed disparity study, the Department reimplemented a state program. In January 1994, the Department's districts were allowed to voluntarily begin setting goals on non

federally funded projects. In July of 1994, which began a new state fiscal year, the Department required each district to review all non federally funded contracts for goal setting opportunities under the guidelines of the disparity study. The Department phased in its program as recommended by setting 4% goals for all areas from 1994 through 1996.

In July of 1996, it phased in the remaining recommended percentages of 8% for Non-minority females and 4% for Blacks in the construction program. Since the program has been in place, the Department has achieved the following with targeted DBEs through race conscious means and has achieved DBE participation through race neutral means with other DBEs who either obtained contracts as primes under the low bid system or who were used by primes as subcontractors **for which no DBE credit was given:**

1994-1995	<u>Race Conscious</u>		<u>Goal</u>	<u>Actual</u>
	Construction			
	Blacks	\$14,831,491	4%	3.98%
	Non-Minority Females	\$31,454,945	4%	8.44 %
	<u>Race Neutral</u>			
	Construction	\$ 1,704,285	<u>0%</u>	<u>4.44%</u>
			8%	16.86%

The Department exceeded its 8% expenditure goal by 8.86%. No efforts were being made by the Department during that time period to solicit race neutral participation.

1995-1996	<u>Race Conscious</u>		<u>Goal</u>	<u>Actual</u>
	Construction			
	Blacks	\$23,486,408	4%	4.41%
	Non-Minority Females	\$45,608,286	4%	8.57%
	<u>Race Neutral</u>			
	Construction	\$ 581,309	<u>0%</u>	<u>.11%</u>
			8%	13.09%

The Department exceeded its 8% expenditure goal by 5.09%. No efforts were being made by the Department during that time period to solicit race neutral participation.

1996-1997	<u>Race Conscious</u>		<u>Goal</u>	<u>Actual</u>
	Construction			
	Blacks	\$16,954,200	4%	4.44%
	Non-Minority Females	\$36,125,191	8%	9.46%
	<u>Race Neutral</u>			
	Construction	\$ 801,430	<u>0%</u>	<u>.21%</u>
			12%	14.11%

With an 8% goal, the Department would have exceeded its goal by 6.11%. With a 12% goal, the Department expended an additional 2.11% over its goal.

1997-1998	<u>Race Conscious</u>		<u>Goal</u>	<u>Actual</u>
	Construction			
	Blacks	\$ 9,359,374	4%	1.93%
	Non-Minority Females	\$53,210,383	8%	10.96%
	<u>Race Neutral</u>			
	Construction	\$ 6,850,859	<u>0%</u>	<u>1.41%</u>
			12%	14.30%

With an 8% goal, the Department would have exceeded its goal by 6.3%. With a 12% goal, the Department expended an additional 2.3% over its goal.

1998-1999	<u>Race Conscious</u>		<u>Goal</u>	<u>Actual</u>
	Construction			
	Blacks	\$21,156,622	4%	4.62%
	Non-Minority Females	\$34,246,740	8%	6.90%
	<u>Race Neutral</u>			
	Construction	\$2,037,373	<u>0%</u>	<u>.41%</u>
			12%	11.93%

With an 8% goal, the Department would have exceeded its goal by 3.9%. The Department met its 12% goal expenditures.

This information supports the ability of the Department and contractors to meet DBE goals outside of race conscious measures. Whether the State's DBE program had goals or no goals, the utilization of DBEs remained somewhat consistent.

During the time period the Department's goal was 8%, which is the Department's currently proposed federal DBE goal, it did 16.86% and 13.09%, which was 8.86% and 5.09%, respectively, above the goal. When the goal increased to 12% overall the utilization remained consistent, which supports that the goals themselves were not overriding factor in DBE utilization and expenditures. The Department has found that greatly deviating DBE utilization amounts are linked primarily to non-goal oriented factors such as lack of available DBEs based on prior work comments, limited DBEs in particular work specialty areas needed for contracts let and bonding ability. (See achievement for Blacks in Construction at 1.93% in 1997-1998 and for Non minority Females in 1998-1999 during which their DBE expenditure was 6.9%). The time period of 1994-1999 supports race neutral participation at a level of 6-7%.

4. The Department considered the pledges of support it has received by its external construction and consulting customers as well as all of its internal staff to monitor the race neutral program and to keep its primary goals of the programs six objectives as a priority. Title VI has also been discussed with contractors and will be integrated into the Department's training components. This training will reiterate the Assurances of the

Department and its contractors to ensure nondiscrimination in all phases of its contracting under Title VI.

This information supports the ability of the Department and contractors to meet DBE goals outside of race conscious measures.

The Department will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Department will use the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and other small business participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical and managerial assistance and other services in:
 - a. Reading plans and specifications
 - b. Identifying jobs comparable to the DBE s work specialties
 - c. Preparing bid packages
 - d. Scheduling
 - e. Completing take off estimates
 - f. Marketing
 - g. Setting up books to track revenues and expenses
 - h. Interpreting financial statements
 - I. Completing applications for loans or bonding
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities. These information and communication programs may include, but are not limited to:
 - a. Annually, the Department will provide all small businesses which have bid on contracts during the last fiscal year a summary on major policy manuals or important changes in contracting procedures;
 - b. The Department shall supply the same information to all firms applying for DBE certification;
 - c. The Department shall provide a summary of key DBE policies to persons responsible for contracting activities in the Department s Central Office and Districts;
 - d. The Department shall provide DBEs with job listings and listings of the potential prime bidders.
5. Implementing a supportive services program to develop and improve immediate and long term business management, record-keeping and financial and accounting capabilities for DBEs and other small businesses.
6. Providing services to help DBEs and other small businesses improve long term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects and achieve eventual self sufficiency. These services may include but are not limited to:

- a. Providing semi-annual workshops for newly certified businesses to explain contracting and business processes;
- b. Conducting conferences at least six (6) times a year in order to bring together DBEs, the Department and prime contractors.

7. Establishing a program to assist new and start-up firms, particularly in fields in which DBE participation has been historically low.

Contract Goals (§ 26.51)

The Department may use contract goals to meet any portion of the overall goal which it does not project being able to meet using race and gender neutral means. The purpose of establishing contract goals is so that, over the period to which the overall goal applies, the goals will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race and gender neutral means.

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

The Department anticipated having its DBE program approved by October 1, 1999. Because of the advertisement process, projects to be let through December will have been published. Therefore projects let from October through December of 1999 will be evaluated under the goal setting strategies listed above. Consultant proposals will also be evaluated under race and gender conscious criteria through December of 1999. Letters of Interest due to the Department through December 31, 1999 will be evaluated for preference points based on utilization of DBEs.

Beginning January 1, 2000, the Department's DBE program will be implemented through race and gender neutral means. Prime Contractors and prime consultants will submit voluntary commitments and actual expenditures with DBEs.

The Department currently has project review processes in place for construction and consulting projects. Those processes, i.e., Goal Setting Committee and the district planning review, will remain as mechanisms for monitoring the results of the race and gender neutral program. The purpose of keeping these processes is to have a baseline of comparison for potential subcontracting opportunities for DBEs. The Department also plans to use this as a component of its outreach program. Each project goal will be set separately. If projected DBE subcontracting opportunities are exceeded or not met, the contracting participants can be contacted to try to determine the factors involved.

The Department will express the contract goal or potential goal as a percentage of the total amount of a USDOT assisted contract.

The Department does not anticipate using any race or gender conscious means of obtaining DBE participation other than contract goals if race and gender neutral means are deemed insufficient

for attaining DBE participation.

Good Faith Efforts (§ 26.53)

Information to be submitted

The Department treats bidder/proposers compliance with good faith efforts requirements as a matter of responsiveness. However, under the Department's race neutral program which will be effective January 1, 2000, a bid will not be rejected as non-responsive based on DBE information.

Bidders will, however, be required to submit DBE utilization information. The Department will also request that contractors maintain Good Faith Efforts documentation to allow the Department to measure and monitor DBE participation on federally funded contracts. This information will also allow the Department to evaluate the number of ready, willing, available and able DBEs for future goal setting.

Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information within the time frames established by Rule 14-78.003, Florida Administrative Code, which is currently within three days of the bid submission:

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

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/proposer can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The following personnel are responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: this responsibility will be handled by the Department's Contract Compliance Manager for the initial good faith efforts review.

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

Administrative Reconsideration

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

The good faith efforts and reconsideration guidelines will be established and implemented as of January 1, 2000. A task team consisting of industry and Department personnel will be established to make recommendations to the Department.

Good Faith Efforts when a DBE is replaced on a contract

Where goal or preference points have been assigned to projects, we will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor or prime consultant to notify the District Compliance Manager immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Replacing a DBE because of the DBE's inability or unwillingness to perform requires the signature of the District Compliance Manager or other individuals as delegated by the appropriate District Secretary.

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 District Construction Engineer may issue a notice of default.

Counting DBE Participation (§ 26.55)

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

Certification (§§ 26.61 - 26.91)

The Department will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of part 26 as adopted by Rule Chapter 14-78, Florida Administrative Code, to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts.

To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. The Department will initiate the rule-making process prescribed by § 120.54, Florida Statutes, to amend Rule Chapter 14-78, Florida Administrative Code and adopt 49 CFR Part 26. The Department has commenced implementation of the certification requirements contained in 49 CFR Part 26 pending the completion of the rule-making process as authorized by Chapter 120, Florida Statutes.

Process

For information about the certification process or to apply for certification, firms should contact: Ruth B. Dillard, Manager, Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747; E-mail: www.ruth.dillard@dot.state.fl.us or John Goodeman, DBE Certification Consultant, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747, E-Mail: www.john.goodeman@dot.state.fl.us.

In the event we propose to remove a DBE's certification, we will follow procedures consistent with § 26.87, Rule 14-78.008, Florida Administrative Code, and Chapter 120, Florida Statutes. To ensure separation of functions in a decertification, we have determined that an Administrative Law Judge of the Division of Administrative Hearings (DOAH) will serve as the decision maker in decertification proceedings which are contested by the DBE, pursuant to § 120.57, Florida Statutes. We have established an administrative "firewall" to ensure that the Administrative Law Judge of the Division of Administrative Hearings will not have participated in any way in the decision to commence a decertification proceeding against the firm. The Division of Administrative Hearings is a separate agency from the Department. Administrative Law Judges of the Division of Administrative Hearings are rotated on each case pending before it.

If we deny a firm's application or decertify it, it may not reapply until six months have passed from our action pursuant to § 339.0805, Florida Statutes.

Unified Certification Program

As required under 26.81, the Department and all other DOT recipients who certify DBEs, will participate in a Unified Certification Program. Within three years of January 29, 1999, the Department and other recipients in the State of Florida will endeavor to sign an agreement establishing the UCP for the State of Florida and submit the agreement to the Secretary of the USDOT for approval.

The Department will take the lead with other municipal, local and county DBE programs to develop and implement a Uniform Certification Program. The Department has already dedicated staff to this project.

Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to the Department for referral of the matter to the Division of Administrative Hearings for resolution or to USDOT. Such appeals may be sent to:

Mr. James Myers
Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458

or

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th Street, SW, Room 2104
Washington, DC 20590

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

DBEs may also appeal certification decisions to the Department and commence the administrative hearing process prescribed by § 120.57, Florida Statutes.

According to § 120.57, Florida Statutes, a DBE may request a formal or informal administrative hearing if it decides to challenge a certification decision. The Department's Office of General Counsel treats all hearing requests from DBEs as requests for formal hearing and refers these requests to the Division of Administrative Hearings for an Administrative Law Judge to be assigned to and preside over the case. In the administrative hearing process, each party may present its case to the Administrative Law Judge and submit proposed recommended orders. The Administrative Law Judge enters a recommended order and each party may file objections to the recommended order. After considering the recommended order and any objections to that order, the Secretary of the Florida Department of Transportation may accept or reject the recommended order as his Final Order. If the DBE disagrees with the Department's Final Order, it may appeal the Final Order to the First District Court of Appeal.

"Recertifications"

We will review the eligibility of DBEs that we certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. We will complete this review no later than three years from the most recent certification date of each firm. The Department has requested Personal Net Worth Statements, Statements of Social Disadvantage and updated specialty code requests from each DBE currently certified by the Department. When the Department receives all of the requested information and determines a DBE satisfies the eligibility criteria set forth in 49 CFR Part 26, the Department will grant a three-year certification to the DBE. This three year

certification will run from the expiration date currently listed for the DBE in the Department's DBE Directory. If a firm fails to submit the requested information or if it submits information which reflects the firm is no longer eligible to participate in the DBE program, the Department will commence decertification proceedings. Approximately one-third of all Personal Net Worth statements and Social and Economic Disadvantage requests have been received and are being reviewed. A second mailout will be sent out. With DBE companies being allowed 45 days from receipt of the request to submit the information.

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility every three years on or before the anniversary date of the firm's initial certification. Each of the DBEs will be notified 120 days before the certification anniversary date on the third year that it must have its certification reviewed and renewed. These reviews will include the following components: the DBEs must complete a new Schedule A application for certification with updated documentation concerning ownership, size standards, gross receipts, social and economic disadvantage. An on-site review of these firms will be conducted on a case-by-case basis as determined by the DBE Certification Manager.

Affidavit of Continuing Eligibility

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26, and Rule Chapter 14-78, Florida Administrative Code, or of any material changes in the information provided with the DBE's application for certification.

We will also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, an Affidavit of Continued Eligibility with supporting documentation.

We require DBEs to submit this affidavit with documentation of the firm's size and gross receipts and updated Personal Net Worth Statements for each of the firm's Disadvantaged Owners and their spouses.

We will notify all currently certified DBE firms of these obligations 120 days before the anniversary date of the firm's initial certification by certified letter. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Notices of Change

If a certified DBE experiences a change in ownership affecting the 51 percent majority ownership, and control of the firm by the disadvantaged owners on record with the Department, the DBE must submit a notice of this change to the Department. If the DBE fails to timely file this notice of change, the Department shall commence decertification proceedings pursuant to Rule 14-78.008, Florida Administrative Code.

A DBE shall also timely notify the Department of any change in address, telephone number,

contact person for the firm, change in the firm's officers, or change in the firm's name so that the Department may properly update this information for its DBE Directory.

Personal Net Worth

We will require all disadvantaged owners of applicant firms and currently-certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth. The Department has already requested PNW statements from the disadvantaged owners of all currently certified DBEs and required new applicants to submit PNW statements with their initial applications for certification. The Department will require updated PNW statements from the firm's disadvantaged owners and their spouses annually with the firm's Affidavit of Continued Eligibility along with the firm's documentation of its size and annual gross receipts. The Department will request updated PNW statements to track the economic disadvantaged status of the firm's disadvantaged owners.

Information Collection and Reporting

Bidders List

The Department will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. A sample of the form is attached for manual submission by contractors. A copy of the Department's database format is also included.

We will collect this information in the following ways:

Until a new software system is procured and installed, the Department will manually collect this information through contract clauses, requiring all bidders to report the names and addresses of firms furnishing them quotes. The information will be requested from all prime contractors within three days of their bid submission. They will also be allowed to submit the information with their bids. The Department will follow up on any information required under 49 CFR Part 26 which the contractor is not able to provide. When the new software system is acquired and implemented, the Department will electronically collect this data. The Department will begin gathering this information with the October 1999 bid letting.

Monitoring Payments 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. These records will be available for inspection upon request by any authorized representative of the Department or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Florida proposes to utilize its monthly payment certifications from contractors. Currently contractors submit the certifications for their monthly progress payments. The Department proposes to add the names of subcontractors who have been paid and how much. This form would have to be signed by the contractor with all of the statutory requirements enforced for false submissions. The Department will monitor the contractor information through sampling with subcontractors on a regular basis and a full review upon the discovery of inconsistent information. The Department further proposes a monitoring process which will include project personnel monitoring the work done by DBEs to ascertain DBE credit.

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.

Reporting to USDOT

We will report DBE participation to USDOT as follows:

We will submit annually USDOT Form 4630, as modified for use by FAA recipients.

We will report DBE participation on a quarterly basis, using USDOT Form 4630. These reports will reflect payments actually made to DBEs on USDOT assisted contracts.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Pursuant to § 339.0805, Florida Statutes, all information submitted by applicant firms with their applications for certification and affidavits of continued eligibility, including their personal net worth statements, are confidential and exempt from the requirements of Florida's public records laws.