

SCDOT South Carolina
Department of Transportation

2018

**Disadvantaged Business Enterprise
Program Plan**

**Division of Minority & Small Business Affairs
Post Office Box 191
Columbia, South Carolina 29201**





DBE PROGRAM PLAN

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DBE PROGRAM POLICY STATEMENT

(26.1, 26.3, 26.23)

As a recipient of Federal funds, the State is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance. South Carolina Department of Transportation (SCDOT) ensures nondiscrimination in the award and administration of contract and procurement activities to use Disadvantaged Business Enterprises (DBEs) on federally assisted projects. SCDOT has established a DBE program in accordance with the United States Department of Transportation (USDOT) 49 CFR Part 26 regulations and objectives.

The Secretary of Transportation has the ultimate responsibility for SCDOT's DBE Program. Appropriate authority has been delegated to the Director of the Minority and Small Business Affairs for implementing the SCDOT's DBE program.

The SCDOT is committed to implementing its DBE program according to Federal and State laws. The objectives of the program are as follows:

- a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway and transit financial assistance programs;
- b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
- g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Christy A. Hall
Secretary of Transportation

5-16-18

Date

GENERAL AND ADMINISTRATIVE REQUIREMENTS

I. Definitions (26.5)

SCDOT will adopt the federal definitions contained in 49 CFR 26.5 for this program in addition to relevant definitions and acronyms specific to SCDOT. (Attachment 1)

II. DBE Program Plan and Updates (26.21)

SCDOT's DBE Program Plan will be updated and approved by FHWA when there have been significant changes to the current approved Plan. All State's sub-recipients of FHWA funds must comply with the prime recipient's State DBE Program Plan and may not have a plan independent from the State.

III. DBE Liaison Officer Requirements (26.25)

SCDOT's DBE Liaison Officer (DBELO), Greg Davis, the Director of the Division of Minority and Small Business Affairs, has direct, independent access to the Secretary of Transportation for SCDOT concerning DBE program matters. The DBELO is responsible for developing, implementing, and monitoring the DBE program in coordination with other appropriate officials with the responsibility of ensuring compliance with 49 CFR Part 26. The DBELO may be reached via telephone at 803-737-1717. The SCDOT provides adequate staff to implement the DBE Program. (Attachment 2)

IV. Non-Discrimination Requirements (26.7)

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

In administering the DBE Program, SCDOT 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 program with respect to individuals of a particular race, color, sex, or national origin.

CERTIFICATION STANDARDS

- I. Burdens of Proof Allocation (26.61)
SCDOT uses 49 CFR Part 26 Subpart D - Certification Standards for guidance in determining 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. Certification decisions will be based on the facts as a whole. (Attachment 3)

- II. Group Membership Determination (26.63)
SCDOT will ensure that all membership determinations are implemented in accordance with this part of the federal regulations. SCDOT requires the individual to present additional evidence that he or she is a member of the group. SCDOT will provide the individual a written explanation of reasons for questioning his or her group membership and a written request for additional evidence. (Attachment 3)

- III. Determining Business Size (26.65)
To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. SCDOT applies current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

- IV. Determining Social and Economic Disadvantage (26.67)
SCDOT will rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. SCDOT will require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged and all required documents to comply within this part of the regulations. The SC Unified Certification Program (SCUCP) application is located at www.scdot.org. (Attachment 3)

- V. Determination of Ownership (26.69)
In determining whether the socially and economically disadvantaged participants in a firm own the business, SCDOT will consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

- VI. Determinations Concerning Control (26.71)
In determining whether socially and economically disadvantaged owners control a firm, SCDOT will consider all the facts in the record viewed as a whole. Only an independent business may be certified as a DBE. An

independent business is one the viability of which does not depend on its relationship with another firm or firms. (Attachment 3)

SCDOT affirms that the UCP is committed to assigning the code that most narrowly describes the work the disadvantaged owner is able to control and the work that the firm performs or intends to perform on federally-assisted contracts. North American Industry Classification System (NAICS) codes used in the certification process are located in SCDOT UCP application located at www.scdot.org.

VII. Other Rules Affecting Certification (26.73)

SCDOT will consider whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of certified DBEs. SCDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. (Attachment 3)

CERTIFICATION PROCEDURES

- I. Requirements for Unified Certification Programs (26.81)
SCDOT and other USDOT recipients are required to participate in a statewide DBE certification program referred to as the Unified Certification Program (UCP). SCDOT maintains the official DBE directory of all DBEs certified through this program. This language is included in the UCP Partner Agreement located at www.scdot.org. (Attachment 4)

- II. Certification Decisions (26.83)
SCDOT will ensure that only firms certified as eligible DBEs under this section participate as DBEs in its program. SCDOT will determine the eligibility of firms as DBEs consistent with the standards of Subpart D as outlined in the regulations. SCDOT handles applications for DBE certification. A copy of the UCP application and PNW for certification is available on SCDOT's website at www.scdot.org. Firms requesting information about the certification process may contact the Division of Minority & Small Business Affairs at (803) 737-1717. If the application is approved, the SCDOT will notify the applicant of its certified status. (Attachment 5)

- III. Annual DBE Update Application Process
Firms will be certified in accordance with applicable Federal and State Regulations. Firms are required to provide an annual update application to include the annual "No Change" Affidavit and a copy of the firm's most current Federal business tax return or tax filing extension on the anniversary of their certification. The annual update application is located at www.scdot.org. Within forty-five (45) days of the annual update due date, a courtesy reminder will be mailed to each firm. A second reminder will be mailed if the update is not received by the due date. Fifteen (15) days after mailing the second reminder, the firm's name will be removed from the UCP DBE Directory if required documents have not been received in accordance with the update application process. (Attachment 5)

- IV. Notice of Changes in Circumstances.
Once certified, DBE's will be required to inform SCDOT of any changes in circumstances which affect the firm's ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 and of any material changes in the information provided with the DBE's application. (Attachment 5)

- V. "No Change" Affidavits. All owners of DBE firms will be required to submit to SCDOT, on the anniversary date of the firm's certification, an affidavit meeting the requirements of 49 CFR 26.83. SCDOT will require DBEs to submit, along with the affidavit, documentation of the firm's current business tax returns and the annual update application.

- VI. Information Change Request Form
A certified DBE contractor must submit an Information Change Request Form or written notification to the department for any change of status with their company. This includes expansion and/or work area(s),

ownership, contact information or any other changes. The Information Change Request Form is located at www.scdot.org. (Attachment 5)

VII. Interstate Certification (26.85)

The SCDOT will consider all firms seeking DBE certification in South Carolina if the applicant's firm is currently certified in their home state. All DBEs seeking Interstate Certification must complete the form located at www.scdot.org. Certification is dependent on a review of the current home state certification in accordance with Federal regulations 49 CFR 26.85 within 60 calendar days. (Attachment 6)

VIII. Denials (26.86)

If the application is denied, the SCDOT will notify the applicant of the denial and state the reasons for the denial. The firm may appeal the denial to the State Administrative Law Court pursuant to 25A S. C. Code Regs. 63-704(I) or appeal directly to the USDOT. (Attachment 7)

IX. Certification Appeals to USDOT (26.91)

Any firm or complainant may appeal SCDOT's decision in a certification matter to USDOT. Such appeals may be sent to USDOT, External Civil Rights Program Division, 1200 New Jersey Avenue, SE, Room W78-338, Washington, DC 20590. The SCDOT will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that SCDOT's denial of its application was erroneous). (Attachment 7)

X. Waiting Period for Reapplication.

If a firm's application is denied or the firm is decertified, it may not reapply until 12 months have passed from the date of SCDOT's denial letter.

XI. Removal of DBE Eligibility (26.87)

In the event SCDOT proposes to remove a DBE's certification, procedures consistent with 49 CFR 26.87 will be followed. To ensure separation of functions in a removal of certification, when SCDOT proposes to remove certification of a firm, the firm may request a hearing before the State Administrative Law Court pursuant to 25A S. C. Code Regs. 63-706 or appeal directly to the USDOT. (Attachment 8)

XII. Suspension of Certification (26.88)

SCDOT shall suspend a DBE's certification without adhering to the requirements in 49 CFR 26.87 when an individual becomes ineligible for the UCP DBE Program. (Attachment 9)

DBE DIRECTORY & FINANCIAL INSTITUTIONS

I. DBE Directory (26.31)

- A. SCDOT will provide daily updates of the directory on the website at www.scdot.org and upon request, anytime, to SCDOT's Director, Division of Minority and Small Business Affairs, Greg Davis, DBELO, located at 955 Park Street, Columbia, South Carolina.
- B. SCDOT will maintain a directory of all firms eligible to participate in the DBE program. It will contain each DBE's name, address, fax number, contact person, telephone number, and areas of work. This information is updated daily in the DBE directory database.
- C. The UCP Directory includes the type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to identify each type of work. SCDOT implemented this change in the UCP Directory effective August 26, 2011, in accordance with the Federal regulations 49 CFR 26.31.
- D. SCDOT and other USDOT recipients are required to participate in a statewide DBE certification program referred to as the Unified Certification Program (UCP). SCDOT will maintain a DBE directory of all DBEs certified through the UCP. (Attachment 4)

II. DBE Financial Institutions (26.27)

- A. SCDOT will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. SCDOT will also encourage prime contractors to use such institutions.
- B. The SCDOT reviewed services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals. The financial institutions information is listed within the SC Unified Certification DBE Directory on SCDOT's website at: www.scdot.org. (Attachment 4)
- C. South Carolina Community Bank is listed as the only minority owned bank in South Carolina. The main office is located at:
 - 1545 Sumter Street, Suite 200
 - Columbia, SC 29201
 - Telephone: (803) 733-8100
 - Fax: (803) 733-8125
- D. Additionally, Small Businesses who are in need of financial assistance please contact one of the 13 Small Business Transportation Resource Centers (SBTRC) for assistance, they can be found at www.transportation.gov . The SCDOT program contact is listed below:

Mr. Steve Smith
Program Coordinator
SCDOT- Business Development Center
955 Park Street, Room 107
Columbia SC 29202
Telephone: (803) 737-6396
Fax: (803) 737-4681

GOALS, GOOD FAITH EFFORTS AND COUNTING

I. Overall DBE Goal Statement and Methodology (26.45)

A. SCDOT will establish its overall DBE goal using the methodology set forth in the Goal Setting document for DOT Federally-assisted contracts. SCDOT will update its goal statement and methodology every three years and submit a goal statement and methodology to FHWA by August 1 during the year of the required update. SCDOT's goal and methodology statement for federal years 2017-2019 is due to Operating Administration (OA) on August 1, 2017. (Attachment 10)

SCDOT's overall DBE goal for federal years 2015-2017 is 12.5% for new FHWA Federally-assisted contracts. The goal includes 3.5% to be obtained through race-neutral means and the remaining 9.0% through race-conscious means. SCDOT's Goal Statement and Methodology is located at www.scdot.org.

B. Estimated Race-Neutral and Race-Conscious Participation

SCDOT will adjust the estimated breakout of race neutral and race conscious participation in its agency goal setting process every three years based upon its success in meeting DBE contract goals in the past and anticipated future participation.

C. Consultation with Interested Groups. Before establishing its DBE goal, SCDOT will obtain available information from minority, women, and general contractor groups, community organizations, other officials and/or organizations. This data is relevant to the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and SCDOT's efforts to establish a level playing field for DBEs.

D. Publication of Notice of Proposed Goal. SCDOT will publish a notice informing the public of the proposed goal and rationale and its availability for inspection or review. The proposed goal and rationale will be made available at SCDOT Headquarters and on SCDOT's website at www.scdot.org for thirty (30) days following the date of the notice.

E. Summary of Information and Comments Received. SCDOT's overall goal submission to USDOT included a summary of information and comments received during the comment period.

II. DBE Goal Shortfall Analysis (26.47)

A. SCDOT will ensure the Program remains compliance with this regulation, by administering its program in good faith as required by this section.

B. If the awards and commitments shown on SCDOT's Uniform Report of Awards/Commitments and Payments at the end of any fiscal year

are less than the overall goal applicable to that fiscal year, SCDOT will do the following in order to be regarded by the Department as implementing SCDOT's DBE program in good faith:

- (1) SCDOT will analyze, in detail, the reasons for the difference between the overall goal, awards and commitments in that fiscal year;
- (2) SCDOT will establish specific steps and milestones to correct the problems identified in the analysis and to enable SCDOT to meet fully the agency's goal for the new fiscal year;
- (3) SCDOT will submit, within ninety (90) days of the end of the fiscal year, the analysis and corrective actions developed to the appropriate operating administration for approval. Upon approval of the report, SCDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

III. Contract Goals (26.51)

- A. SCDOT will use contract goals to meet any portion of the overall goal it does not anticipate being met using race-neutral means. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. (Attachment 11)
- B. Goals are established on each project based on a formula that encompasses the types of work DBEs have been approved to perform with actual line item work identified from the Engineer's estimate. The quantity for each work type is entered into the formula. Costs for each work type are determined based on estimated or actual costs. The total of those costs represent the percentage or goal for a particular project. Projects with higher requirements for certain work types such as hauling, concrete work, and rebar usually have higher goals as the quantities for these services are higher.
- C. SCDOT will submit the overall goal and methodology for review to the operating administration and projection of the portion of the goal expected to meet through race-neutral means and along with basis for that projection.
- D. SCDOT establishes contract goals to meet any portion of the agency's overall goal not projected to be met using race-neutral means. Established goals make up the race conscious requirements. Amounts exceeding the established goal counts towards race neutral. Contract goals that are not met are normally the direct result of under-runs or changes in contract requirements.
- E. SCDOT use contract goals only on DOT federally-assisted contracts that have possibilities for DBE participation. SCDOT does not set goals on every project nor require same contract goal at the same

percentage level as the overall goal. The goal for a specific contract is set depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

- F. SCDOT ensures that the DBE program continues to be narrowly tailored to overcome the effects of discrimination by adjusting the overall agency contract goals as applicable. Contract specific goals are not adjusted once awarded.
- G. SCDOT submits a three year analysis report for DBE Awards, Commitments and Payout to operating administration annually. The report identifies the overall goal achievements breakout of race neutral and race conscious categories by federal fiscal calendar year.

IV. Good Faith Efforts (26.53)

On a contract with a DBE goal, SCDOT or its sub-recipient, will award the contract only to a bidder that has met or made a good faith effort to meet the goal. (Attachments 12 & 15)

Contract provisions located at www.scdot.org will include the following elements to establish a bidder's good faith efforts:

- A. Bid Proposal Documentation. For each solicitation in which a DBE goal has been established, the bidder will be required to provide information with its bid indicating how it intends to fulfill the goal. The submission of this information will constitute a commitment by the bidder to utilize the listed DBEs for the work and quantities subject to the provisions of the contract. SCDOT generates project committal sheets. Copies of the signed statements must be submitted to SCDOT Contract Administration Office within four (4) business days of the bid letting from the apparent low bidder. Should the apparent low bid be rejected for failing to meet the goal, the next apparent low bidder will have three (3) business days from notification to submit the signed quotes. (Attachment 15)
- B. Demonstration of Good Faith Efforts. If the determined low bidder does not provide sufficient evidence with its bid to support meeting the DBE goal, the bidder may submit additional information to show that it has made a good faith effort to meet the goal. This information must be furnished to SCDOT Contract Administration Office in writing within three (3) business days of the bid letting. If the additional information is submitted, SCDOT will consider the information to determine whether a good faith effort has been demonstrated, using the factors found in Appendix A to 49 CFR 26.

This determination shall be made by a Good Faith Efforts Review Committee, composed of representatives from the following SCDOT offices: Division of Minority & Small Business Affairs, Construction, Preconstruction, and Contracts Administration offices. A representative from the Federal Highway Administration Division

Office shall serve as a non-voting member of the Committee. After the Committee makes its determination, SCDOT will notify the bidder, in writing, of its determination.

C. Administrative Reconsideration. The bidder may request a reconsideration of SCDOT's determination of good faith efforts within two (2) days of its receipt of the determination. SCDOT will designate an official who did not take part in the original determination to reconsider the determination. The bidder will have the opportunity to present written documentation to and/or a face-to-face meeting with the reconsideration official to discuss the bidder's good faith efforts. After the reconsideration official has heard the matter, SCDOT will provide a written decision on the reconsideration and explain the basis for its final determination within forty-eight (48) hours. This determination is not administratively appealable to the USDOT.

D. Good Faith Efforts - DBE Replacement on a Contract. When a Contractor has obtained SCDOT's permission to replace a DBE on a contract, the Contractor will be required to make a good faith effort to replace the DBE with another DBE firm. (Attachments 12 & 15)

V. Set-Asides or Quotas (26.43)

A. Federal guidelines prohibit the use of quotas on DOT assisted contracts. SCDOT is allowed to use set-aside contracts in its state DBE contracting programs as provided in S. C. Code Section 12-28-2930 (2000).

B. Any firm certified as a DBE and pre-qualified by the Director of Construction as a prime contractor may bid on set-aside projects. Goals are established by race neutral means, (i.e., 5% woman owned business and 5% minority owned business) and is monitored by the Director of Construction for program compliance and goal attainment. The Division of Minority & Small Business Affairs provides technical assistance as needed for this program.

C. Set-aside projects are identified by the Letting Preparation Engineer and concurred with by the Director of Construction, or his designee, based on project size, type of work to be accomplished, the number of certified DBEs pre-qualified to bid on projects, location of work being performed, and overall value of the contract as outlined under State Regulations 63-707. (Attachment 13)

VI. Transit Vehicle Manufacturers (26.49)

The SCDOT will require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurement, to certify that the TVM has complied with the requirements of the TVMs' DBE program goal. Alternatively, SCDOT 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. (Attachment 14)

COMPLIANCE, ENFORCEMENT AND RECORD KEEPING

I. Contract Assurances (26.13)

SCDOT will ensure that assurances are included in USDOT assisted contracts between the prime contractor and subcontractor. The contract agreement is located at www.scdot.org. SCDOT choose option 2, assessing sanctions to the prime contractor as applicable for non-compliance of contract agreement. (Attachments 15)

A. Each financial assistance agreement SCDOT signs with DOT operating administration will include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of the DBE program or the requirements 49 CFR part 26. SCDOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

B. Each contract SCDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SCDOT deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

II. Record Keeping Requirements (26.11)

A. Uniform Report – SCDOT will transmit the new Uniform Report of DBE Awards/Commitments and Payments to Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) in accordance with the December 2014 regulations. The report will be submitted to both federal Departments in a timely manner as required by June 1st and December 1st annually. (Attachment 16)

B. SCDOT will continue to provide data about the DBE Program to the federal Departments as directed by DOT operation administrations.

C. SCDOT maintains a list of Primes and Sub Contractors who attempt to obtain work on federally assisted contracts.

- (1) The purpose of this list is to obtain as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts for use in helping SCDOT to set the agency's overall FHWA goals.
- (2) SCDOT maintains information on prime contractor bidders containing the information outlined below:
 - (i) Firm name;
 - (ii) Firm address;
 - (iii) Firm's status as a DBE or non-DBE;
 - (iv) Age of the firm; and
 - (v) The annual gross receipts of the firm.
- (3) SCDOT acquires information for bidders in a variety of ways by collecting data from all prime contractors during the bidding and award process. SCDOT's Director of Construction Office updates information monthly on Prime contractors who bid on federally-assisted contracts and all contracts awarded to Primes and subcontractors. In addition, SCDOT conducts surveys to determine whether DBE subcontractors quote on federally assisted contracts in conjunction with the Goal Setting Methodology Process.

D. SCDOT maintains records documenting a firm's compliance with the record keeping requirements. At a minimum, SCDOT will keep a complete application package for each certified firm, all "No Change" Affidavits, change notices, and on-site reviews. These records are retained in accordance with SCDOT's applicable record retention requirements for financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer. (Attachment 16)

DBE certification applications and supporting documents are maintained in accordance with SCDOT's records retention schedule. Documents are destroyed seven (7) years from the certification file closed date. Effective June 1, 2015, all applications and supporting documents are scanned to digital files, stored on the agency's server and maintained indefinitely based on space availability. The certification documents will remain confidential within the agency based on SCDOT's Privacy Statement "Limiting

Access to Personal Identifiable Information” located at www.scdot.org. In addition, SCDOT’s employees sign a Confidentiality Memorandum relevant to DBE documents annually.

E. The State department of transportation in each UCP established pursuant to 49 CFR Part 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals (Attachment 16)

SCDOT compiles the percentage and location of certified DBE firms in the state data annually in December. The data is reviewed and analyzed to generate the MAP-21 report. SCDOT submits a cover letter summarizing the data along with the MAP-21 Report to FHWA per 49 CFR 26.11 no later than January 1st of each calendar year.

III. Monitoring DBE Participation (26.37)

A. SCDOT will implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under federal, state and local laws). SCDOT will set forth these mechanisms in the DBE Program. (Attachment 15)

SCDOT implemented quarterly reporting mechanisms to capture DBE participation on all contracts to comply with federal regulations. The DBE Quarterly Reports and DBE Status Spreadsheet documents are utilized to ensure compliance with project monitoring. (Attachment 17)

B. The DBE Program will also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism will include a written certification that contracting records have been reviewed and work sites have been monitored for DBE participation. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

In conjunction to the DBE quarterly reporting documents, SCDOT compiles a summary report of all projects monitored during each year. This report will be due on January 1st and July 1st to FHWA. (Attachment 18)

- C. SCDOT utilizes a DBE Summary report to track a running tally of DBE attainments for contract awards, committals, and actual payments throughout the course of a project. The DBE Summary report is generated along with each DBE quarterly report. This report serves as a mechanism for tracking and monitoring contract goal attainment in comparing commitments to actual payments and Race Conscious and Race Neutral participation to DBEs. (Attachment 17)

SCDOT's primary intent is to ensure that every effort is put forth to meet the DBE contract goal to prevent the need to demonstrate a GFE on the project. Prime contractor notifies SCDOT throughout the life of the project as soon as possible if any issues arise with DBE participation that could affect goal attainment. Applicable Good Faith Efforts justification documents are submitted at time of event and/or along with quarterly reports. Upon project completion, the Prime contractor submits a summary report regarding Good Faith Efforts when commitments have not been attained on the project. SCDOT prepares a DBE Closeout Request packet to include identification whether the project goal attainment has been met or not met along with the GFE summary memo. Contract goals are not adjusted after project award or project closeout. (Attachment 17 & 18)

The agency utilizes Project Compliance Tracking System (PCTS) and Web-Transport software to track the state/federal funding split on every contract. The software maintains contract goals, awards, committals, and payment data made to all prime/subcontractors and identifies DBE participation for every project. This data is prepared to report only federal share on the Uniform Report of DBE Commitments/Awards and Payments.

- D. SCDOT will monitor DBE participation on all federally assisted contracts. Factors used to identify projects for monitoring include but are not limited to:

- 1) Contract Amount
- 2) Percentage of DBE participation
- 3) Previous problems or issues of concern with DBE subcontractors
- 4) Previous problems or issues of contracts with prime contractors
- 5) Other factors (i.e., location, length of time, etc.)

- E. SCDOT will include the following provision/sanctions in all its federally assisted contracts with DBE contract goals:

The Contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE or by other forces (including those of the Contractor) pursuant to prior written authorization of the Director of Construction. Failure to meet the DBE goal or demonstrate good faith efforts to meet the goal may result in one or more of the following sanctions:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions in the amount of the difference in the DBE contract goal and the actual payments made to certified DBEs;
- 3) Disqualifying the Contractor from bidding; and/or
- 4) Declaring the Contractor in default for material breach of the contract

F. Where a Contractor fails to meet or make good faith efforts to meet the DBE goal on a contract, SCDOT uses the discretion as Deem appropriate in accordance with the regulation and items outlined in the DBE Supplemental Specifications located on SCDOT's website at www.scdot.org.

G. SCDOT will bring to the attention of the U. S. Department of Transportation (USDOT), through the South Carolina Division Office of the Federal Highway Administration, any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take such steps as it deems appropriate (e.g. referral to the Department of Justice for criminal prosecution, referral to DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules and as provided in 49 CFR 26.107). The SCDOT also will consider similar action under its own legal authority, including disqualification procedures and responsibility determinations in future contracts.

IV. Prompt Payment Mechanisms (26.29)

SCDOT will include prompt payment provision in every contract and assurance that prime contractors include such provision in subcontracts located at www.scdot.org. This is applicable to all subcontractors, including DBEs. SCDOT enforces a Prompt Payment Bond clause for Prime contractors in every contract. (Attachment 15)

A. SCDOT will establish, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment made to the prime contractor.

B. SCDOT will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. SCDOT will use Option #2 of to comply with this requirement:

SCDOT may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed.”

- C. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

SCDOT employs various methods to monitor prompt payment requirements that include direct complaints, on-site questioning during CUF reviews (section V), and project completion processes.

SCDOT utilizes a “Project Completion and Acceptance Form” for every project. This form is completed by the RCE and submitted to the DEA and DOC for final review. (Attachment 19)

- D. SCDOT’s DBE program will provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which are set. SCDOT’s DBE program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with SCDOT’s prior written approval. The Prime will provide updates monthly regarding pending disputes.

SCDOT utilizes a “Final Estimate Form Concurring Construction Work Acceptance” for every project. This form is completed by the Prime at the end of the project. The RCE reviews and sign as appropriate for final submission to the DOC. The Affidavit Form 67 verifies that Prime has paid every subcontractor worked on the project in accordance to the Prompt Payment Clause. (Attachment 19)

- E. SCDOT may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

SCDOT selects Option 2 and includes a clause in all its federally-assisted contracts to require prime contractors to pay subcontractors who have satisfactorily performed work on the contract within seven (7) days of the prime contractor's receipt of payment for the work from SCDOT. SCDOT will not ordinarily withhold retainage from its prime contractors. However, if prime contractors withhold retainage from their subcontractors, SCDOT will require the prime contractor to return the retainage to the subcontractor within seven (7) days of the subcontractor's satisfactory completion of all of the items of work of the subcontract. (Attachment 19)

The Prime contractor certifies Prompt Payment compliance in accordance with SCDOT's Supplemental Specifications by signing the Contractor Concurrence (for each Estimate) which includes the following statement:

"Process this estimate as it is and addresses any exceptions as listed above in the next construction estimate for this contract. Also, I certify that all sub-contractors have been paid for work covered by previous estimate according to the "prompt payment clause" located in Supplemental Specifications dated July 26, 2016."

SCDOT may impose any one of the four (4) sanctions listed in "E" as a means to enforce compliance with the prompt payment provisions.

V. Counting DBE Participation (26.55)

- A. Contract data for DBE participation shall be counted and reported on the federal New DBE Uniform Report of DBE Awards/Commitments and Payments as required by the November 2014 regulations. SCDOT tracks race neutral and race conscious participation separately.
- B. When a DBE participates in a contract, SCDOT will count only the value of the work actually performed by the DBE toward DBE goals. Joint Venture contracts will be tracked via DBE quarterly reports identifying appropriate DBE participation on the project.
- C. SCDOT tracks Commercial Useful Function (CUF) participation on the Project Site Review CUF form. These reports are submitted along with the DBE quarterly reports.
- D. CUF monitoring conducted by staff from the Division of Minority & Small Business Affairs and/or Director of Construction includes

interviews of contractor and SCDOT personnel on the jobsite., review of invoices for materials, payroll, hauling tickets, vehicle/truck ownership or lease agreements and queries on payment issues.

- E. A DBE trucker may subcontract a portion of its work to a non-DBE trucker and count toward the DBE goal the value of the transportation services subcontracted, but only to the extent the DBE trucker has provided transportation services on the same contract with its own trucks. This information is calculated using the Trucker's Report, shared at Pre-construction partnering meetings and other annual trainings. No Trucker's plan is required by SCDOT. (Attachments 17)
- F. SCDOT will count expenditures with DBEs for materials or supplies toward DBE goals as outlined in 49 CFR Part 26 regulations and in SCDOT's Supplemental Specifications. (Attachment 15)
- G. Regular Dealers, SCDOT only counts expenditures with DBE's who are bonifide dealer/supplier as described in 49CFR 26.55. Firms determined to be regular dealers, including bulk dealers, will be identified in the SCUCP DBE Directory. (Attachment 4)
- H. SCDOT counts contract awards and commitments during the Good Faith Efforts (GFE) panel review. This process is completed at contract award to the Prime Contractor. (Attachments 16, 17 & 19)
- I. SCDOT does not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal. This process is reconciled monthly at time of new committal/contract awards and at time of processing DBE quarterly report documents. (Attachment 15)
- J. DBE participation will be credited toward the DBE program only when payment to a certified DBE is actually made and validated by SCDOT on the DBE quarterly report documents. CUF performed work and payments are reported quarterly along with the DBE quarterly reports. The agency uses its current Project Compliance Tracking System (PCTS) to track payments to the DBEs on each project. This system creates a DBE Summary Report of firm's participation captured from the DBE quarterly reports. The PCTS also creates a subcontractor file for each DBE approved to perform work to be counted towards the DBE goal. This file will track actual payments to DBEs on a quarterly basis. It includes the type work to be performed, start and finish dates, amounts committed, and provides for a status of each DBE's progress at any time during the life of the project. The PCTS has a data file for maintaining unreported payments, and is capable of providing status reports on individual contractor and subcontractor files. (Attachment 17 & 19)

VI. Monitoring Payments to DBEs

- A. Contractor Records. SCDOT requires all Resident Construction Engineers (RCEs) and Program Managers to maintain records and documents of payments to DBEs for three (3) years following the completion of the contract. These records will be made available for inspection upon the request of any authorized representative of the SCDOT or USDOT.

- B. SCDOT Records. SCDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This tally will be based upon the Quarterly Reports submitted by the contractors.

- C. Procedures For Processing DBE Quarterly Reports. DBE Quarterly Reports are submitted to the Division of Minority & Small Business Affairs office throughout the state from the Resident Construction Engineers (RCEs). This document validates payment to the DBE based upon their signatures. The data is entered into appropriate software tracking systems. The detailed process for DBE quarterly reports are outlined as an attachment with the quarterly report form. Data from the quarterly reports are used to investigate complaints of nonpayment or discrepancies in payment; to reconcile the project for DBE closeout and include data on the Uniform Report of DBE Awards/Commitments and Payments.

- D. Interim Audits. SCDOT may perform interim audits of contract payments to DBEs. The audit may review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the Quarterly Reports.

BUSINESS DEVELOPMENT & MENTOR PROTEGE

I. Business Development Programs (26.35)

SCDOT provides DBE business development programs to assist firms in gaining or strengthening their ability to compete successfully in the marketplace within and outside the DBE program. The program has the following components, better known as the “Supportive Services Program”:

- A. The Education & Training Services Program is designed to provide business development assistance to eligible DBE’s and selected contractors seeking certification to do SCDOT work through activities designed to improve communications, profitability, company capacity, etc. (Attachment 20)
- B. The Entrepreneurial Development Institute (EDI) is an annual training program, designed to enhance the development of DBEs. This program provides in-depth developmental training on road and bridge building principles, productivity, and business capacity/depth. (Attachment 20)
- C. The DBE Business and Technical Assistance Program is designed to expand the participation by small and disadvantaged businesses in SCDOT's pre-construction, construction and mass transit (includes, but may not be limited to, road and bridge building and building renovation) programs. It provides management and technical assistance to eligible firms including preconstruction and construction engineering assistance, outreach activities, bonding and financial management assistance. (Attachment 20)
- D. The purpose of the Mentor-Protégé Program (MPP) is to establish a link between businesses certified under the SCUCP, successful professional service providers, and general contractors who contract with the SCDOT on highway design/ engineering and construction projects. The program is sponsored by SCDOT in coordination with the FHWA and is designed to build a more effective, competitive and diverse pool of contractors capable of bidding on future projects. (Attachment 21)
- E. Outreach services that are also offered to DBE certified contractors include: Orientation, USDOT Short Term Loan Program, Training Tuition Assistance Program, Financing & Bookkeeping Analysis, and special programs such as Business Development Program and a Mentor-Protégé Program (MPP).

II. Overconcentration (26.33)

If SCDOT determines that DBE firms are overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, SCDOT devises appropriate measures to address this overconcentration. SCDOT will assert that any allegations or determinations of overconcentration shall be forwarded to the Operating Administrator (FHWA local) for consultation.

CONFIDENTIALITY

I. Confidentiality (26.109)

- A. SCDOT safeguards from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, SCDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter, unless required to do so by Court order. SCDOT obtains official documents of identification from USDOT agent unless request is via electronic process and confirmation with a telephone call to the USDOT office. If requestor visits office, SCDOT makes copies of appropriate identification(s) prior to discussion or release of documents.

- B. SCDOT advises staff in office meetings the importance of confidentiality of documents. Records are maintained and files are locked at all times when not in use. SCDOT has a Privacy Statement located at www.scdot.org and staff signs an annual confidentiality memo document generated by the manager. (Attachment 22)

ADDITIONAL INFORMATION, GOALS & ACCOMPLISHMENTS

- I. Noncompliance Complaints (26.103)
Any person who believes that the SCDOT has failed to comply with its obligations under the DBE program may file a written complaint to the Federal Highway Administration, Office of Civil Rights, 1200 New Jersey Avenue, SE, 8th Floor, Room E81-324, Washington DC 20590.
- II. Impact on DBE by FHWA Order 4470.1A
SCDOT Procurement Policy memorandum dated February 2, 2011 implementing FHWA Order 4470.1A. (Attachment 23)
- III. Small Business Enterprise (SBE) Program (26.39)
SCDOT developed the SBE Program document in accordance with the new rule 49 CFR Part 26.39, **Fostering small business participation**. The approved SBE document is included as a part of the DBE Program Document. SBE application is located at www.scdot.org (Attachment 24)
- IV. DBE Program Major Accomplishments & Goals
July 1, 2017 - June 30, 2019 accomplishments for the DBE Certification and Reporting Units (Attachment 25)