



*Office of the Chief Internal Auditor*

## ***Audit Report***

*South Carolina Department of Transportation  
Disadvantaged Business Enterprise (DBE)*

*December 4, 2014*

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**Office of the Chief Internal Auditor  
Disadvantaged Business Enterprise (DBE)**

July 14, 2014

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# ***Transmittal Letter***



**Office of the Chief Internal Auditor**

December 4, 2014

Commission of the South Carolina Department of Transportation

The Honorable Lawrence K. Grooms, Chairman  
South Carolina Senate Transportation Committee

The Honorable Hugh K. Leatherman, Sr., Chairman  
South Carolina Senate Finance Committee

The Honorable Bill Taylor, 1st Vice Chairman  
South Carolina House Education and Public Works Committee

The Honorable W. Brian White, Chairman  
South Carolina House Ways and Means Committee

Dear Gentlemen:

**RE: SCDOT Disadvantaged Business Enterprise Audit**

The Office of the Chief Internal Auditor has completed a Disadvantaged Business Enterprise Audit in accordance with Section 57-1-360. On November 3, 2014, we communicated our preliminary review results with the Agency. Based on our draft report dated July 14, 2014 the Office of the Secretary of Transportation submitted its response to our office regarding the audit findings. The response is accompanied to the attached draft report.

We conducted this audit in accordance with Generally Accepted Governmental Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a responsible basis for these findings and conclusions.

We appreciate your support to our office. If you have any questions or comments regarding this report or this review process, please don't hesitate to contact me at (803)737-1151 or via email: [townespb@scdot.org](mailto:townespb@scdot.org).

Respectfully submitted,

Paul B. Townes, CPA  
Chief Internal Auditor  
Office of the Chief Internal Auditor

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# ***DBE Audit Report***

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**Audit of Disadvantaged Business Enterprise (DBE)**

**Office of the Chief Internal Auditor**

**July 14, 2014**

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## **Executive Summary**

### **Background**

The federal government requires the state and local governments to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they receive U.S. Department of Transportation (USDOT) funds. In 1983, the DBE statutory provision was first enacted by Congress and was then reauthorized and amended (with the addition of women into the DBE program) in 1987. Under the federal DBE program, a certified DBE firm must be a small business owned and controlled by socially and economically disadvantaged individuals and meets the following conditions:

- 1) Small Business – Any firm whose average annual gross receipts over three years do not exceed \$22.41 million (the limit can be lower for certain lines of business).
- 2) Economic Disadvantage - The eligible owner(s) cannot have a Personal Net Worth (PNW) that exceeds \$1.32 million. PNW does not include the value of equity in the business and in the primary personal residence.
- 3) Socially Disadvantaged - The owner of the firm must belong to one of the following classes of individuals:
  - *Black American*
  - *Hispanic American*
  - *Native American*
  - *Asian-Pacific American*
  - *Subcontinent Asian American*
  - *Women of any race or ethnicity*
  - Any other group as designated by the Small Business Administration (SBA)

In 1986, the South Carolina General Assembly enacted legislation that required the South Carolina Department of Transportation (SCDOT) to ensure that not less than ten percent (10%) of the state source highway funds must be spent on direct contracts with minority and women owned firms. See S. C. Code Section 12-28-2930. In response to this legislation, SCDOT implemented the State DBE Program (also referred to as the “State Set-Aside Program”). SCDOT promulgated regulations to govern the State DBE program, which are found in S.C. Code of Regulations 63-700, et seq. SCDOT uses the certification standards set forth in the Federal DBE Regulations, which can be found in 49 CFR Part 26, for its State DBE program. As of March 11, 2014, 690 DBE firms have been certified by the Unified Certification Program (UCP) at SCDOT.

### **Audit Objectives**

Pursuant to 49 CFR §26.37, the Office of the Chief Internal Auditor (OCIA) conducted an audit of the SCDOT Disadvantaged Business Enterprise (DBE) program. The audit objectives were: (1) to determine whether the SCDOT DBE program complied with the federal and state requirements, (2) to ensure that the program was operating efficiently and effectively, and (3) to provide constructive suggestions for further improvement of the SCDOT DBE program.

### **Scope and Methodology**

The audit focused on the DBE program at the present time, sampled data from 7/1/2011 through 6/30/2013. The methodology of this audit included documentation review, staff interviews, data testing, operation walkthrough, and observation at either on-site or in-house whenever suitable. In-depth review included the following DBE functional areas: the Office of Business Development and Special Programs in the Division of Support Services, the Division of Construction, the Division of Pre-construction, the Resident Construction Engineers Offices (at Districts 3, 6 and 7), and the Department of Professional Services Contracting. The auditor also contacted the SCDOT Legal Office, Department of Finance, and Office of Budget.

During this audit engagement, 140 prime contractors and 290 DBE firms were surveyed by two differently tailored survey questionnaires. Seventy-Nine firms returned completed surveys, 30 firms participated in either phone or face-to-face interviews.

USDOT DBE program officials and the Federal Highway Administration (FHWA) Division Offices and the South Carolina State Budget and Control Board Office were contacted for guidance. In addition, the auditor contacted the DBE program staff of the other 49 states, the District of Columbia, and Puerto Rico to obtain comparative information related to DBE issues.

### **Abstract of Audit Recommendations**

The audit report is divided into seven sections according to the functional areas in which the DBE program is carried out by the management team and staff at SCDOT. The following recommendations are listed by functional areas:

- I. Audit recommendations to the area of setting the agency's overall DBE goal:**
  1. Strengthen the determination of "the number of ready, willing, and able DBEs" in setting the overall agency's DBE goal.
  2. Remove the 17.5% DBE goal cap and reduce DBE contract goals where fewer DBEs possess the requisite skills or are present near project site locations.
  3. Provide and utilize DBE geographical information to optimize goal setting.
  4. Sustain a collaborative environment in SCDOT to enhance stewardship relationships with its contractors/consultants.
- II. Audit recommendations to the area of DBE certification:**

5. Enhance the accuracy and completeness of the review and analysis for DBE certification applications.
6. Create a system that closely tracks whether a DBE submits its affidavit and supporting documentation annually to update its DBE certification.
7. Conduct an on-site revisit to DBEs for certification update on a sampling basis.

**III. Audit recommendations to the area of Business Development Center (BDC):**

8. Facilitate connections between DBEs and prime contractors proactively.
9. Resolve the issue of low attendance at training events by DBEs.
10. Admit more qualified DBEs into the Business Development Academy Program.
11. Improve the Mentor Protégé Program (MPP).

**IV. Audit recommendations to the area of DBE Reporting and Contract Assurance:**

12. Provide periodic training to DBE prime contractors and subcontractors about how to properly complete DBE quarterly reports in a timely fashion.
13. Monitor the DBE expenditure for professional engineering consulting services.
14. Utilize DBE reports as a protocol to facilitate the DBE contract management.

**V. Audit recommendations to the area of Division of Construction and Resident Construction Engineer (RCE) Offices:**

15. Consider taking a proactive approach to addressing underperforming DBE subcontractors.
16. Provide marketing information to increase job opportunities for DBE subcontractors.

**VI. Audit recommendations to the area of Professional Services Contracting:**

17. Increase the award of evaluation points from the current 5% to 10% of the overall score for a professional consulting proposal including DBE sub-consulting services.
18. Consider including the race-conscious DBE contract goal on contracts with subcontracting possibilities, including those involving professional services.
19. Establish a follow-up procedure requiring a good faith effort to prime consultants.

**VII. State Funded DBE Program**

20. Recommend revision to the State Set-Aside Program: consider looking at the feasibility of adding a goal-based (subcontracting) component to the state's current set-aside law.

**Conclusion:**

Per our review, the SCDOT DBE program is in general compliance with federal requirements. During this audit process, opportunities for strengthening internal controls and operational efficiency were identified. The observations addressed in this report were not issues, but rather opportunities for improvements. Therefore, we recommend that SCDOT senior management and applicable divisions review the recommendations for future enhancement.

### **I. Setting the Agency's Overall DBE Goal**

Among other things, U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) regulations require recipients, state and local transportation agencies, to establish narrowly-tailored overall DBE program goals. In 2003, according to 49 CFR §26.45, the SCDOT Office of Chief Counsel initiated the framework and methodology in setting SCDOT's overall DBE goal for Federal Highway Administration (FHWA) funds. Since 2009, the Office of Business Development & Special Programs in the Division of Support Services has set the overall DBE goal. The overall DBE goal of federal highway funds was established through the following steps:

**Step one: Determine the Base Figure** – The Base Figure is determined by the ratio of the number of DBE firms to the number of all contractors who have submitted a bid or quote for a SCDOT contract at least once in the past three years:

$$\frac{\text{Ready, Willing, and Able DBEs}}{\text{All Firms Ready, Willing and Able (Including DBEs and non-DBEs)}}$$

**Step two: Adjust the Base Figure** - The key in step two is to come up with a more appropriate ratio for DBE expenditures in SCDOT highway projects. Because the base figure reflects only the raw number of firms, the base figure must be adjusted to account for capacity of the firms to actually perform work in SCDOT's contracting program. Under the current methodology, "capacity to perform work" is measured by the amount of work that firms have performed in the past in the SCDOT contracting program, expressed in the following ratio:

$$\frac{\text{Expenditures to DBEs on Closed Projects}}{\text{Expenditures to Contractors on all Closed Projects (Including DBEs and non-DBEs)}}$$

The methodology also considers opportunities for DBEs to perform in future contracts by determining what kinds of contracts will be awarded and the areas of work that will be performed in those contracts. The DBE ratio in the different categories of contracts (e.g., bridge, resurfacing, pavement, etc.) is different since DBE firms may have less of a presence in some of these categories. Therefore, the base figure is weighted by the ratios of each of the categories.

**Step three: Overall DBE goal = Race Conscious goal + Race Neutral goal**

The overall agency’s DBE goal is expressed in two components: the race-conscious DBE goal and the race-neutral DBE goal. The established SCDOT overall DBE goals for FHWA funds from federal fiscal year (FFY) 2003 to 2013 are listed below:

**Table 1**

FFYs	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Race Conscious	8.0%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%	7.8%	7.8%
Race Neutral	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%	3.2%	3.5%	3.5%	3.7%	3.7%
Overall DBE Goal	10.5%	10.5%	10.5%	10.5%	10.5%	10.5%	10.7%	11.0%	11.0%	11.5%	11.5%

Federal regulation requires that recipients keep track of both the agency’s DBE “commitments” and “achievements” (payouts) “to have a mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs.” (Section 26.37(b)) SCDOT reports its federal highway funds for DBEs through contract commitments and payouts to FHWA semiannually.

It is crucial to note that the information between Table 2, Commitment to DBEs, and Table 3, payouts to DBEs, is incomparable. The commitment data reflects what the agency expects to spend on DBEs during the term of the contracts that are performed over varying periods but are let in the listed year. The payout data are the total payments made over multiple years from contracts awarded over different years but closed in the listed year. Thus, this difference in time frames results in that data of commitments and payouts do not reflect the same contracts.

Any amount of commitments exceeding the assigned contract’s DBE goal is counted as race-neutral to DBEs. Whereas, the race-neutral DBE payouts include either the expenditures paid to DBEs exceeding the assigned contract goal or the DBE expenditures incurred in a contract without a DBE goal.

**Table 2**

Commitment to DBE							
A Fiscal Year	B Commitment To DBE	C Race-Conscious Commitment	D Race-Neutral Commitment	E Commitment To All Contracts	F = C/E Race-Conscious to DBE	G = D/E Race-Neutral to DBE	H = B/E Total Commitment to DBE
2011	\$ 80,408,474	\$ 75,844,314	\$ 4,564,160	\$ 487,617,771	15.6%	0.9%	16.5%
2012	\$ 40,136,810	\$ 27,009,964	\$ 13,126,846	\$ 300,056,904	9.0%	4.4%	13.4%
2013	\$ 59,581,993	\$ 15,245,804	\$ 44,336,189	\$ 361,693,807	4.2%	12.3%	16.5%
Total	\$180,127,277	\$118,100,082	\$62,027,195	\$1,149,368,482	10.3%	5.4%	15.7%

Data from Table 2 demonstrates that the SCDOT DBE goal performance by contract commitments has been continuously exceeding the agency’s overall DBE goal (11.5%) from 2011 through 2013. The three-year average commitment to DBEs at contract letting was 15.7% (Col. H). It also depicts that the DBE goal performance through race-neutral means has been consistently increasing during the same time period.

**Table 3**

Payout to DBEs							
A Fiscal Year	B Total Actual Payment to DBE	C Race-Conscious Actual Payment	D Race-Neutral Actual Payment	E Total Contracts Actual Payment	F = C/E % of Race- Conscious to DBE	G = D/E % of Race-Neutral to DBE	H = B/E % of Overall Actual Payment to DBE
2011	\$ 36,465,350	\$ 25,934,088	\$ 10,531,262	\$ 362,380,160	7.2%	2.9%	10.1%
2012	\$ 40,625,067	\$ 23,171,935	\$ 17,453,132	\$ 307,553,307	7.5%	5.7%	13.2%
2013	\$ 25,070,459	\$ 17,333,126	\$ 7,737,333	\$ 252,151,815	6.9%	3.1%	9.9%
TOTAL	\$102,160,876	\$66,439,149	\$35,721,727	\$922,085,282	7.2%	3.9%	11.1%

Data from Table 3 reveals that the three-year average contract payout to DBEs through race-neutral means was 3.9% (Col. G), which exceeded the overall agency’s DBE race-neutral goal of 3.7%.

A comparison between South Carolina and other southeastern states in 2013 indicated that SCDOT’s overall DBE goal was above the median:

**Table 4**

State	Agency Overall Goal	Race-Conscious Goal	Race-Neutral Goal
Georgia	15.0%	10.0%	5.0%
North Carolina	14.7%	11.7%	3.0%
South Carolina	11.5%	7.8%	3.7%
Mississippi	9.7%	4.1%	5.6%
Alabama	9.5%	4.4%	5.1%
Florida	8.6%	N/A	8.6%
Kentucky	8.5%	5.5%	3.0%
Tennessee	7.6%	5.7%	1.9%

This audit demonstrated that SCDOT’s DBE goal achievement was the result of combined efforts provided by the Office of Business Development and Special Programs, the Division of Construction, the Division of Preconstruction, the Resident Construction Engineer Offices, the Professional Services Contracting, as well as SCDOT contractors, including DBEs. Supportive

services to the DBE program were provided by the Office of Chief Counsel and the Department of Finance.

### **Observation 1**

Based on discussions with resident construction engineers (RCEs) at district offices and observations at the project sites, we noted that finding reliable DBE subcontractors to fulfill contracts in order to meet the DBE goal is sometimes challenging for prime contractors. More than 50% (14/26) of prime contractors, who answered our survey questions concerning their DBE subcontractors, indicated that they experienced a “lack of qualified DBE subcontractors” to perform contract obligations because “some of the DBE subcontractors do not have the resources or expertise to perform the work they quote.” Our review revealed that it is an essential process of setting a more appropriate ratio that accurately reflects the maximal feasibility of available and capable DBEs to successfully complete SCDOT projects.

We noted that currently, the Business Development and Special Program makes extensive efforts to set up the agency DBE goal for the period of FFY2015–2017. Staff documents the validity, reliability, and feasibility of the DBE data to ensure that sufficient and objective analyses and reviews are utilized in calculating the overall DBE goal.

### **Recommendation 1**

We recommend strengthening Step One; Determine the Base Figure in setting the overall agency’s DBE goal by following the federal guidance on using “the number of ready, willing, and able DBEs” in performing SCDOT contracts. We recognize that the current method of using the bidder list to determine the base figure is acceptable per 49 CFR §26.45 (c) (2). We recommend staff revisit DBE goal setting steps by reviewing all the possible elements, which may affect the total number of realistically available DBEs.

### **Observation 2**

The overall SCDOT DBE goal is accomplished through individual contracts. Staff from the Division of Pre-construction sets the DBE goal for contracts based on the availability of DBEs for certain construction items. The proportion of dollar amount of construction items assigned to DBEs as compared to the total dollar amount of items in the contract yields the percentage of recommended DBE goal for a contract. For example, by comparing two similar contracts conducted in 2003 and 2013, we found there were four additional construction work items added to the DBE list in 2013 compared to the list in 2003. As a result, it increased the subcontract items to DBE by about 26% (4/15) for the particular contract.

Sixty-seven percent (100/150) and eighty-five percent (69/81) construction contracts closed their DBE portions in 2012 and 2013 respectively met their DBE contract goals. Based on the responses

to our survey, some prime contractors indicated that it is a challenge to meet the DBE goal in bridgework, widening/intersections, and in projects with small amounts of roadwork, where limited items can be subcontracted to DBEs. Another challenge in meeting the DBE goal was when contract quantities were under-running and the services to be provided by DBE firms were reduced from the contracts. It was difficult to utilize that firm in another area because many DBE firms specialize in specific areas.

### **Recommendation 2**

According to 49 CFR 26.51(e) (2): “You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on factors such as the type of work involved, the work location, and the availability of DBEs for the work of the particular contract.”

To increase the utilization rate of DBEs to the most feasible level where contract items match DBEs’ areas of specialization, we recommend removing the 17.5% DBE goal cap, which is currently applied to construction contracts. We also recommend reducing DBE goals for construction contracts where fewer DBEs possess the requisite skills or are present near the location of the project site. These changes will ensure that although the level of DBE goals may vary from one contract to another, at the end of the year, the amount of contract/subcontract awards to DBEs should be consistent with the overall agency’s goal.

### **Observation 3**

The physical location of available DBEs was not sufficiently considered in contract goal setting due to the lack of information. The current DBE directory is listed alphabetically and not sorted by location. Survey responses provided by prime contractors indicated that finding DBE subcontractors is a challenge because “sometimes there are only one or two DBEs in a specific area for a specific source.” The lack of DBE availability in certain locations can increase the cost to prime contractors in order to meet the contract DBE goal. For example, a prime contractor indicated they paid a DBE subcontractor \$30,000 more than they would have paid a general subcontractor due to the limited availability of DBEs at the project site location.

### **Recommendation 3**



To increase operational efficiency while utilizing DBEs, we recommend that information regarding DBE geographic location be made available to facilitate the decision-making process of assigning a DBE contract goal. This process can optimize the DBE goal setting

process to identify the availability of suitable DBEs in the project location.

#### **Observation 4**

The federal direction in setting the DBE goal is through the development of DBEs to ultimately transform a race-conscious DBE goal to a race-neutral DBE goal. Recipients “must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation” (49 CFR 26.51 (a)). One of the effective ways to achieve the race-neutral goal is to motivate SCDOT prime contractors either to exceed the limit of their DBE service contract goal or to include DBEs in their contracts, even without a DBE goal requirement. Per prime contractor feedback to our survey, there is no incentive or motivation provided by the current federal DBE program for prime contractors to go beyond the race-conscious goal of their contracts.

#### **Recommendation 4**

We recommend that SCDOT consider enhancing an environment to motivate and encourage prime contractors in accomplishing the DBE goal by race-neutral means. For example, engaging contractor/consultant participation in the DBE program by proactively enhancing communication regarding DBE program policies, procedures, and DBE goal-related information; or achieving the DBE contract goal by sustaining a collaborative relationship and stewardship with contractors/consultants. We recommend that the DBE program and other DBE program functional areas at SCDOT join the efforts of prime contractors in managing DBE subcontractors by providing efficient and effective services in accomplishing the SCDOT mission.

## **II. DBE Certification**

In order for small disadvantaged firms to participate in the DOT-assisted contracts of state and local transportation agencies, they must have been certified as a DBE. In March of 1999, the DBE Program Regulations (49 CFR Parts 26 and 23) took effect and required that all recipients of funds from the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) develop a Unified Certification Program (UCP) in each state.

SCDOT is the lead agency for the UCP in the state of South Carolina, managing all certification requests and related issues. This is accomplished by reviewing the DBE application and supporting documentation and conducting an on-site interview. From 8/31/10 through 9/1/13, a total of 263 DBE applications were approved. During the same period, 186 on-site reviews were conducted. The UCP group also provides training, monitoring, and technical assistance to DBEs on a regular basis.

### **Observation 5**

Applications for DBE certification were processed in a timely fashion with certification issued within 90 days from the date of application receipt. However, the review and analysis of financial data submitted by DBE applicants need to be enhanced and strengthened. In 10 sampled files, the auditor noted that two different measures (the adjusted and regular personal net worth (PNW) figures) were applied to an application, and one non-current tax return was used. Some clerical errors were also identified in the sampled files.

In accordance with 49 CFR 26.83 (c) (7): “(ii) you must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.” Our assessment also indicated that there may be new challenges anticipated in the review of DBE certification and analysis of financial information proposed by the Notice of Proposed Rulemaking (Vol.77.No. 173).

### **Recommendation 5**

We recommend the SCDOT DBE certification group enhance the accuracy and completeness of the review and analysis of the DBE application to fulfill the responsibilities required by 49 CFR 26.83(c): “must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.”

Based on the current resources of the certification group, SCDOT should ensure “the UCP has sufficient resources and expertise to carry out the requirements of this part” (49 CFR 26.81(a) (2)). We recommend the division evaluate whether or not the current manpower of the SCDOT UCP group is sufficient to carry out the Uniformed Certification Program for the state of South Carolina.

### **Observation 6**

Federal regulation requires that on each anniversary date of its certification, a DBE firm must provide the state an affidavit along with supporting documentation to update its financial situation and advise of any changes. This requirement is indicated in the certification letter sent to each newly certified DBE, and SCDOT sends reminders of this requirement 90 days prior to each DBE’s anniversary date.

The auditor reviewed 86 DBE files to verify if they had submitted the affidavits and supporting documentation to the SCDOT DBE program in order to update their DBE certifications for the year 2013. Of the 86 DBEs reviewed, 84 of them did not submit the required documentation at the time of the review when their deadlines had been past. Despite the fact that these DBEs were without the current annual affidavit and supporting documentation, potentially impairing their

qualification as certified DBEs, they were still listed in the DBE directory as of 10/25/2013, the date the auditor conducted a sampling test. This situation increased the risk that some of the DBEs may exceed \$22.41 million average annual gross receipts for the three (3) preceding fiscal years as defined by 49 CFR 26.65, while still participating in federally funded projects with DBE status.

According to 49 CFR 26.83 (j): “If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification” to demonstrate that “there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form... If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).”

### **Recommendation 6**

The SCDOT DBE program should enforce the federal requirement that each DBE must submit its affidavit and supporting document annually to ensure DBEs continually meet certification requirements. Specifically, the program should create a tracking system to closely monitor whether or not a DBE submits its affidavit and supporting document on time and evaluate if there is a change affecting the DBE’s certification status. If a DBE fails to meet this requirement, SCDOT should follow the procedure provided by 49 CFR 26.87, removing the firm from the DBE directory to prohibit its participation in SCDOT projects under DBE status until the requirement is met.

### **Observation 7**

Currently the SCDOT DBE certification group performs an on-site visit to the DBE applicant’s offices for the purpose of DBE certification. After the DBE certification is issued, there is no on-site follow up visit by the UCP to ensure that the DBE continues to be qualified as originally certified. Based on the information obtained, a few DBEs were unable to perform their subcontracts, either due to the lack of technical skills or the necessary equipment. Consequently, RCEs and prime contractors have to re-train the DBE in order for them to complete the job. One prime contractor indicated he had to remove the work done by a DBE and re-do it in order to meet the quality requirement of the project. Another instance was reported by RCEs where a DBE possessed neither the necessary equipment (truck), nor the financial qualifications to rent the equipment needed to perform the contract (hauling).

We also learned that in a three-year period, between 01/01/2010 to 01/01/2013, there were only five (5) DBE firms, less than 1%, that had “graduated” from DBE status. Some DBEs had been certified and stayed on DBE status for more than two decades, despite the fact they received relatively large dollar amounts in projects each year. Per DBE survey responses, about 16% of

DBEs (7/44) received 25 or more projects in the past three-year period. Among that 16%, more than one-third (3/7) received more than 50 projects during the three-year period.

Under 49 CFR 26.37 (b) it states: “Your DBE program must 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.” Further, 49 CFR 26.83 (h) states: “Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87..... you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility.”

### **Recommendation 7**

We recommend that on a risk-based selection, UCP should conduct an on-site visit of DBEs for certification update after the DBE has been certified for three years and is continually conducting projects with SCDOT. An on-site visit to DBE construction sites helps ensure that the DBE meets certification requirements in performing the job for which it has been certified. This procedure also minimizes the risk that firms exceeding the DBE financial threshold (\$22.1 million of gross receipts for a three-year period) still remain in the DBE program.

### **III. Business Development Center (BDC)**

The Business Development Center (BDC) is an essential part of the federal and state DBE Supportive Services (DBE/SS) programs at SCDOT. The objective of the BDC is to offer various services to help DBEs and Small Business Enterprises (SBE) become more competitive while participating in SCDOT pre-construction, construction, and procurement-related projects. According to survey feedback, 62% (29/47) of DBEs believe that the SCDOT DBE/SS program provides customer service at a level from good to excellent. BDC services include the following categories:

- A. Special events and communication
- B. Training, financial and technical management assistance
- C. Special programs – Business Development Academy and Mentor Protégé Program

### *A. Special Events and Communication*

Each year, the BDC organizes special events for multiple purposes to benefit DBE/SBE firms. In 2013, BDC hosted the DBE Business Development Forum (DBE forum) which was concurrent with the Southern Transportation Civil Rights Training Symposium in Charleston, SC in an effort to offer DBE firms opportunities to network with those in attendance at the Symposium. Approximately 140 individuals (most of them DBEs) attended the DBE Forum. The DBE Forum included several panel discussions and training sections that covered various topics related to DBEs' concerns and needs. In conjunction with the DBE Forum, BDC also held a "DBE Business Development Outreach Event" where 10 partners, including USDOT Office of Small and Disadvantaged Business Utilization (OSDBU), City of Columbia, Small Business Administration (SBA), Office of Small and Minority Business Assistance (OSMBA), set up booths to share information with DBE/SBE firms. These activities made an effective impact on promoting DBE development and connecting with other businesses and government officials who are responsible for DBE/SBE program.

The BDC is the contact point for DBE/SBE firms to communicate with SCDOT. Based on our survey, 80% of DBEs (40/50) indicated that they are being notified of updated policies regarding the SCDOT DBE/SBE programs. About 68% (34/50) of DBEs indicated that they communicated with SCDOT on a regular basis. The SCDOT BDC regularly emails all DBE firms the following information: upcoming bid opportunities, potential prime bidder list, training and seminars, and job listings with details. To advocate DBE/SBE, the center, upon request, emails the DBE/SBE list to general contractors and suppliers/vendors to help them to locate DBE/SBEs for their need. We acknowledge that these communications effectively support and facilitate DBE/SBE firms that participate in federal and state funded programs.

#### **Observation 8:**

One of the challenges for DBE firms is making connections with prime contractors in order to gain subcontract job opportunities. Some DBEs, especially newly certified DBEs, have little or no experience in establishing connections with prime contractors. This is one of the barriers for some of the DBEs in getting the increased business opportunities that they expect. DBEs expect SCDOT to facilitate the connections between DBE subcontractors and prime contractors.

#### **Recommendation 8:**

We recommend that the BDC establish and facilitate the connections between DBEs and prime contractors by way of communication media and marketing opportunities for DBEs whenever possible. BDC should keep encouraging DBE firms to proactively establish connections with prime contractors and other non-DBE contractors to market themselves in the competitive industry.

### ***B. Training, Financial and Technical Management Assistance***

The SCDOT BDC provides various financial and technical management assistance services to DBEs through training and consulting services. Specific business and technical courses are designed and offered to DBE firms to develop performance skills that are critical to the day-to-day operation of the business. A bi-annual training catalog is disseminated to all certified firms and posted on the SCDOT website. Training courses include basic construction knowledge, SCDOT blue print reading, construction bidding and estimating, accounting and marketing techniques, and financial software (QuickBooks) training. In addition, BDC staff provides counseling services to help DBEs obtain loans and bonding. Per DBE responses to our survey, financial training and counseling services offered essential help for DBE firms since these firms are small businesses. A successful example was demonstrated in the Bonding Education Program, which conducted a one-day course per week for eight consecutive weeks. Fourteen participants successfully completed the program, among them; one firm was able to increase their bonding aggregate from \$250,000 to over \$2,000,000. The table below summarizes BDC training information.

**Table 5**

Period (by calendar year)	Number of DBE Trainings Held	Number of Attendees	Federal Funds Received From FHWA (excluding MPP and BDA funds)	Funds Spent per Attendee
2011	13	171	\$ 30,000	\$175
2012	16	213	\$117,467	\$552
2013	19	269	\$ 95,000	\$353
<b>Total</b>	<b>48</b>	<b>653</b>	<b>\$242,467</b>	

Another important service provided by the BDC is on-site technical assistance to DBE contractors. The assistance includes but is not limited to quality assessment, technical assistance, and coordination among DBE subcontractors, prime contractors, and SCDOT. There are a lot of additional assistance services that the staff provides to DBEs on the project site, which are commended by DBEs as demonstrating “a passion for going the extra mile for the DBE program.” For example, the staff serves as a liaison in disputes between DBE subcontractors and prime contractors, resolves issues where prime contractors delay payments to DBEs, provides translation and clarification of SCDOT contract documentation and bid proposals for DBE contractors who are non-English speakers, and conducts troubleshooting for any issues observed on the construction project site.

### **Observation 9**

According to the information provided by DBE training staff, DBE attendance at training classes was not as good as expected, some DBEs registered for a training class, but failed to attend. Nevertheless, we noted that the on-site, hands-on technical assistance brings the most efficient and

effective help to DBEs. During our on-site visits to construction project sites, the auditor had the opportunity to observe SCDOT staff helping DBEs resolve issues and providing technical assistance for various issues in a timely fashion. In addition, the on-site technical assistance/coordination effectively and efficiently enhanced communication among SCDOT headquarters, district offices, and DBEs.

**Recommendation 9**

We recommend the objectives of DBE training and technical assistance be achieved more creatively in order to improve DBE attendance. SCDOT staff should evaluate the possibility of on-line training courses. If practicable, hold construction related training courses at construction sites or district offices. In addition, we recommend increasing on-site visits to DBE contractors to provide one-on-one, hands-on help at the job site through consultation with prime contractors.

***C. Business Development Academy and Mentor Protégé Program***

At the SCDOT BDC, there are two federally funded special training programs: the Business Development Academy (BDA) and the Mentor Protégé Program (MPP). Both the BDA and the MPP program are sponsored by SCDOT in coordination with the Federal Highway Administration (FHWA). The purposes of the BDA and MPP program are to enhance DBE development and business growth through a customized strategic training plan to fit the needs of each individual firm.

***C1. Business Development Academy (BDA)***

**Observation 10**

Based on preset criteria, 14 DBE firms were selected to attend the BDA at the initiation of the program in 2009. The BDA training curriculum includes eight to ten classes. However, after only five classes, the BDA service was stopped in June 2011 due to several changes in staffing, departmental directives, as well as consultant changes. When training resumed in April 2013, the same BDA members selected in 2009 continued in the program with ten firms completing the program. The table below shows BDA activity for the past three years based on the information provided by the program.

**Table 6**

Period (by calendar year)	Number of BDA Training Sessions	Number of Attendees
2011	1	56
2012	1	21
2013	3	21

A total of \$116,130 federal funds have been designated for the BDA. As of November 2013, \$45,746 has been spent, equaling 39% of the total BDA fund.

### **Recommendation 10**

We recommend the BDA's function be enhanced and strengthened in order to effectively assist DBE development and business growth. More DBEs should be included in this program, and the BDA curriculum should be designed more creatively in order to fit DBE needs identified through DBE feedback. We recommend that the SCDOT BDA program proactively exercise its unique role in developing DBE business and technical skills to meet the needs of the transportation industry.

#### *C2. Mentor Protégé Program (MPP)*

Another special program in the SCDOT BDC is called the Mentor Protégé Program (MPP). The purpose of the MPP is to pair a successful contractor/service provider, experienced and familiar with SCDOT policies and practices, with a DBE seeking to become a competitive, proficient resource for SCDOT contracts. According to the MPP objective, based on the established criteria, mentors and protégés in the MPP program should be selected from contractors/service providers to extend the SCDOT contractor pool, which serves as a resource for SCDOT projects.

### **Observation 11**

The current mentor-protégé program is not available for construction contractors. Four DBE firms have been selected into the MPP program since 2009. Among these four, none are construction contractors. Three firms conduct project management, community relations, or advertising/marketing consulting services. One firm does engineering design operations. Per DBE feedback to our survey, some construction contractors want to join the MPP program and take advantage of opportunities to learn from successful mentors and connect with experienced prime contractors. Some of the engineering design firms indicated they are not clear as to how to become a part of the MPP program. Considering SCDOT has more than 100 active DBE contractors, including both construction and engineering design, we believe the current the SCDOT MPP should be enhanced to meet DBE needs.

A total of \$250,000 has been designated for the SCDOT MPP program by FHWA. As of November 2013, \$32,001 had been expended, which is less than 13% of the total available funds.

### **Recommendation 11**

We recommend that the mentor-protégé program be improved. Specifically, the program should provide a training opportunity for DBE construction contractors as well as professional engineering design contractors who are actively involved in SCDOT highway projects. The

program should take a proactive approach to achieve its goals and function more efficiently and effectively in developing DBEs into more competent and skillful contractors for SCDOT projects.

#### **IV. Reporting and Monitoring DBE Data**

The DBE reporting unit plays an important role in the SCDOT DBE program. To comply with FHWA requirements, the DBE reporting unit tracks DBE participation in federally funded SCDOT projects based on data collected by residential construction engineers and project managers. Information is compiled into the following categories: contract awards/commitments, DBE participation by ethnicity and gender, and actual payments at contract closing. Data is also compiled by different funds, for different areas, and in different periods, etc. The DBE reporting unit compiles the DBE data information and submits quarterly and semiannual reports to the FHWA for the American Recovery Reinvestment Act (ARRA) funds as well as for regular funds. From July 1, 2011, through June 30, 2012, the DBE reporting unit processed 3,377 quarterly reports. Among them, 2,425 reports were for regular funds, 730 for ARRA funds, 124 for design build, 22 for local public agency (LPA) funds, and 76 for the state fund.

##### **Observation 12**

Some DBE prime contractors and DBE subcontractors still have difficulty accurately completing the quarterly report in a timely fashion. Sometimes, RCEs have to exert extra effort to obtain the DBE payment data from prime contractors and to get the report signed by DBE subcontractors in order to meet the reporting deadline. Per the information provided by RCEs, about 20% of DBEs either delay submitting or are unclear about completing the quarterly report. Some prime contractors also indicated they have to train DBE subcontractors to correctly complete their quarterly reports.

##### **Recommendation 12**

We recommend that SCDOT reiterate to all contractors, including DBEs, the importance of correctly completing and submitting the DBE quarterly reports in a timely fashion. Any challenges by contractors to properly complete the quarterly report should be identified by on-site or off-site monitoring and promptly resolved through hands-on training by staff from the DBE program. We recommend staff from the DBE reporting program conduct introduction training at the contract letting to awarded contractors, especially to newly certified DBEs participating in federally funded projects. In addition, the training should be made available to contractors during the entire course of projects.

### **Observation 13**

At time of this audit, there was no assurance/monitoring procedure to determine if the reported DBE data for professional engineering consulting services are legitimate, accurate, and/or properly completed. Specifically, there was no control protocol to determine if the type of DBE professional consulting service was indeed certified by the Uniformed DBE Certification Unit. Further, there were no designated personnel to review the DBE expenditure data to determine if the DBE's invoice for payment matches the cost of services provided based on the project agreement.

### **Recommendation 13**

Based on the principle of segregation of duty for internal controls, a separation of job functions between monitoring and reporting for DBE expenditures is necessary. We recommend the contract assurance department develop an assurance procedure for the claimed DBE expenditure incurred for professional engineering consulting services. The review and verification will enhance internal controls for eligible DBE cost and the accountability of the reported DBE information to the FHWA.

### **Observation 14**

The DBE reporting function has the potential to be an effective protocol towards SCDOT's operational success if its results are communicated and utilized frequently. This audit revealed that managers and pertinent staff whose job functions are related to DBE operations need more knowledge about the DBE goal setting process and are not updated with the latest DBE reporting information. Therefore, they are unable to use the DBE reports and DBE goal documents as reference tools to facilitate their job functions related to the DBE program.

### **Recommendation 14**

We recommend that the DBE reporting unit periodically distribute DBE reports to managers and staff members whose job functions are related to the DBE program. In addition, by using the DBE reporting information to facilitate the DBE contract goal setting process for a suitable level to meet the overall agency DBE goal, the management of the DBE program can be efficiently and effectively enhanced. We also recommend making the agency's overall DBE goal and its progress status report available to the public to advocate the transparency and promotion of the SCDOT DBE program.

## **V. Division of Construction and Resident Construction Engineers Offices**

The Division of Construction and Resident Construction Engineers Offices play a vital role in the SCDOT DBE program. A major portion of the overall SCDOT DBE goal is accomplished by DBE construction contract goals. Through a joint effort, the Division of Construction and Resident Construction Engineers (RCEs) Offices administrate statewide federally assisted construction contracts utilizing DBEs in accordance with state and federal laws and regulations.

### ***A. Division of Construction***

A uniform “DBE Supplemental Specification” was originally established in February 2004. Beginning this year, it was updated and implemented for all contractors who wished to participate in SCDOT construction contracts. The “DBE Supplemental Specification” provides comprehensive and detailed instructions to bidders and contractors in pre-award and post-award contracts. It effectively enhances the compliance with USDOT regulations in all types of contracting and procurement activities administrated by SCDOT.

During the period from 7/1/2012 through 6/30/2013, there were a total of 151 (56%) construction projects awarded with DBE goal requirements. This means a majority of SCDOT construction contracts required DBE contract goal commitments in fiscal year 2013. Based on the data provided by the DBE reporting unit, the DBE goal commitment at contract letting was 16.5%, 13.4%, and 16.5% in 2011, 2012, and 2013, respectively. The average of three-year commitments to DBEs by contracts was 15.7%.

### ***B. Resident Construction Engineers Offices***

During this audit engagement, the auditor traveled to RCEs offices, contractors’ offices, and construction sites to discuss, observe, and walk through DBE program operations. Information from the field indicates that the RCEs offices play a critical role in implementing DBE requirements in construction projects. RCEs ensure that contracts are executed in compliance with contract specifications and DBE requirements. They also provide constructive monitoring and hands-on help to DBE contractors to accomplish their tasks on a regular basis. At District Office 3, the auditor observed RCEs assisting a DBE contractor to resolve job quality issues.

The RCEs offices also play an important role in collecting DBE payment data in the field and submitting quarterly reports to SCDOT headquarters to comply with the federal DBE reporting requirement. During the period of 6/30/2011 to 7/1/2012, the RCEs offices submitted approximately 3,379 quarterly reports statewide to SCDOT headquarters to track DBE payments made by federal and state funds for SCDOT highway projects.

Table below shows the DBE participation in the closed contracts of FFY 2012 and 2013.

**Table 7** RC= Race-conscious DBE goal RN = Race-neutral DBE goal

	Categories	2012	2013	Total
A	Number of Contracts Requiring a DBE Goal (RC)	150	81	231
B	Number of Contracts Having DBEs Without a DBE Goal Requirement (RN)	5	13	18
C	Total Number of Contracts with DBE Participation (A+B)	155	94	249
D	Total Number of Contracts Meeting DBE Goals	100	69	169
E	Percentage of Contracts Meeting DBE Goals (D/A)	67%	85%	73%

The discrepancy between the number of contracts with a DBE goal (row A) and the number of contracts that met the DBE goal (row D) was due to some contracts were underrun for multiple reasons. In such cases, prime contractors were required to submit written documentation to justify that a good faith effort was undertaken to meet the DBE contract goal.

The Federal Register on September 6, 2012, proposed requiring a stronger standard regarding the good faith effort and more supporting documentation to justify failing to meet DBE contract goals (Federal Register Vol. 77 No. 173 September 6, 2012). SCDOT should continue to monitor the good faith effort policy and procedure regarding prime contractors in all contract phases: letting, execution, and closing of contracts to ensure sufficient documentation is on file to demonstrate that the commitment of utilizing DBEs for federally funded contracts.

**Observation 15**

The assurance of DBE subcontractor reliability and accountability is one of the essential factors that influence the success of SCDOT construction contracts. Per the feedback provided by prime contractors to our survey, while most of the DBE subcontractors cooperated with their prime contractors, there lacks a strong mechanism to monitor and control the performance by subcontractors, including DBEs. Prime contractors responded in the survey: “some DBE subcontractors abandoned a project and refused to honor contract commitment,” or DBE subcontractors “walked away from the contract because there were no sanctions to them by SCDOT.” The same concern was also raised by RCEs that the reliability and accountability of some DBE contractors in performing SCDOT contracts should be improved.

### **Recommendation 15**

We recommend that SCDOT take a proactive approach to address quality issues with some DBEs. The essence of a successful DBE program is to enhance the number of DBEs whose quality performance draws prime contractors to greater utilization of the DBEs. The greater the quantity of DBEs who maintain high quality service, the more successful utilization of DBEs.

### **Observation 16**

A request for the SCDOT to publish the bidder's list or plan holder's list before SCDOT contract letting in order to increase the opportunity for subcontract jobs with potential prime contractors was raised by some DBE contractors. During this audit process, the auditor did extensive research about this issue by way of documentation review, discussions with applicable staff members, and the South Carolina Budget and Control Board. We obtained the following information:

1. Currently, SCDOT uses the Bid Express website to facilitate construction contract bids. Bid Express is managed by an independent third party outside of SCDOT. Therefore, SCDOT is unable to access the bidder's list until the opening of contract letting.
2. It is a requirement by federal regulation "to create the most competitive environment for potential bidders, a firm should not be aware of the identity of the other potential bidders." (*Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, January 20, 2004*) The state Freedom of Information Act (FOIA) specifically includes the bidders (mailing) list as one of the documents that can be released "after bid opening but prior to award." (*FOIA Document Guide for Information Technology Management Office and State Procurement Office, Page 14*)
3. The Business Development Center has been sending DBEs the list of prime contractors, service providers, and suppliers, when requested, in order to increase job opportunities for DBEs and to help general contractors meet this need. We acknowledge the collaborative effort by the Business Development Center, the engineering group demonstrated in making connections between prime contractors, and DBEs for the design build project concerning I85/I385. A meeting was held that produced the desired exposure and received many positive comments from DBEs as well as the prime contractors. The meeting was hosted by the Business Development Center and received support and assistance from the engineering group. Once the proposals were submitted, a short list of three firms was chosen. A meet and greet was held with each of the three short listed firms interviewing possible DBE partners to be included in their final proposal. The meeting was at one location that facilitated marketing by the DBEs. This collaborative effort by the Business Development Center and the engineering group showcased the DBE program and should be encouraged.

### **Recommendation 16**

We recommend SCDOT provide options to DBE subcontractors to increase contract opportunities while keeping the bidders' list confidential before letting so "bidders will submit what is believed to be a realistic competitive bid based upon the company's own individual circumstances" (*Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, January 20, 2004*). Specifically, we suggest that the Division of Construction provides the historical data, e.g. in the past 18 months of prime contractors who participated in SCDOT contracts similar to the newly published contract on the SCDOT website. This information will facilitate subcontractors, including DBEs, connecting with potential prime contractors for subcontract jobs.

We also recommend SCDOT advocate and encourage potential bidders and subcontractors including DBEs, to utilize the following list to post and share their interest to solicit or submit subcontract quotes:

- Small Business Exchange on the Bid Express website
- Construction Extranet on the SCDOT website.

### **VI. Professional Services Contracting**

Professional Services Contracting consists of architectural and engineering (A&E) and other professional services in support of the construction, maintenance, and repair of bridges, highways, and roads. Services include solicitation, selection, negotiation, execution, invoicing, performance evaluation, and record management. Analogous to the construction contracts, the professional consulting service projects are funded by federal funds. Therefore, A&E consulting contracts play an important role in implementing the DBE program and contributing to SCDOT's overall DBE goal, especially the race-neutral DBE goal.

The following table represents the proportion of DBE payments within the total Professional Consulting A&E contracts, which were closed in FFY 2012 and 2013, respectively:

**Table 8**

Federal Fiscal Year	Number of Total Closed Contracts	Number of Contracts with DBE Participation	Total Payments to Closed Contracts	Total Payments to DBEs in Closed A&E Contracts	Percentage of DBE Payments
2012	46	12	\$17,807,166	\$1,269,321.13	7.1%
2013	30	12	\$22,378,133	\$1,183,242.47	5.3%

### **Observation 17**

At the time of this audit, the professional services consulting procurement process was that A&E and other professional service firms received a maximum 5% of the total 100 points in the competitive qualification-based consultant selection if a DBE utilization plan was included in the project proposal. The score changed from 10% to 5%, effective 11/24/2013. According to the survey feedback from DBEs, the 5% score has no significant impact in motivating prime consultants to utilize DBE firms. In addition, there was no system to guarantee that the prime contractor who received the 5% awarding points would utilize the same DBE included in its plan, or that whether the proposed DBE would be utilized at all after the selected consultant was awarded the project.

Per federal regulation, “agencies are required to give consideration to DBE consultants in the procurement of engineering and design related services contracts using FAHP funding.....Use of an evaluation factor for DBE participation in the procurement of engineering and design related services must comply with Federal laws and regulations (as specified in 49 CFR 26) and be consistent with the agency's FHWA approved DBE program.”

### **Recommendation 17**

We recommend that policies and procedures to effectively facilitate and motivate DBE utilization in federally funded professional consulting service projects be strengthened. To encourage the full utilization of DBE sub-consultants by prime consultants, we recommend SCDOT consider increasing the points rewarded from the current 5% to 10% on DBE utilization plan. Federal regulation states: “To harmonize Federal regulations related to qualification based selection and DBEs, a contracting agency may establish the use/participation of certified and qualified DBE sub-consultant firms as an evaluation criterion of no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services.” (*USDOT FHWA, VII. Disadvantaged Business Enterprise (DBE) Considerations; Posted 7-20-11*)

### **Observation 18**

Currently there is no DBE goal requirement for professional consulting service projects funded by federal funds. Any DBE participation in A&E and other professional services is counted towards the race-neutral DBE goal. The proportional payments for DBE participation within SCDOT's preconstruction funds were 7.1% and 5.3% in 2012 and 2013, respectively, which exceeded the SCDOT overall DBE race-neutral goal of 3.7%. However, they were below the 11.5% of the SCDOT overall DBE goal for 2012 and 2013. This situation provides an enhancement by adding a DBE race-conscious goal to the professional consulting services projects. Federal DBE regulations require recipients of federal highway funds to establish contract goals to meet any portion of their overall goal they do not meet through race-neutral means. (49 CFR §26.51(d))

Prime consultants have little incentive to hire a DBE sub-consultant in the absence of race-conscious contract goals. Based on our discussions with DBE consulting firms, a payment to a DBE was reduced from the agreed 5% to 1%. In a few cases, prime consultants did not utilize DBEs after receiving the awards. Neither of the situations was approved from the awarding agency since there was no DBE goal requirement in place. Without contract goals, it is very difficult for DBEs providing professional services to gain experience on federally funded contracts. Consequently, without prior experience, DBE professional services firms are not likely to be awarded a contract as a prime consultant or even a sub-consultant.

**Recommendation 18**

We recommend that SCDOT consider including the race-conscious DBE contract goal on contracts with subcontracting possibilities, including those involving professional services, in order to create opportunities for a wide variety of DBEs. While recipients are not required to set a contract goal on every DOT-assisted contract (per 49 CFR §26.51(e)), and the task of meeting the overall agency’s DBE goal for race-conscience has only been tasked to the division of construction at the present time, we encourage SCDOT to implement this critical step and elevate the SCDOT DBE program to a higher standard.

To evaluate our recommendation, we consulted with the USDOT DBE program for directions, contacted the other 49 states, and asked whether or not they require a DBE contract goal (race-conscience) on professional consulting engineering contracts. The feedback to our question indicated that the majority, 58% (29/50), of the states in the nation currently have a DBE contract goal for professional engineering consulting services.

For comparison purposes, the auditor also requested the following expenditure data from the SCDOT Budget Office for preconstruction and construction for 2011, 2012, and 2013:

**Table 9**

	2011	2012	2013	Total
<b>Pre Construction</b>	48,139,156	48,917,386	39,477,770	136,534,312
<b>Construction</b>	315,484,754	553,280,451	448,130,639	1,316,895,844
<b>% of preconstruction vs.construction</b>	15.26%	8.84%	8.81%	10.37%

The above data depicted that federal funding in preconstruction was much smaller than within construction at SCDOT. Therefore, we suggest that the set-up of the DBE contract goal on preconstruction projects should be given a critical evaluation on a case-by-case approach to ensure the feasibility of utilizing DBE contractors. A review and evaluation of a suitable procedure in this area may be established through a pilot program.

**Observation 19**

At the time of this review, if a prime consultant failed to meet the DBE utilization plan included in its project proposal, i.e. decreased or eliminated DBE services during the execution of a project, there was no procedure requiring the prime consultant to demonstrate its good faith efforts to utilize DBEs in the project. Based on the information we obtained, the Division of Procurement was considering requiring documentation of a good faith effort if prime consultants failed to meet the DBE utilization plans; however, no documentation could be found to confirm this requirement has been implemented during our audit.

**Recommendation 19**

We suggest that SCDOT establish a written policy and procedure for a good faith effort for professional consulting contracts. The good faith effort should be part of the DBE supplemental specification attached to the professional project agreement. During the project execution process, if the prime consultant needs to replace or reduce DBE services, the prime consultant should provide documentation of a good faith effort to SCDOT to get an approval for the changes associated with its DBE utilization plan. This adds accountability to the evaluation criterion used in the consultant selection process.

**VII. State Funded DBE Program**

**Observation 20**

A limited assessment of DBE projects funded by South Carolina state funds was conducted. Our assessment revealed that it is necessary to establish a set of effective policies and procedures to maximize the utilization of state funds for the DBE program.

The Construction Office issued the following set aside contracts for DBE prime contractors based on the type of work, the size of project, and the Division of Preconstruction’s recommendation:

**Table 10**

Reporting Period	Number of Projects for DBE Bid Only	Amount Paid to DBEs
2011	6	\$ 632,516.18
2012	4	\$ 254,048.00
2013	2	\$ 421,520.00
<b>Total</b>	<b>12</b>	<b>\$1,308,084.18</b>

Section 12-28-2930 of the South Carolina Code of Laws of 1976, as amended, requires the Department to ensure that not less than ten percent (as allocated in Section 12-28-2930(A) (1) and (2)) of the funds subject to the State DBE Program be expended through “direct contracts” with DBE's. The requirement for “direct contracts” limits the benefits of these set aside contracts to DBE's that can operate as prime contractors. While the law may have intended to give DBE firms experience and exposure as prime contractors, the unintended consequence has been to restrict SCDOT's ability to encourage the use of more DBEs as subcontractors on State funded projects.

The types of projects that SCDOT currently has available for state funding are larger road and bridge projects. The complexity and required experience for these larger projects limit the number of DBEs that bid as a prime contractor due to their lack of resources, skill level, and economic ability. This situation increases the possibility that the 10% of DBE state funds may not be fully utilized if the state funds are limited to direct contracts with DBE as the prime contractor.

### **Recommendation 20**

We recommend that SCDOT consider looking at the feasibility of replacing the state's current set-aside law with a goal-based component that would increase the opportunity for DBE firms and maximize the benefit to DBE's of the state DBE program.

We encourage SCDOT senior management to work with the State Legislature to make the necessary changes in the current DBE law to accomplish this result.

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*Department Response*

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***SCDOT Management Response***

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*South Carolina  
Department of Transportation  
Disadvantaged Business Enterprise (DBE) Audit*

*November 19, 2014*

This report contains the SCDOT's responses to findings and recommendations presented in the *Disadvantaged Business Enterprise (DBE) Audit – July 14, 2014*, performed by Chief Auditor Paul Townes and the SCDOT Internal Audit Office. You will notice that some of the recommendations have already been implemented. In addition, earlier this year, we took a proactive approach to strengthen our efforts by establishing a Director of Minority and Small Business Affairs position as a direct report to the Secretary of Transportation. We will continue to monitor our processes and seek to identify areas of improvement as we move forward in enhancing the growth of small and disadvantaged businesses.

## I. Setting the Agency's Overall DBE Goal

### **Recommendation 1**

We recommend strengthening Step One; Determine the Base Figure in setting the overall agency's DBE goal by following the federal guidance on using "the number of ready, willing, and able DBEs" in performing SCDOT contracts. We recognize that the current method of using the bidder list to determine the base figure is acceptable per 49 CFR §26.45 (c) (2). We recommend staff revisit DBE goal setting steps by reviewing all the possible elements, which may affect the total number of realistically available DBEs.

#### *Response #1:*

We will continue to explore other possible elements for establishing the overall agency's DBE goal. Recently, we sought the assistance of twenty-seven resource providers to help identify potential DBEs that provide services utilized by SCDOT to expand the pool of "ready, willing and able" DBE firms.

*Completion By:* FHWA recently approved the agency's DBE Goal for FFY2015-2017 which became effective October 1, 2014. The Office of Business Development and Special Programs, within the Division of Minority and Small Business Affairs, will continue to review all possible elements which may affect the total number of available DBEs.

### **Recommendation 2**

According to 49 CFR 26.51(e) (2): "You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on factors such as the type of work involved, the work location, and the availability of DBEs for the work of the particular contract."

To increase the utilization rate of DBEs to the most feasible level where contract items match DBEs' areas of specialization, we recommend removing the 17.5% DBE goal cap, which is currently applied to construction contracts. We also recommend reducing DBE goals for construction contracts where fewer DBEs possess the requisite skills or are present near the location of the project site. These changes will ensure that although the level of DBE goals may vary from one contract to another, at the end of the year, the amount of contract/subcontract awards to DBEs should be consistent with the overall agency's goal.

Response #2:

We agree with the removal of the 17.5% cap on individual project DBE goals. We will continue to monitor the individual project goals to ensure that the work type and work items allow for a prequalified prime contractor to perform the federally mandated 30% of the work outside of the DBE goals. This recommendation was adopted during the audit process and is currently in place.

Completion By: Ongoing. This recommendation was adopted during the audit process and is currently in place.

**Recommendation 3**

To increase operational efficiency while utilizing DBEs, we recommend that information regarding DBE geographic location be made available to facilitate the decision-making process of assigning a DBE contract goal. This process can optimize the DBE goal setting process to identify the availability of suitable DBEs in the project location.

Response #3:

The current DBE Certification Directory provides information in a PDF and Excel spreadsheet format. We believe that it would be beneficial to utilize GIS to identify the location of DBE firms for some decision-making efforts; however, we do not believe the location should be a major factor in setting an individual contract goal. In some instances, DBE firms have the ability to travel and perform work in various areas across the state.

Completion By: We prefer that our agency avoid placing limitations on DBEs availability for work.

**Recommendation 4**

We recommend that SCDOT consider enhancing an environment to motivate and encourage prime contractors in accomplishing the DBE goal by race-neutral means. For example, engaging contractor/consultant participation in the DBE program by proactively enhancing communication regarding DBE program policies, procedures, and DBE goal-related information; or achieving the DBE contract goal by sustaining a collaborative relationship and stewardship with contractors/consultants. We recommend that the DBE program and other DBE program functional areas at SCDOT join the efforts of prime contractors in managing DBE subcontractors by providing efficient and effective services in accomplishing the SCDOT mission.

Response #4:

Concur –We have initiated a training and educational program called “DBE 101 – Soup to Nuts” in which prime contractors are trained on the entire DBE Program requirements from the initial stages of setting DBE participation goals on federally aided projects, to bidding requirements, to active DBE participation during the project, and to project completion. In addition, we explain the rules and regulations and how the Department interprets and applies them. This training has been effective in resolving problems before they begin. We are also taking advantage of other opportunities to join efforts with prime contractors such as participating in events like the South Carolina Engineers Conference, and the DBE MPowerHour that is hosted in all district locations of the state to share information about the DBE program.

Completion By: Ongoing. This recommendation is already in place.

## II. DBE Certification

### **Recommendation 5**

We recommend the SCDOT DBE certification group enhance the accuracy and completeness of the review and analysis of the DBE application to fulfill the responsibilities required by 49 CFR 26.83(c): “must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.”

Based on the current resources of the certification group, SCDOT should ensure “the UCP has sufficient resources and expertise to carry out the requirements of this part” (49 CFR 26.81(a) (2)). We recommend the division evaluate whether or not the current manpower of the SCDOT UCP group is sufficient to carry out the Uniformed Certification Program for the state of South Carolina.

#### Response #5:

Concur – SCDOT Office of Business Development and Special Programs has taken proactive steps in the creation of an internal DBE Certification Task Force, as well as the addition of a certification analyst to improve the certification process. Also, a newly established position of Director of Minority and Small Business Affairs will lead to enhanced program efficiency.

Completion By: This recommendation is currently in place.

### **Recommendation 6**

The SCDOT DBE program should enforce the federal requirement that each DBE must submit its affidavit and supporting document annually to ensure DBEs continually meet certification requirements. Specifically, the program should create a tracking system to closely monitor whether or not a DBE submits its affidavit and supporting document on time and evaluate if there is a change affecting the DBE’s certification status. If a DBE fails to meet this requirement, SCDOT should follow the procedure provided by 49 CFR 26.87, removing the firm from the DBE directory to prohibit its participation in SCDOT projects under DBE status until the requirement is met.

#### Response #6:

Concur – This issue was identified and placed under review several months prior to the auditor’s review. Appropriate action has already taken place to include training on the internal tracking system for tracking and monitoring purposes which will enhance efficiency in the area.

Completion By: This recommendation is currently in place.

### **Recommendation 7**

We recommend that on a risk-based selection, UCP should conduct an on-site visit of DBEs for certification update after the DBE has been certified for three years and is continually conducting projects with SCDOT. An on-site visit to DBE construction sites helps ensure that the DBE meets certification requirements in performing the job for which it has been certified. This

procedure also minimizes the risk that firms exceeding the DBE financial threshold (\$22.1 million of gross receipts for a three-year period) still remain in the DBE program.

Response #7:

The updated Final Rule for the DBE Program provisions became effective November 3, 2014. The reference to a certification review occurring every three years was removed from the regulations. However, the SCDOT Office of Business Development and Special Programs will conduct a random sampling of on-site visits each year to determine if DBE firms receiving continuous awards with SCDOT are still eligible for the DBE program.

Completion By: A process for conducting random on-site visits will be developed by March 2015.

### **III. Business Development Center (BDC)**

**Recommendation 8:**

We recommend that the BDC establish and facilitate the connections between DBEs and prime contractors by way of communication media and marketing opportunities for DBEs whenever possible. BDC should keep encouraging DBE firms to proactively establish connections with prime contractors and other non-DBE contractors to market themselves in the competitive industry.

Response #8:

Concur – The SCDOT Office of Business Development and Special Programs continues to engage in innovative approaches and partner with interested parties to facilitate interaction between DBE firms and prime contractors.

Since 2008, staff has been involved in a number of events designed to allow small businesses the opportunity to have face-to-face meetings with prime contractors, federal, state and county agencies to learn about specific contracting and subcontracting opportunities. A “DBE Open Discussion” was included as part of the 2014 South Carolina Engineers Conference, and recently SCDOT hosted two successful DBE/Prime Contractor Outreach Events for design build projects. The first event consisted of three short-listed teams on the I-385/I-85 project. Forty-five individuals inclusive of thirty-three DBE firms were in attendance. The second event consisted of five short-listed teams on the US701 project. Sixty individuals inclusive of twenty-nine DBE firms were in attendance. After the general sessions, each short-listed team sponsored a room and met with DBE firms interested in doing business with them on the upcoming project. SCDOT intends to continue hosting networking/outreach events on major SCDOT projects to increase DBE participation.

In the last two years, SCDOT staff has participated in approximately fourteen outreach/networking activities geared to DBE/SBE firms. SCDOT will continue to provide opportunities, as well as foster partnerships with parties interested in providing educational and networking opportunities to DBE/SBE firms.

Completion By: Ongoing. This recommendation is in place.

### **Recommendation 9**

We recommend the objectives of DBE training and technical assistance be achieved more creatively in order to improve DBE attendance. SCDOT staff should evaluate the possibility of on-line training courses. If practicable, hold construction related training courses at construction sites or district offices. In addition, we recommend increasing on-site visits to DBE contractors to provide one-on-one, hands-on help at the job site through consultation with prime contractors.

#### **Response #9:**

The recommendations made by the Office of the Chief Internal Auditor are noteworthy. Over the past several years, the Office of Business Development and Special Programs has engaged in various training approaches. Currently, SCDOT offers training throughout the state in different locations such as Charleston, Columbia, Florence, and Greenville. SCDOT also collaborates with small business development centers, educational institutions, and other agencies to enroll DBE firms in existing training workshops.

The staff will research online training classes that would allow DBEs the convenience of training in their home offices. There is a very small number of DBEs that are not familiar with computers or do not have fax machines or email addresses. For these particular businesses, the Office of Business Development and Special Programs will continue to encourage these DBEs to modernize their businesses and will offer or recommend beginner computer classes.

Suggestions for future training workshops are solicited from DBEs, SCDOT engineers, consultants, and DBE offices in other states. Subsequently, a DBE training catalog is published, sent to DBE firms and posted on the SCDOT Internet during the fall and spring of each year. The training catalog is continuously reviewed and modified as needed on a semi-annual basis. Recent construction-related training workshops have included the following:

- Curb & Gutter, Sidewalk, Driveway, Handicapped Ramp, Catch Basin Installation
- Certified Erosion Prevention & Sediment Control Inspection (CEPCSI)
- SCDOT (USC) Portland Cement Concrete Field Inspection Technical Certification
- Heavy Equipment Operator Training
- OSHA Safety Training - Confined Space Lock Out/Tag Out
- OSHA 10-Hour Safety
- Haulers Entrepreneurial Development Institute (EDI)
- DBE MPowerHour (Hosted in all district locations)

Once every two years, SCDOT hosts a two-day training session for all certified DBEs to meet and learn from key federal, state, city, and county professionals in the transportation industry and the business community. During these customized training sessions, DBEs learn economic tips, crucial business strategies, and receive practical hands-on survival tips for coping and finding opportunities in the transportation industry. Approximately 140 DBEs attended the last two-day training held in August 2013.

While it may appear that the numbers are low in some of the DBE training classes, this can be attributed to the maximum number of participants that are allowed by law to be trained at one

time in one class (i.e., CDL training/ maximum participants = 4, HEO – maximum participants = 5, Temporary Traffic Control – maximum participants = 10, etc.). As a result, there is a waiting list for some of the training classes SCDOT offers.

In addition to offering free training classes to DBEs, SCDOT also offers a “Training Tuition Assistance Program”. This program was established to assist DBE firms with development of the educational skill levels of its key employees. Eligible DBE firms may receive approval for assistance up to \$1,500 per year to be used for training that is otherwise not offered through SCDOT during the calendar year. Tuition assistance is available in the form of reimbursements.

With regards to the recommendation for one-on-one on-site help to DBE contractors, we have expanded the on-site technical assistance unit with an additional person to provide more field support to DBE firms working on SCDOT construction projects.

After communicating with many agencies that assist DBEs across the country, the audit noted that South Carolina has one of the most innovative and progressive training programs available.

*Completion By:* Ongoing. This recommendation is in place.

### **Recommendation 10**

We recommend the BDA’s function be enhanced and strengthened in order to effectively assist DBE development and business growth. More DBEs should be included in this program, and the BDA curriculum should be designed more creatively in order to fit DBE needs identified through DBE feedback. We recommend that the SCDOT BDA program proactively exercise its unique role in developing DBE business and technical skills to meet the needs of the transportation industry.

#### *Response #10:*

Concur – The Business Development Academy was not a federal mandate but a pilot project undertaken when additional federal funds were secured to enhance business and technical assistance services for DBEs in South Carolina. A total of 20 slots were available for a pilot group using selected, objective criteria. Due to an unforeseen change of venue with the vendor conducting the business assessment portion of the academy, as well as an unexpected staffing change, the pilot program was delayed. These challenges caused the participants in the pilot class to remain in the program much longer than anticipated. The participants were individuals who had been awarded work with SCDOT. Strategies were underway to strengthen the program with the next class of participants prior to the auditor’s recommendation. A DBE consulting firm was selected to assist with enhancing the program and to provide fresh ideas.

*Completion By:* A revised program will be brought in line with FHWA’s newly established Business Development Program by June 2015.

### **Recommendation 11**

We recommend that the Mentor-Protégé Program be improved. Specifically, the program should provide a training opportunity for DBE construction contractors as well as professional engineering design contractors who are actively involved in SCDOT highway projects. The program should take a proactive approach to achieve its goals and function more efficiently and

effectively in developing DBEs into more competent and skillful contractors for SCDOT projects.

Response #11:

Concur – The pilot program has been under review to make improvements prior to proceeding with the next group. The pilot program has been marketed in six different locations across the state to include construction and professional services contractors. SCDOT received excellent feedback and participation from those in attendance during the informational sessions. A primary deterrent for non-DBE mentor firms is their inability to receive DBE credit for using its protégé firm for more than one-half of its goal on a contract. This proved to be a disincentive for prime contractors in the construction arena. To address challenges and further develop the program, several individuals within the department were identified to serve on a Mentor-Protégé Program task force.

Completion By: A new individual has been hired to focus on the Mentor-Protégé Program. Over the next 90-120 days, this individual will review the results of the pilot program, work with FHWA, and develop an approach to enhance the program to better serve the DBE community. We expect to implement new Mentor-Protégé partnerships at the end of the program development period. The estimated program launch date is April 2015.

#### **IV. Reporting and Monitoring DBE Data**

**Recommendation 12**

We recommend that SCDOT reiterate to all contractors, including DBEs, the importance of correctly completing and submitting the DBE quarterly reports in a timely fashion. Any challenges by contractors to properly complete the quarterly report should be identified by on-site or off-site monitoring and promptly resolved through hands-on training by staff from the DBE program. We recommend staff from the DBE reporting program conduct introduction training at the contract letting to awarded contractors, especially to newly certified DBEs participating in federally funded projects. In addition, the training should be made available to contractors during the entire course of projects.

Response #12:

Concur – During the auditor’s review, resource constraints in the Office of Business Development and Special Programs precluded our ability to provide additional training beyond what was offered during the DBE Orientation Workshop. A project notification letter will be distributed to the Prime Contractors and DBE’s at time of contract award. The letter will identify reporting requirements, contact person, training and project monitoring information. The DBE Reporting Unit will also conduct training for the district offices and give presentations at various DBE 101 Training sessions.

Completion By: March 2015

**Recommendation 13**

Based on the principle of segregation of duty for internal controls, a separation of job functions between monitoring and reporting for DBE expenditures is necessary. We recommend the

contract assurance department develop an assurance procedure for the claimed DBE expenditure incurred for professional engineering consulting services. The review and verification will enhance internal controls for eligible DBE cost and the accountability of the reported DBE information to the FHWA.

Response #13:

We agree that monitoring procedures to validate reported DBE expenditures on professional engineering services contracts can and should be improved. We do not agree that those monitoring procedures must be performed by the contract assurance department to address segregation of duty issues. Rather, written procedures for the review and verification of DBE data reported for professional engineering services contracts will be developed. The services of the contract assurance department will be incorporated into those procedures where appropriate and practical.

Completion By: June 2015

**Recommendation 14**

We recommend that the DBE reporting unit periodically distribute DBE reports to managers and staff members whose job functions are related to the DBE program. In addition, by using the DBE reporting information to facilitate the DBE contract goal setting process for a suitable level to meet the overall agency DBE goal, the management of the DBE program can be efficiently and effectively enhanced. We also recommend making the agency's overall DBE goal and its progress status report available to the public to advocate the transparency and promotion of the SCDOT DBE program.

Response #14:

Concur - The Office of Business Development and Special Programs will expand the distribution list for Semi-Annual Reports and other DBE tracking data reports.

Completion By: February 2015

**V. Division of Construction and Resident Construction Engineers Offices**

**Recommendation 15**

We recommend that SCDOT take a proactive approach to address quality issues with some DBEs. The essence of a successful DBE program is to enhance the number of DBEs whose quality performance draws prime contractors to greater utilization of the DBEs. The greater the quantity of DBEs who maintain high quality service, the more successful utilization of DBEs.

Response #15:

We agree with the recommendation to take a proactive approach to address the quality of work being performed by DBEs. SCDOT has various methods to address performance of our prime contractors, including, for example, bonding requirements, a Contractor Performance Evaluation System, a prime contractor application/approval process, delinquency/default, and the use of SCDOT/AGC joint committee and sub-committees to address performance issues. Based on the current DBE program guidelines, there are no specific actions available to address

underperforming or non-performing DBE subcontractors. The burden for insuring quality of DBE performance falls on the prime contractors. The Director of Construction Office will coordinate with the Office of Business Development and Special Programs to determine the feasibility of incorporating a review procedure for the prime contractors to evaluate the performance of DBE subcontractors as well as to determine additional training needs. This could be utilized in the continuing process for approval of a firm's DBE status and prequalification.

Completion By: June 2015

### **Recommendation 16**

We recommend SCDOT provide options to DBE subcontractors to increase contract opportunities while keeping the bidders' list confidential before letting so "bidders will submit what is believed to be a realistic competitive bid based upon the company's own individual circumstances" (*Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, January 20, 2004*). Specifically, we suggest that the Division of Construction provides the historical data, e.g. in the past 18 months of prime contractors who participated in SCDOT contracts similar to the newly published contract on the SCDOT website. This information will facilitate subcontractors, including DBEs, connecting with potential prime contractors for subcontract jobs.

We also recommend SCDOT advocate and encourage potential bidders and subcontractors including DBEs, to utilize the following list to post and share their interest to solicit or submit subcontract quotes:

- Small Business Exchange on the Bid Express website
- Construction Extranet on the SCDOT website.

### Response #16:

As a result of the 2002 Legislative Audit Council's (LAC) findings in the audit of "A Review of Competition for the Department of Transportation's Road Paving Contracts," SCDOT no longer maintains a "bidder's list." Also, all plans and proposals are available online electronically which does not allow for a plan holders list to be maintained. To accommodate these changes and still promote subcontracting opportunities, we created a message board on the SCDOT Extranet website for contractors to post comments or solicitations for projects. Until 2014, the Association of General Contractors (AGC) also maintained a message board for the same purpose. The AGC site was the primary point of contact for prime contractors and subcontractors until the AGC site was removed. In an effort to continue to provide an avenue for communication and continue to meet the LAC recommendations, we are enhancing our Extranet message board to provide more detailed, project specific information. This will fit the needs of the contracting community while maintaining audit compliance.

Completion By: May 2015

## VI. Professional Services Contracting

### **Recommendation 17**

We recommend that policies and procedures to effectively facilitate and motivate DBE utilization in federally funded professional consulting service projects be strengthened. To encourage the full utilization of DBE sub-consultants by prime consultants, we recommend SCDOT consider increasing the points rewarded from the current 5% to 10% on DBE utilization plan. Federal regulation states: “To harmonize Federal regulations related to qualification based selection and DBEs, a contracting agency may establish the use/participation of certified and qualified DBE sub-consultant firms as an evaluation criterion of no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services.” (*USDOT FHWA, VII. Disadvantaged Business Enterprise (DBE) Considerations; Posted 7-20-11*)

### **Response #17:**

Prior to November 2013, we used two separate DBE related evaluation criterion weighted at 5% each for a total of 10%. In November 2013, we began using a single DBE criterion with a weight of 5%. Beginning in June 2014, we increased the weight of the DBE evaluation criterion to 10%.

**Completion By:** This recommendation is currently in place.

### **Recommendation 18**

We recommend that SCDOT consider including the race-conscious DBE contract goal on contracts with subcontracting possibilities, including those involving professional services, in order to create opportunities for a wide variety of DBEs. While recipients are not required to set a contract goal on every DOT-assisted contract (per 49 CFR §26.51(e)), and the task of meeting the overall agency’s DBE goal for race-conscience has only been tasked to the division of construction at the present time, we encourage SCDOT to implement this critical step and elevate the SCDOT DBE program to a higher standard.

To evaluate our recommendation, we consulted with the USDOT DBE program for directions, contacted the other 49 states, and asked whether or not they require a DBE contract goal (race-conscience) on professional consulting engineering contracts. The feedback to our question indicated that the majority, 58% (29/50), of the states in the nation currently have a DBE contract goal for professional engineering consulting services.

For comparison purposes, the auditor also requested the following expenditure data from the SCDOT Budget Office for preconstruction and construction for 2011, 2012, and 2013:

**Table 9**

	2011	2012	2013	Total
Pre Construction	48,139,156	48,917,386	39,477,770	136,534,312
Construction	315,484,754	553,280,451	448,130,639	1,316,895,844
% of preconstruction vs.construction	15.26%	8.84%	8.81%	10.37%

The above data depicted that federal funding in preconstruction was much smaller than within construction at SCDOT. Therefore, we suggest that the set-up of the DBE contract goal on preconstruction projects should be given a critical evaluation on a case-by-case approach to ensure the feasibility of utilizing DBE contractors. A review and evaluation of a suitable procedure in this area may be established through a pilot program.

Response #18:

We concur with this recommendation. We will develop and execute a plan to apply DBE goals to selected professional engineering consulting services contracts.

Completed By: February 2015

**Recommendation 19**

We suggest that SCDOT establish a written policy and procedure for a good faith effort for professional consulting contracts. The good faith effort should be part of the DBE supplemental specification attached to the professional project agreement. During the project execution process, if the prime consultant needs to replace or reduce DBE services, the prime consultant should provide documentation of a good faith effort to SCDOT to get an approval for the changes associated with its DBE utilization plan. This adds accountability to the evaluation criterion used in the consultant selection process.

Response #19:

We concur with this recommendation and will develop written policies and procedures for evaluating the consultants' good faith efforts to meet their proposed DBE Utilization Plans or contract goals, as applicable. These policies and procedures will be finalized as a part of the plan for including goals on professional services contracts.

Completed By: February 2015

**Recommendation 20**

We recommend that SCDOT consider looking at the feasibility of replacing a goal-based (subcontracting) component to the state's current set-aside law. A goal-based component would increase the opportunity for DBE firms and maximize the benefit to DBE's of the state DBE program.

We encourage SCDOT senior management to work with the State Legislature to make the necessary changes in the current DBE law to accomplish this result.

Response #20:

Concur – SCDOT will work with the SC General Assembly to assist in their consideration of changes to existing state law to replace the current set-aside with DBE project goals.

Completed By: State Legislative session 2015-16.