



ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN

FEDERAL HIGHWAY ADMINISTRATION

ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, CIVIL RIGHTS OFFICE

8/31/2017

## Contents

<b>49 CFR Part 26.1 (Objectives)</b> .....	4
<b>49 CFR Part 26.3 (Applicability)</b> .....	4
<b>49 CFR Part 26.5 (Definitions)</b> .....	4
<b>49 CFR Part 26.7 (Discriminatory Actions)</b> .....	9
<b>49 CFR Part 26.11 (Records Maintenance and Reporting)</b> .....	9
<b>49 CFR Part 26.13 (Assurances)</b> .....	10
<b>49 CFR Part 26.15 (Exemptions and Waivers)</b> .....	11
<b>49 CFR Part 26.21 (Administrative Requirements)</b> .....	11
<b>49 CFR Part 26.23 (Policy Statement)</b> .....	11
<b>49 CFR Part 26.25 (DBE Liaison Officer)</b> .....	12
<b>49 CFR Part 26.27 (DBE Financial Institutions)</b> .....	13
<b>49 CFR Part 26.29 (Prompt Payment)</b> .....	13
<b>49 CFR Part 26.31 (DBE Directory)</b> .....	15
<b>49 CFR Part 26.33 (Over-concentration)</b> .....	15
<b>49 CFR Part 26.35 (Business Development Program)</b> .....	16
<b>49 CFR Part 26.37 (Monitoring Program Participants)</b> .....	16
<b>49 CFR Part 26.39 (Small Business Enterprise Element)</b> .....	20
<b>49 CFR Part 26.43 (Set-Asides and Quotas)</b> .....	21
<b>49 CFR Part 26.45 (Overall Goals)</b> .....	21
<b>49 CFR Part 26.47 (Shortfall Analysis and Action Plan)</b> .....	21
<b>49 CFR Part 26.51 (Contract Goals)</b> .....	22
<b>49 CFR Part 26.53 (Good Faith Efforts)</b> .....	23
<b>49 CFR Part 26.53(f) (Termination/Replacement/Substitution of a DBE)</b> .....	25
<b>49 CFR Part 26.53(g) (Good Faith Efforts to Replace Lost DBE Participation)</b> .....	25
<b>49 CFR Part 26.53(i) (DBE Prime Contractors)</b> .....	26
<b>49 CFR Part 26.53(j) (Furnishing of Requested Documents)</b> .....	26
<b>49 CFR Part 26.55 (Counting)</b> .....	26
<b>49 CFR Part 26.61 (Burdens of Proof)</b> .....	27
<b>49 CFR Part 26.63 (Group Membership Determinations)</b> .....	28
<b>26.65 (Size Standards)</b> .....	28
<b>49 CFR Part 26.67 (Determinations Concerning Social and Economic Disadvantage)</b> .....	29
<b>49 CFR Part 26.69 (Determinations Concerning Ownership)</b> .....	30

<b>49 CFR Part 26.71 (Determinations Concerning Control)</b> .....	<b>31</b>
<b>49 CFR Part 26.81 (Alaska Unified Certifications Program)</b> .....	<b>32</b>
<b>49 CFR Part 26.83 (Certifications Procedures)</b> .....	<b>32</b>
<b>49 CFR Part 26.85 (Interstate Certification)</b> .....	<b>33</b>
<b>49 CFR Part 26.86 (Denials of Initial Requests for Certification)</b> .....	<b>33</b>
<b>49 CFR Part 26.87 (Removing DBE Eligibility)</b> .....	<b>34</b>
<b>49 CFR Part 26.88 (Summary Suspensions of Certification)</b> .....	<b>34</b>
<b>49 CFR Part 26.91 (USDOT Certifications Appeals)</b> .....	<b>34</b>
<b>49 CFR Part 26.109 (Confidentiality, Cooperation, and Intimidation or Retaliation)</b> .....	<b>34</b>

**State of Alaska**  
**Department of Transportation & Public Facilities**  
**Disadvantaged Business Enterprise Program Policy Statement**

The Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE) Business Development Office will assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program through activities outlined in the Statement of Work for the DBE Support Services program and approved annually by Federal Highway Administration (FHWA).

It is the policy of The Alaska Department of Transportation and Public Facilities (ADOT&PF) to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in United States Department of Transportation (USDOT)-assisted contracts. It is also our policy to

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

ADOT&PF has delegated a DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by ADOT&PF in its financial assistance agreements with the USDOT.

ADOT&PF has disseminated this policy statement to all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts, as well as construction contractors, by publishing this notice on our internet site at:

[www.dotcivilrights.alaska.gov](http://www.dotcivilrights.alaska.gov)

The Civil Rights Office (CRO) will also disseminate this policy using the following methods: announcements at the Annual DBE Conference, e-mail blasts to all DBEs and prime contractors, communications with the Associated General Contractors, Alaska Public Notices, and providing a link to the CRO website and the DBE Transporter Newsletter.

  
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Marc A. Luken  
Commissioner  
Alaska Department of Transportation & Public Facilities

Date: 1 Sep 17

#### 49 CFR Part 26.1 (Objectives)

The ADOT&PF DBE program applies to all types of firms and seeks to achieve several objectives:

- 1) To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in ADOT&PFs highway, transit, and airport financial assistance programs.
- 2) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
- 3) To ensure that ADOT&PFs DBE program is narrowly tailored in accordance with applicable law.
- 4) To ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs.
- 5) To help remove barriers to the participation of DBEs in USDOT-assisted contracts.
- 6) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by ADOT&PF.
- 7) To assist the development of firms that can compete successfully in the marketplace outside of the DBE program.
- 8) To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

#### 49 CFR Part 26.3 (Applicability)

As a recipient of federal funds, ADOT&PF is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance.

#### 49 CFR Part 26.5 (Definitions)

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

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

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

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

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a

minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

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

**Alaska Unified Certifications Program (AUCP)** means the Unified Certifications Program serving all DOT-recipients in the State of Alaska.

**Assets** mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

**Business, business concern or business enterprise** means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

**Civil Rights Office (CRO)** means the Alaska Department of Transportation & Public Facilities Civil Rights Office.

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

**Contingent Liability** means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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

**Contract Compliance Review (CCR)** means comprehensive reviews of the employment practices of ADOT&PF contractors and subcontractors in order to determine compliance with Equal Employment Opportunity and Affirmative Action contractual obligations.

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

**Days** mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

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

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

- (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

***Immediate family member*** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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

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

***Liabilities*** mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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

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

***Non-compliance*** means that a recipient has not correctly implemented the requirements of this part.

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

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

**Plan Holder Self-Registration List (PHSRL)** means the ADOT&PF online portal that allows contractors, DBEs, SBEs and other non-DBEs to self-register as an interested contractor to bid.

**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

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

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

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

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

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

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

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

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

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

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

**Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small



Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

***Socially and economically disadvantaged individual*** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

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

- i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. Women;
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

***Spouse*** means a married person, including a person in a domestic partnership or a civil union recognized under State law.

***Transit vehicle manufacturer*** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-

produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

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

#### 49 CFR Part 26.7 (Discriminatory Actions)

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

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

#### 49 CFR Part 26.11 (Records Maintenance and Reporting)

In compliance with the requirements of 49 CFR Part 26.11, ADOT&PF will maintain the following records and furnish reports to applicable USDOT operating administrations.

- (1) ADOT&PF will submit the Uniform Report of DBE Commitments/Awards and Payments for each half of the federal fiscal year by the dates and in the format included in 49 CFR Part 26, Appendix B.
- (2) ADOT&PF will provide data about its DBE program to the USDOT as directed by the Operating Administrations.
- (3) ADOT&PF will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to provide accurate data about the universe of DBE and non-DBE contractors and subcontractors who seek to work on ADOT&PFs federally-assisted contracts, to be used in setting overall goals. The following information will be collected from each bidder:
  - i. Name of firm
  - ii. Mailing and email addresses
  - iii. Contact name
  - iv. Telephone and fax numbers
  - v. Date the firm was established
  - vi. Type of firm
  - vii. Gross annual receipts
  - viii. Type of contract/proposals bid on, designated by USDOT operating administration
  - ix. DBE certification status

ADOT&PF will collect this information by requiring all firms to submit a Bidder Registration Form (25D-6) prior to an ADOT&PF project being awarded. This information must be submitted by contractors/consultants on an annual basis by January 1, and is valid for the calendar year. This information will be listed on the Bidder Registration online directory

available at <http://www.dot.alaska.gov/cvlrts/bidreg.shtml>, and will be updated at the beginning of each business week.

- (4) ADOT&PF will maintain records documenting a firm's compliance with the requirements of 49 CFR Part 26. For each certified firm, the complete application package and all affidavits of no-change, change notices, and on-site reviews will be retained indefinitely. Other DBE certifications records will be retained for 3 years in accordance with applicable State of Alaska Records Retention and Disposition Schedules available at [http://archives.alaska.gov/records\\_management/schedules/dot\\_retention.html](http://archives.alaska.gov/records_management/schedules/dot_retention.html). All DBE certifications records are stored in a locked, secure location maintained by the ADOT&PF CRO, and access is restricted to authorized staff to ensure confidentiality.
- (5) ADOT&PF will report to the USDOT Office of Civil Rights, by January 1 of each year, the percentage and location in the state of certified DBE firms in the AUCP Directory controlled by the following:
  - i. Women
  - ii. Socially and economically disadvantaged individuals (other than women); and
  - iii. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

#### 49 CFR Part 26.13 (Assurances)

ADOT&PF has signed the following assurances, applicable to all USDOT-assisted contracts and their administration.

*The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).*

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

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

- (1) *Withholding monthly progress payments.*

- (2) *Assessing sanctions.*
- (3) *Liquidating damages.*
- (4) *Disqualifying the contractor from future bidding as non-responsible.*

ADOT&PF Statewide Special Provisions Section 120 implements the requirements of the DBE program. Failure to comply with the provisions of Section 120 is considered a material breach of contract, and may result in cancelation of intent to award, withholding of progress payments consistent with Subsection 109-1.06, contract termination, or other remedy as ADOT&PF deems appropriate. Failure to comply with Section 120 is justification for debarment action as provided in AS 36.30.640(4).

#### **49 CFR Part 26.15 (Exemptions and Waivers)**

ADOT&PF will coordinate with the applicable operating administration when requesting exemptions from any of the provisions of 49 CFR Part 26. Applications for waivers will include specific program proposals and summaries of public outreach and participation.

#### **49 CFR Part 26.21 (Administrative Requirements)**

ADOT&PF will update this plan when there have been significant changes and submit the updated plan the concerned USDOT operating administration for approval. Sub-recipients of federal funds must comply with this program document and may not develop a plan independent from this document.

#### **49 CFR Part 26.23 (Policy Statement)**

ADOT&PF has issued a Policy Statement expressing its commitment to its DBE program, stating program objectives, and outlining responsibilities for program implementation. ADOT&PF has distributed its policy statement to DBE and non-DBE business communities through:

- (1) Publication on the ADOT&PF CRO website.
- (2) Announcements at the Annual DBE Conference.
- (3) E-mail blasts to all DBEs, constant communication with the Associated General Contractors of Alaska, and ADOT&PF senior leadership.
- (4) Alaska Public Notices.
- (5) The DBE Transporter newsletter.

The Policy Statement is detailed on the third page of this program plan.

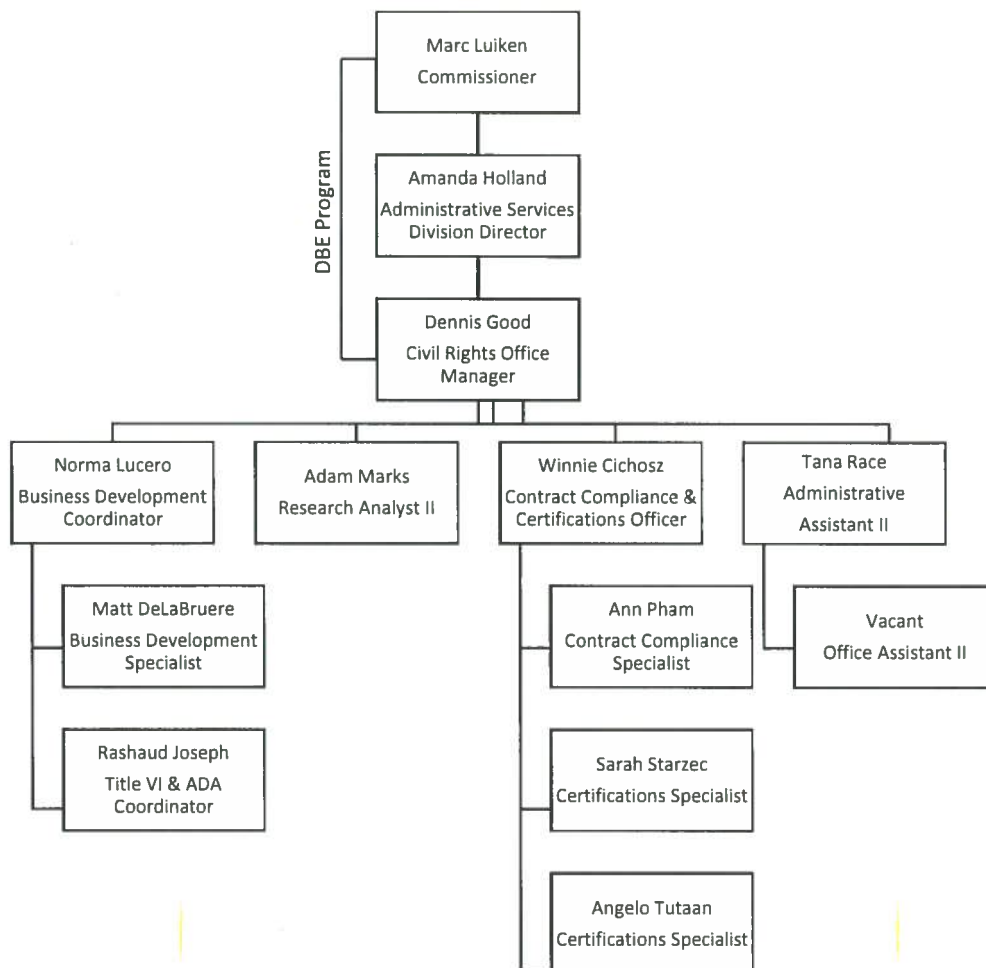
#### 49 CFR Part 26.25 (DBE Liaison Officer)

ADOT&PF has designated the following individual as its DBE Liaison Officer (DBELO):

Dennis Good  
Civil Rights Office Manager  
2200 E. 42<sup>nd</sup> Avenue  
Anchorage, AK 99508  
(907) 269-0848  
[dennis.good@alaska.gov](mailto:dennis.good@alaska.gov)

*For individuals requiring TTY communications, please contact Alaska Relay at 711.*

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that ADOT&PF complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the ADOT&PF Commissioner concerning DBE program matters. The following chart displays the DBELO position in the organization:



The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 10 to assist in the administration of the program, with duties and responsibilities that include:

- (1) Gathering and reporting statistical data and other information as required by USDOT operating administrations.
- (2) Setting overall DBE goals.
- (3) Identifying contracts and procurements so that DBE goals and race-neutral requirements are included in solicitations.
- (4) Analyzing ADOT&PFs progress toward attaining its DBE goal, and identifying ways to improve progress.
- (5) Planning and participating in DBE training seminars.
- (6) Certifying DBEs according to the criteria set by USDOT, and acting as liaison to the Uniform Certification Process in Alaska.
- (7) Performing outreach to DBEs and community organizations to advise them of opportunities.
- (8) Making good faith efforts determinations.
- (9) Reviewing federal and state laws and regulations to make policy recommendations to the Commissioner of ADOT&PF.
- (10) Providing Support Services to DBEs and prospective DBEs prior to, and during their participation in the program.
- (11) Assisting ADOT&PF personnel, DBEs and non-DBE contractors, and other parties in resolution of DBE program-related issues.
- (12) Developing, maintaining, and implementing DBE program operating methods.
- (13) Providing direct technical assistance to ADOT&PF personnel.
- (14) Establishing and regularly updating an online DBE directory.
- (15) Implementing a Small Business Development Program (SBDP).

#### 49 CFR Part 26.27 (DBE Financial Institutions)

It is the policy of ADOT&PF to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. A review of federal and state-chartered banks and financial institutions found there are no such banks or financial institutions in Alaska.

On a continuing basis, ADOT&PF will review the availability of such financial institutions.

#### 49 CFR Part 26.29 (Prompt Payment)

ADOT&PF relies upon Alaska Statute 36.90.210 - Required Contractual Terms as a basis for ensuring compliance with this part. Alaska Statute 36.90.210 (a) states:

*...The prime contractor and a subcontractor on a public construction or public works contract shall include in a subcontract between the prime contractor and subcontractor for the*

*public construction or public works a clause that requires the prime contractor to pay (1) the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid...*

Alaska Statute 36.90.210 (b) states:

*A subcontractor on a public construction or public works contract shall include in each subcontract under which a person agrees to provide the subcontractor with services, other than as an employee, or supplies to be used in the public construction or public works project a clause that requires the subcontractor to pay (1) the person for satisfactory performance under the subcontract within eight working days after receiving payment from which the person is to be paid...*

ADOT&PF Standard Specifications for Highway Construction Section 108-1.01 Prosecution and Progress details the prime contractor's obligations when subcontracting a portion of the contract. Section 108-1.01(1)(c-g) states that the contractor shall ensure that for all subcontracts:

- (1) The required prompt payment provisions of AS 36.90.210 are included in all subcontracts;*
- (2) A clause is included requiring the Contractor to pay the subcontractor for satisfactory performance according to AS 36.90.210 and within eight (8) working days after receiving payment from which the subcontractor is to be paid;*
- (3) A clause is included requiring the Contractor to pay the subcontractor interest, according to AS 45.45.010(a), for the period beginning the day after the required payment date and ending on the day payment of the amount due is made;*
- (4) A clause is included requiring the Contractor to pay the subcontractor all retainage due under the subcontract, within eight (8) working days after final payment is received from the Department, or after the notice period under AS 36.25.020(b) expires, whichever is later;*
- (5) A clause is included requiring the Contractor to pay interest on retainage, according to AS 36.90.250 and AS 45.45.101(a).*

Contractors are entitled payment for the value of work that is satisfactorily performed to date. Progress payments are prepared based on estimated quantities (unit measure, breakdown of lump sum items, load count, engineering judgement, etc.), and are reviewed with the contractor prior to submittal for processing. The prime contractor is paid within 21 calendar days of the dates both the Project Engineer and the contractor signed and dated the progress estimate (based on last date signed), or within 21 calendar days of the date the state actually receives the federal (or grant) money, whichever is later. The prime contractor shall pay subcontractors within 8 working days of receipt of payment from ADOT&PF from which subcontractors are to be paid.

ADOT&PF will not withhold retainage from prime contractors, and will require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within eight working days after final payment is received from ADOT&PF.



To ensure that subcontracts comply with prompt payment requirements, ADOT&PF will review 1 out of every 10 subcontracts executed on USDOT-funded prime contracts to verify that compliant prompt payment clauses are included.

ADOT&PF monitors prompt payment compliance on USDOT-funded contracts by conducting Contract Compliance Reviews (CCRs). As one element of the CCR, the ADOT&PF CRO contacts each DBE and non-DBE subcontractor to verify payments have been made as declared by the prime contractor. Any issues identified during the CCR are directed to the ADOT&PF Regional Contract Compliance Liaison for follow up, and if necessary, enforcement action.

Failure to comply with prompt payment requirements is considered unsatisfactory performance, and may result in enforcement action such as withholding of progress payments, termination of contract, suspension, or debarment.

ADOT&PF may withhold part of or all of a progress payment pursuant to ADOT&PF Standard Specifications for Highway Construction Section 109-1.06 to enforce prompt payment requirements. Section 109-1.06 notes:

*...The contractor's failure to pay subcontractors, or subcontractor's failure to pay lower tier subcontractors, according to prompt payment provisions required under Subsection 108-1.01 is considered unsatisfactory performance... The Department will not withhold payment as retainage but may withhold payment for unsatisfactory performance...*

ADOT&PF may, pursuant to ADOT&PF Standard Specifications for Highway Construction Section 108-1.08(9), issue a written Notice of Default to the contractor and the surety if the contractor fails to comply with applicable civil rights requirements. Failure to cure a default within the time specified in a Notice of Default authorizes ADOT&PF to terminate the contract.

Any actions to suspend or debar will be made in accordance with Alaska Statute 36.30.640 Causes for Debarment or Suspension.

#### 49 CFR Part 26.31 (DBE Directory)

ADOT&PF maintains the Alaska Unified Certifications Program (AUCP) DBE Directory identifying all firms eligible to participate as DBEs in the State of Alaska. The directory lists firm names, addresses, phone numbers, and the types of work the firm has been certified to perform as a DBE. ADOT&PF revises the directory on a weekly basis, and makes the directory available online at [www.dotcivilrights.alaska.gov](http://www.dotcivilrights.alaska.gov).

#### 49 CFR Part 26.33 (Over-concentration)

An analysis for over-concentration for a given type of work shall begin when either of the following conditions has been met:

- (1) More than 50% of the total number of firms ready, willing, and able to perform such work are composed of DBE firms; or
- (2) DBE firms earned more than 50% of the total federal-aid dollars spent on such work during the previous federal fiscal year; or



(3) The ADOT&PF CRO receives an allegation of over-concentration.

ADOT&PF will review the types of work and evaluate the circumstances that lead to of the above conditions. Based on the findings ADOT&PF will address each instance on a case-by-case basis in coordination with the concerned operating administration.

#### 49 CFR Part 26.35 (Business Development Program)

ADOT&PF has established a business development program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. Primary elements of the business development program include the Map to Success Specialized Assistance Program, and the Mentor-Protégé Program (MPP).

The Map to Success Specialized Assistance Program is a business development initiative designed to assess the overall business infrastructure of firms by conducting an in-depth, one-on-one review. The review is conducted by a business consultant specializing in construction business development, and seeks to assist firms by highlighting areas needing improvement and providing firms guidance to grow their business. Additional information about the Map to Success Specialized Assistance Program is available at [www.dotcivilrights.alaska.gov](http://www.dotcivilrights.alaska.gov).

ADOT&PF CRO proposes establishing a Mentor-Protégé Pilot Program which will identify at minimum one to two areas in either construction or professional services for each ADOT&PF region in Alaska that has fewer than two suppliers. Once these areas are identified, the CRO will review the current inventory of DBE firms that have completed the Map to Success program or provide a service (based on NAICS code) that could meet or fulfill the requirements to bid. Moreover, the CRO will identify two to three potential mentors who have been in business no less than five years and that have the capacity and interest in participating as a mentor to the identified protégé. Pairings for the Mentor-Protégé Pilot Program will be directed, selected and formed by the CRO to begin with. Once the areas of mentoring have been identified and a potential protégé who meets the minimum qualifications of time and successful completion of the Map to Success program – and an appropriate mentor is selected by CRO, an applicable work plan will be developed by the mentor and protégé and will be approved by the CRO. During the execution of the mentor-protégé work plan, the CRO and/or a select review committee will monitor progress and provide corrective action; if necessary. It is anticipated that the mentor-protégé work plans will last no more than one calendar year and the CRO may execute additional mentor-protégé pairings during the initial pilot plan in order to meet current needs and/or the additional notification of the MPP as interest grows.

The initial pilot project will target the most critical needs in each ADOT&PF region as an effort at a minimum to increase the number of participating firms to bid on areas that historically have not had enough vendors to meet demand or have had recent participating firms leave voluntarily or otherwise from the DBE program.

#### 49 CFR Part 26.37 (Monitoring Program Participants)

ADOT&PF has implemented appropriate monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 by DBE program participants. ADOT&PF has set forth the following mechanisms to monitor DBE program compliance:

##### (1) Training

The CRO provides training and/or guidance for ADOT&PF and non-ADOT&PF project personnel (consultants) as a means to monitor DBE program compliance. By having personnel on project sites and in procurement offices who are knowledgeable about DBE program rules, it allows ADOT&PF to expand its DBE monitoring capabilities beyond the CRO. ADOT&PF and non-ADOT&PF project personnel are instructed, both verbally and in the ADOT&PF Construction Manual, to inform the CRO of any instances of potential non-compliance with the DBE program.

The ADOT&PF CRO holds monthly teleconferences with ADOT&PF Regional Contract Liaisons to provide guidance on DBE program implementation. Additionally, the CRO provides DBE program on-site guidance to ADOT&PF and non-ADOT&PF project personnel as one component of Quality Assurance Reviews, and directly to DBE and non-DBE contractors during various events (Annual DBE Conference, Regional Training Sessions, Regional Director's Brown Bag Lunch Series, etc.).

## **(2) Commercially Useful Function (CUF)**

To be eligible for DBE credit, a DBE must perform a CUF as defined by 49 CFR Part 26.55. ADOT&PF has set forth the following process to monitor DBE performance of CUF on USDOT-funded contracts:

On-site project personnel perform CUF reviews for DBE prime contractors, subcontractors, and joint ventures performing work on-site as soon as a DBE begins work on a project. At least one CUF review is conducted per DBE, per construction season, and additionally as necessary. To assist in conducting CUF reviews, project personnel utilize the Form 25A-298 (CUF monitoring report), which can be found at [www.dot.state.ak.us/cvlrts/forms.shtml](http://www.dot.state.ak.us/cvlrts/forms.shtml). Upon completion, project personnel must submit CUF monitoring reports and any accompanying documentation (such as lease agreements, lower-tier subcontracts, or additional reviewer observations) to the ADOT&PF CRO for further review. The CRO will review the submittal and either request additional information or accept the CUF documentation as sufficiently documenting a firm's CUF. In cases where the CRO requests additional documentation and, in coordination with the Project Engineer, finds that a DBE is not performing a CUF, the following process will be used:

Consistent with the provisions of 49 CFR Part 26.55, before making a final determination that no CUF has been performed by a DBE, the Project Engineer will coordinate transmittal of the presumptive finding to the prime contractor, who will in-turn, notify the DBE. The contractor will provide the DBE the opportunity to provide rebuttal information, and the prime contractor shall present the information to the Project Engineer. The Project Engineer in coordination with the CRO, will make a final determination on whether the DBE is performing a CUF. Under no circumstances will the prime contractor take any action with respect to the DBE until the final determination is made. Decisions on CUF matters are subject to review by ADOT&PF, but are not administratively appealable to USDOT.

As part of its Quality Assurance Reviews performed annually, the ADOT&PF CRO will monitor commercially useful function of DBEs performing work off-site, such as professional services providers or firms participating as regular dealers. The ADOT&PF CRO will follow the

previously defined process in determining whether an off-site DBE is performing a commercially useful function.

### **(3) Joint Checks**

The ADOT&PF CRO monitors joint check payments in conjunction with its process for monitoring CUF. All joint check arrangements will be reviewed by the CRO and approved on a case-by-case basis to ensure compliance with the requirements of 49 CFR Part 26.

### **(4) Contract Compliance Reviews (CCRs)**

The CCR is a systematic, objective, and comprehensive review of the employment practices of ADOT&PF contractors and subcontractors. CCRs are conducted by the ADOT&PF CRO to determine whether ADOT&PF contractors and subcontractors are complying with their Equal Employment Opportunity (EEO) and Affirmative Action (AA) contractual obligations. These site visits provide an avenue for monitoring DBE participation and prompt payment, as discussed in Section 26.29, and consist of meeting with contractors on-site to examine their EEO objectives, reviewing files and data, conducting project worksite interviews, and preparing a final review and analysis of collected information. Review dates are coordinated with contractors and scheduled during their peak employment periods. This allows time to correct deficiencies, should any be found. In addition, the CRO will review special training provisions and assess whether contractors are meeting or exceeding the DBE goal or commitment for the project.

In agreement with FHWA, the CRO is required to perform 10 CCRs annually. The parameters for choosing the CCRs are set based on the following criteria:

- i. Largest dollar value FHWA contracts
- ii. Largest number of FHWA contracts
- iii. Contracts which are the type, size, and/or duration to provide the contractor with maximum hiring and promotional opportunities
- iv. Contractors who have past reporting data which indicates regularly underutilizing women and minorities in their workforce
- v. Contracts that contain Statewide Special Provisions Section 645, Training Program
- vi. Contractors FHWA specifically requests to have reviewed
- vii. Contractors who have complaints filed against them regarding employment practices

Contractors who were found in non-compliance during the previous construction season and working on FHWA-funded projects in the upcoming season are automatically selected for a follow-up review regardless of size, duration, etc. of the project(s) involved.

### **(5) Quality Assurance Reviews (QARs)**

QARs are on-site reviews conducted by the DBE/SBE Business Development Office staff, which serve as a mechanism to monitor DBE program compliance and a vehicle for providing guidance to non-Civil Rights personnel. These site visits include interviews with DBEs, prime contractors, project staff, as well as additional CUF reviews. Projects are audited to ensure documentation requirements are accurate and up to date, and to monitor for discriminatory

practices or violations of other policies such as prompt payment. 20% of FHWA-assisted contracts that have not had CCRs during a given construction season receive QARs.

#### **(6) Required Reporting**

ADOT&PF Statewide Special Provisions Section 120.3.04(4) requires that contractors on USDOT-assisted contracts report payments made to DBEs on a monthly basis beginning the first month that a DBE participates on the project through the month in which the final payment is made to the DBE. Form 25A-336 (Monthly Summary of DBE Participation) must be submitted to the ADOT&PF CRO by the 15<sup>th</sup> of the month following the month in which payments were made. Upon request, contractors must submit supporting documentation such as copies of canceled checks or bank statements that identify payer, payee, and amount of transfer. This documentation provides the ADOT&PF CRO with written verification of payments being made to DBE subcontractors. Instructions for acquiring, completing and submitting Form 25A-336 (Monthly Summary of DBE Participation) can be found online at [www.dot.state.ak.us/cvlrts/forms.shtml](http://www.dot.state.ak.us/cvlrts/forms.shtml). The ADOT&PF CRO monitors DBE utilization on a continual basis, using information provided by contractors on Forms 25A-336 (Monthly Summary of DBE Participation), 25A-325C (DBE Utilization Report), and 25A-326 (Prime Contractors Written DBE Commitment) to ensure that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed. Copies of these forms can be found online through the previous link.

#### **(7) Subcontracting Practices**

ADOT&PF will monitor subcontracts let on USDOT-funded contracts by reviewing 1 out of every 10 subcontracts executed to ensure all required contract clauses such as those pertaining to prompt payment are included in each subcontract. The Regional Contract Compliance Liaison is responsible for reviewing subcontracts, and maintaining records of those subcontracts that were reviewed.

#### **(8) DBE Utilization**

The ADOT&PF CRO will audit contracting records (subcontracts, payments, commitments, CUFs) for each project on a continual basis for the duration of the project, and maintain a running tally of DBE utilization. At project closeout, the Regional Contract Compliance Liaison will request DBE clearance from the CRO. The CRO will conduct a final audit of the project, and if found compliant with the requirements of 49 CFR Part 26, will issue a written DBE clearance to the ADOT&PF Regional Contract Compliance Liaison. The written DBE clearance will certify that the project has complied with DBE program requirements, and upon receipt of the DBE clearance, the ADOT&PF Project Engineer may proceed with making final payment to the contractor.

#### **(9) Monitoring of Sub-Recipients**

ADOT&PF coordinates with individual sub-recipients of USDOT funds to provide training and guidance on DBE program implementation. Through individual meetings as well as group events such as the Annual DBE Conference, AUCP members are informed of changes in program requirements and provided guidance on implementing the DBE program as a sub-recipient.

Twice annually ADOT&PF works with and provides guidance to sub-recipients to collect data relevant for completing the Uniform Report of DBE Awards or Commitments. Additionally, every three years the ADOT&PF Alaska Community Transit section will conduct reviews of each sub-recipient of FTA funds to ensure that the DBE program is being administered in compliance with the requirements of 49 CFR Part 26 (reviews of FHWA sub-recipients will be conducted by the ADOT&PF CRO on an as-needed basis). Questions raised during such reviews pertain to DBE participation on procurements, good faith efforts to maximize DBE opportunities on procurements, and questions relating to complaints.

ADOT&PF will monitor overall DBE utilization on a continual basis to measure progress toward the overall DBE goal during each federal fiscal year. If during any fiscal year information demonstrates that current trends make it unlikely that ADOT&PF will achieve DBE awards and commitments that would be necessary to meet the overall DBE goal at the end of the fiscal year, ADOT&PF will coordinate with applicable USDOT operating administrations to take additional steps to increase DBE utilization during the remainder of the fiscal year, including setting contract goals in compliance with 49 CFR Part 26.47(d).

ADOT&PF will enforce DBE program compliance with legal and contract remedies available under federal, state, and local law. Enforcement mechanisms include:

#### **Contract Remedies**

ADOT&PF Statewide Special Provisions Section 120 implements the requirements of the DBE program. Failure to comply with the provisions of Section 120 is considered a material breach of contract, and may result in cancellation of intent to award, withholding of progress payments consistent with Subsection 109-1.06, contract termination, or other remedy as ADOT&PF deems appropriate. Failure to comply with Section 120 is justification for debarment action as provided in AS 36.30.640(4).

#### **Legal Remedies**

ADOT&PF will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalty rules) provided in 49 CFR Part 26.107. ADOT&PF will withhold progress payments consistent with ADOT&PF Standard Specifications for Highway Construction Subsection 109-1.06.

#### **49 CFR Part 26.39 (Small Business Enterprise Element)**

ADOT&PF has a Small Business Enterprise (SBE) Program that was approved July 18, 2012 through the FHWA Associate Administrator for Civil Rights encompassing FAA and FTA. The SBE program is administered under the DBE/SBE Business Development Office within the Civil Rights Office. Businesses may self-register with ADOT&PF as an SBE utilizing Form 25D-6 (Bidders Registration Form). If an SBE firm is awarded a USDOT-funded contract, at the time of award the firm will be required to submit the following to the ADOT&PF CRO:

- (1) SBE Affidavit of Certification Eligibility

- (2) Personal Financial Statement
- (3) Past three years of corporate and individual tax returns
- (4) If not a certified DBE, documentation that the firm is self-certified as a small business

ADOT&PF implements several race-neutral initiatives to benefit DBE and non-DBE SBEs interested in participating on USDOT-funded procurements. ADOT&PF, when practical, may unbundle contracts, specifying elements of a contract or subcontract to enable small businesses to bid as subcontractors or prime contractors. When determining if contracts are practical to unbundle, the following criteria will be considered:

- (1) Maintenance of project integrity and management efficiency – unbundling contracts should not disturb the overall administration and quality of the project or unreasonably increase project costs.
- (2) Number of small businesses working in the specific region – a high number of small businesses in the area can indicate the likelihood that small businesses will successfully submit a proposal or bid on the contract.
- (3) History of DBEs and small businesses submitting bids on similar types of projects – If DBEs and small businesses have a history of submitting proposals or bids on similar types of projects, past participation can indicate the probability that small businesses will successfully submit a proposal or bid on the contract.

For more information please refer to the ADOT&PF SBE Plan at [http://www.dot.alaska.gov/cvlrts/forms/SBE-FHWA-SBE\\_Plan.pdf](http://www.dot.alaska.gov/cvlrts/forms/SBE-FHWA-SBE_Plan.pdf).

#### 49 CFR Part 26.43 (Set-Asides and Quotas)

ADOT&PF does not use quotas in any way in the administration of its DBE program. ADOT&PF does not anticipate the need for set-aside contracts to redress egregious instances of discrimination.

#### 49 CFR Part 26.45 (Overall Goals)

ADOT&PF is required to submit an overall DBE program goal to each operating administration for legal sufficiency approval by August 1, triennially. ADOT&PF has established an overall goal in compliance with 49 CFR Part 26 of 8.83%, to be met entirely through race-neutral means and applicable for federal fiscal years 2018 through 2020. A description of the methodology used to calculate the overall goal and the goal calculations can be found at <http://www.dot.alaska.gov/cvlrts/index.shtml>. ADOT&PF will submit updated DBE goals to each operating administration by August 1 of the assigned year.

#### 49 CFR Part 26.47 (Shortfall Analysis and Action Plan)

If the awards and commitments to DBEs at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the ADOT&PF CRO will prepare and submit, within 90 days of the end of the federal fiscal year, an analysis and corrective action plan to the applicable USDOT operating administration for approval. ADOT&PF will base its analysis on available evidence to identify the factors that contributed to the shortfall, and will include a corrective action plan identifying the steps ADOT&PF will take to address each factor.



ADOT&PF will include in its shortfall analysis calculations demonstrating the actual race-neutral and race-conscious achievement versus the respective goal projections. To explore the causes of the differences between actual achievement and the goal projections, ADOT&PF will consider evidence related to DBE availability, DBE utilization, and efforts made by program participants to procure DBE participation. Evidence considered in the analysis may include:

- (1) ADOT&PF Bidders List records
- (2) AUCP certifications records
- (3) Plan Holder Self Registration List records
- (4) ADOT&PF Subcontracting records
- (5) Evidence of efforts made by prime contractors to procure DBE participation
- (6) DBE prime and subcontractor utilization on race-conscious and race-neutral contracts

Additionally, ADOT&PF will provide an analysis of the race-neutral and race-conscious measures used to meet the overall goal, and their levels of effectiveness.

Contributing factors identified in the shortfall analysis along with the review of measures used to meet the overall goal will form the basis of the corrective action plan. The corrective action plan will detail proposed changes to ADOT&PF practices to take effect during the next fiscal year. The proposed changes will seek to address the causes of the shortfall by introducing new race-neutral measures, building on existing race-neutral measures, and/or using contract goals to remedy the shortfall.

#### 49 CFR Part 26.51 (Contract Goals)

ADOT&PF operates under a race-neutral DBE program for FHWA and FTA, and does not set goals on FHWA or FTA-funded contracts. The Department will set contract goals on applicable FAA-funded contracts according to the following process:

For construction contracts, the ADOT&PF CRO will coordinate with ADOT&PF regional engineering staff to establish DBE goals based on DBE availability and available subcontracting opportunities on a contract-by-contract basis. To determine whether a contract goal is appropriate, ADOT&PF regional engineering staff will review the engineering estimate for the given project and work with the CRO to identify which bid items represent subcontracting opportunities. The CRO will make a determination of which bid items to consider in its contract goal calculation based on the availability of DBEs to perform that work. The AUCP DBE directory will be used to identify whether there are DBEs available to perform the work in the ADOT&PF operating region (due to the geographic size of the State of Alaska, DBEs identify which geographic regions they are available to work in at the time of their initial certifications and annually thereafter). The CRO will exclude bid items from its goal calculation that do not have DBEs available to perform the work, and will calculate the contract goal as the total of the engineers estimated total costs for each "subcontractable" bid item, reflected as a percentage of the engineer's estimated total costs for the project.

In cases where a procurement method is Design/Build, Construction Manager-at-Risk, or other innovative contracting practice where the preceding method may not apply, the ADOT&PF CRO will assign a DBE contract goal based on the race-conscious portion of its overall goal for the federal fiscal year in which the procurement is to be advertised.

For FAA-funded professional services contracts awarded in the Northern Region, contract goals will be calculated by the ADOT&PF Contracts Section based on the presence of subcontracting opportunities, subject to oversight by the ADOT&PF CRO.

#### 49 CFR Part 26.53 (Good Faith Efforts)

ADOT&PF treats bidder/proposers' compliance with good faith efforts requirements as a matter of responsibility. Each solicitation for which a contract goal has been established will require bidders/proposers to submit the following information on Forms 25A-325C (DBE Utilization Report) and 25A-326 (Prime Contractor's Written DBE Commitment) (copies of these forms are available for download at [www.dot.state.ak.us/cvlrts/forms.shtml](http://www.dot.state.ak.us/cvlrts/forms.shtml)) within five working days of the bid submission:

- (1) The names and addresses of DBEs that will participate on the contract.
- (2) A description of the work that each DBE will perform.
- (3) The dollar amount of the participation of each DBE.
- (4) Written and signed documentation of commitment to use a DBE subcontractor whose participation is submitted to meet a contract goal.
- (5) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

If a contract goal is not met, evidence of good faith efforts will be evaluated. Bidders may only clarify efforts taken before bid opening, and may not supplement with new efforts or additional DBE participation. Criteria considered when evaluating good faith efforts for sufficiency may vary, but will include consideration of prime contractor outreach to DBEs registered as interested, mandatory contacts on the ADOT&PF Plan Holders Self Registration List. Additional considerations may include:

- (1) Seeking DBE participation by considering those portions of the work or material needs consistent with DBE availability.
- (2) Contacting DBEs listed as voluntary contacts on the ADOT&PF Plan Holders Self Registration List.
- (3) Providing DBEs with adequate time (at least seven calendar days) to quote.
- (4) Consistent application of deadlines for quote submission and responsiveness determinations for DBEs and non-DBEs.
- (5) Providing assistance to DBEs, including:
  - i. Information about bonding or insurance required by the bidder.
  - ii. Information about securing equipment, supplies, materials, or business development related assistance or services.
  - iii. Adequate information about the requirements of the contract regarding the specific item of work or service sought from the DBE.

All efforts to contact DBEs must be recorded separately on Form 25A-321A (Contact Report) (forms are available for download at [www.dot.state.ak.us/cvlrts/forms.shtml](http://www.dot.state.ak.us/cvlrts/forms.shtml)) and provide details



regarding initial and follow-up contacts, and the result of those contacts (did the DBE provide an acceptable sub-bid?). Bidders must include evidence supporting a determination not to use a DBE subcontractor, including DBE and non-DBE quotes. More examples of good faith efforts may be found in Appendix A to 49 CFR Part 26.

In cases where a procurement method is Design/Build, Construction Manager-at-Risk, or other innovative contracting practice where the preceding method may not apply, and the bidder has committed to meeting the contract goal, the CRO will evaluate efforts to meet the goal after contract award but prior to construction. Good faith efforts on these contracts will be evaluated in the same manner as previously described.

The ADOT&PF CRO will evaluate good faith efforts and generate written determinations of sufficiency or insufficiency based evidence submitted. The following ADOT&PF personnel are responsible for determining whether a bidder who has not met a contract goal has documented sufficient GFE to be regarded as responsive. These positions are also responsible for determining a prime contractor's GFE on replacement of a DBE firm:

Contract Compliance Officer  
Civil Rights Office Manager  
DBE/SBE Business Development Coordinator

PO Box 196900  
Anchorage, AK 99519-6900  
(907) 269-0851 / 1-800-770-6236 (within Alaska)

*For individuals requiring TTY communications, please contact Alaska Relay at 711.*

Within (3) working days of being informed by ADOT&PF that they are not responsible because they have not documented sufficient GFE, a bidder may request administrative reconsideration. The bidder will make this request in writing to the following reconsideration official:

Dennis Good  
ADOT&PF DBE Liaison Officer  
2200 E. 42<sup>nd</sup> Avenue  
Anchorage, AK 99508  
(907) 269-0848 / 1-800-770-6236 (within Alaska)

[dennis.good@alaska.gov](mailto:dennis.good@alaska.gov)

*For individuals requiring TTY communications, please contact Alaska Relay at 711.*

The reconsideration official shall remain impartial and may not have assisted in the original determination by the CRO of the bidder's insufficient good faith efforts.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or arguments concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue. ADOT&PF will send the bidder a written decision on the reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or

make adequate good faith efforts to do so. The result of the reconsideration process is not subject to an administrative appeal to USDOT.

ADOT&PF will ensure that all information is complete, accurate and adequately documents the bidder/proposer's good faith efforts before ADOT&PF commits to the performance of the contract by the bidder/proposer.

#### 49 CFR Part 26.53(f) (Termination/Replacement/Substitution of a DBE)

Contractors shall submit to the ADOT&PF Project Engineer a written request to replace or substitute a DBE who fails or refuses to execute a written subcontract or who is terminated under ADOT&PF Statewide Special Provisions Section 120-3.03(3). Contractors shall not terminate a DBE without good cause and the prior written consent of the ADOT&PF Project Engineer. Good cause may include:

- (1) DBE defaults on their obligation for any reason.
- (2) The DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the contractor.
- (3) The DBE fails or refuses to meet the contractor's reasonable, nondiscriminatory bond requirements.
- (4) The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
- (5) The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law.
- (6) The Project Engineer determines the DBE is not a responsible contractor.
- (7) The DBE voluntarily withdraws from the project and provides a written notice of its withdrawal.
- (8) The DBE is ineligible to receive DBE credit for the type of work required.
- (9) A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work.
- (10) Other documented good cause that the Project Engineer determines, compels the termination of the DBE, provided that good cause does not exist if the contractor seeks to terminate a DBE it relied upon to obtain the contract so that the contractor can self-perform the work for which the DBE was engaged or so that the contractor can substitute another DBE or non-DBE after contract award.

Contractors must give written notice to DBEs of their intent to request to terminate and/or substitute, and the reason for the request. The request to terminate and/or substitute must be submitted to the Project Engineer. Contractors must give the DBE 5 working days to respond to the written notice. Any response from the DBE must be submitted to the Project Engineer.

#### 49 CFR Part 26.53(g) (Good Faith Efforts to Replace Lost DBE Participation)

ADOT&PF will require the prime contractor to provide copies of new or amended subcontracts, or documentation of good faith efforts to replace lost DBE participation to the extent required to meet the DBE goal. If the contractor fails or refuses to comply in the time specified by the Project Engineer, the Project Engineer will withhold progress payments consistent with ADOT&PF Standard Specifications for Highway Construction subsection 109-1.06. If the contractor still fails to comply, the contracting officer may initiate a termination for default proceeding.

If a contractor cannot obtain replacement DBE participation, the DBE goal will not be adjusted and the contractor will be required to submit, within 7 days, documentation of good faith efforts to replace the lost DBE participation to the extent required to meet the DBE goal. The ADOT&PF CRO, in coordination with the Project Engineer, may consider the following criteria as satisfying the portion of DBE participation that cannot be replaced:

- (1) The Contractor was not at fault or negligent and that the circumstances surrounding the replacement or substitution were beyond the control of the Contractor.
- (2) The Contractor is unable to find replacement DBE participation at the same level of DBE commitment and has adequately performed and documented GFE. Considerations for GFE sufficiency determinations in these instances may include contacting other DBEs certified to perform the same work, or efforts to create additional opportunities for DBEs.
- (3) It is too late in the project to provide any real subcontracting opportunities for DBEs.

If the ADOT&PF Project Engineer and CRO determine that additional DBE participation is not available, the DBE may be replaced or substituted with a non-DBE or the contractor may self- perform the work.

#### 49 CFR Part 26.53(i) (DBE Prime Contractors)

ADOT&PF will apply its contract goal and good faith efforts requirements in the case of DBE prime contractors. In determining whether a DBE bidder or offeror has met a contract goal, ADOT&PF will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

#### 49 CFR Part 26.53(j) (Furnishing of Requested Documents)

ADOT&PF will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts consistent with ADOT&PF Statewide Special Provisions Section 120-5.1.

#### 49 CFR Part 26.55 (Counting)

The ADOT&PF CRO is tasked with tracking and reporting DBE participation on USDOT-funded contracts. Only the value of the work actually performed by a DBEs own forces is counted toward DBE goals, including the costs of supplies, materials, and equipment leased by the DBE (with the exception of supplies or equipment a DBE subcontractor purchases or leases from a prime contractor or its affiliate). Fees or commissions charged by a DBE firm for providing bona fide services such as consultant work are counted toward DBE goals provided that the fees are reasonable and not excessive compared to fees customarily allowed for similar services. Work subcontracted to non-DBE lower-tier subcontractors by DBE subcontractors is not counted toward DBE goals. Additionally, DBEs must be performing a commercially useful function in order for their work to be credited toward overall and contract goals. Commercially useful function will be determined on a contract-by-contract basis, and will be based on the procedures outlined in the Section 26.37 of this program plan.

ADOT&PF has established procedures for counting DBE participation and crediting that participation toward overall and contract goals. ADOT&PF tracks DBE subcontractor utilization on construction contracts by requiring prime contractors to report all payments made to DBE subcontractors on a monthly basis to the ADOT&PF CRO utilizing Form 25A-336 (Monthly Summary of DBE Participation). Prime contractors are required to complete Form 25A-336 (Monthly Summary of DBE Participation) in a way that ensures DBE credit is accurately calculated and captured, and are also

required to submit copies of checks and/or bank statements upon request for verification purposes. Form 25A-336 (Monthly Summary of DBE Participation) provides for prime contractors to report whether payments to DBEs are credited at 100% or 60% [of payment]. ADOT&PF will credit commitments/awards and payments made to DBEs toward DBE goals as follows:

- (1) 100% credit will be given for commercially useful function work performed by a DBEs own forces in an ADOT&PF Work Category and/or NAICS code for which the DBE is certified.
- (2) 100% credit will be given for the costs of materials, supplies, or other bulk items procured from a DBE manufacturer.
- (3) 60% credit will be given for the costs of materials, supplies, or other bulk items procured from a DBE acting as a regular dealer. The determination of whether a DBE is acting as a regular dealer will be made on a case by case basis.
- (4) Purchases of materials, supplies, or services from DBEs who are neither manufacturers nor regular dealers will receive credit for the entire amount of fees or commissions charged, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Credit given for expenditures to firms acting as brokers will be calculated on a contract-by-contract basis based on observations made by ADOT&PF project personnel and information provided by contractors on Form 25A-336 (Monthly Summary of DBE Participation).
- (5) When a DBE performs as a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will be counted toward DBE goals. Calculations for joint venture credit will be based on observations by ADOT&PF project personnel and submitted with Form 25A-298 (CUF Monitoring Report).
- (6) ADOT&PF will credit 100% of the total value committed/awarded/paid to DBE trucking firms for transportation services it provides on a contract using trucks it owns, insures, and operates using drivers it employs.
- (7) DBEs may lease trucks without drivers from non-DBE truck leasing companies and use their own employees as drivers to receive 100% credit. Copies of lease agreements must be submitted to the ADOT&PF CRO along with Form 25A-298 (CUF Monitoring Report) attesting whether or not the leased trucks display the name and identification number of the DBE.
- (8) No DBE credit will be counted toward any DBE goals if a DBE is not certified at the time of contract execution.
- (9) Payments made to DBEs during the execution of a contract after they cease to be certified will not be counted toward the overall DBE goal.
- (10) Amounts awarded or committed to DBE subcontractors will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount has actually been paid to the DBE and reported to the ADOT&PF CRO on Form 25A-336 (Monthly Summary of DBE Participation).

#### 49 CFR Part 26.61 (Burdens of Proof)

The AUCP must presume that the members of the designated groups found in 49 CFR 26.67 are socially and economically disadvantaged. Owners for which disadvantaged status is relied must provide a notarized Affidavit of Certification, which certifies that the owner is a member of one or more of the designated groups.

#### 49 CFR Part 26.63 (Group Membership Determinations)

The AUCP reviews documents from the following list if the applicant's presumption of disadvantage has been rebutted, or if the AUCP has a well-founded reason to question the individual's claim of membership in that group:

- (1) Birth certificate
- (2) Naturalization papers
- (3) Certificate of Degree of Indian Blood or Certificate of Degree of Alaska Native Blood (CDIB), blood quantum letter from the tribe
- (4) Indian tribal roll
- (5) Tribal voter's registration certificate
- (6) History of individual having held themselves to be a member of the minority group
- (7) Proof of membership and interaction in recognized minority organizations
- (8) Minority status
- (9) Federal Register (Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs)

If the applicant firm disagrees with the AUCPs determinations regarding group membership, they make an administrative appeal directly to the USDOT per the procedures outlined in 49 CFR Part 26.89

#### 26.65 (Size Standards)

The AUCP reviews documents from the following list, to determine that the three year average gross receipts of the applicant's firm does not exceed the SBA business size standard(s) found in 13 CFR part 121 and the \$23.98 million size cap:

- (1) Federal tax returns
- (2) Audited financial statements
- (3) Year-end balance sheet and income statements for the three most recent years
- (4) Gross receipts (three year average)
- (5) Schedule K-1 and other similar documentation

Affiliates are considered by including the owner's interest in the affiliate, and adding it to the total three year average gross receipts of the firm. An example is provided below.

Gross revenues for last three years (calculate average):

<b>Applicant Firm</b>									
	Gross Receipts								
2013	\$ 350,000								
2014	\$ 850,000								
2015	\$ 1,200,000								
Total	\$ 2,400,000					÷ 3	=	\$ 800,000	
<b>Affiliate Firm (Applicant Firm Owner has a 50% stake in the Affiliate Firm)</b>									
	Gross Receipts (50% of total)								
2013	\$ 10,000								
2014	\$ 8,000								
2015	\$ 12,000								
Total	\$ 30,000	x	100%	=	\$ 30,000	÷ 3	=	\$ 10,000	
<b>Total for both companies:</b>								<b>\$ 810,000</b>	

#### 49 CFR Part 26.67 (Determinations Concerning Social and Economic Disadvantage)

The AUCP reviews the PNW for accuracy and then analyzes it for completeness. The information reported on the PNW is verified by comparing it with the information reported on the personal federal tax returns, Ingens report (Alaska's public information), and any supporting documents that are voluntarily provided by the applicant.

The AUCP reviews documents from the following list to determine the applicant's PNW:

- (1) Bank statement
- (2) Brokerage statement
- (3) Retirement statement
- (4) Bank loan statement
- (5) Personal Federal tax returns for the three most recent years
- (6) Documented proof of transfers of assets over the past 2 years
- (7) Divorce decree
- (8) Estate settlement

#### ASSETS

- (1) Cash and Cash Equivalents: bank statements, Schedule B (Parts A and C)
- (2) Retirement Accounts: brokerage statement
- (3) Investment Accounts: brokerage statement
- (4) Assets held in Trust: secure trust agreement; confirm trust activity on Schedule E, bank statement



- (5) Loans to Shareholders or Receivables: schedule L (Form 1065 or 1120) to confirm shareholder loan, provide evidence of other loans (promissory notes)
- (6) Real Estate Excluding Primary Residence: fair market value of real estate (source of valuation) – monthly statement, municipality property tax document, deed
- (7) Life insurance: life insurance declaration page

#### **LIABILITIES**

- (1) Loan on life insurance: secure loan documents
- (2) Mortgage on Real Estate: municipality property tax assessment documents
- (3) Notes & accounts payable: promissory note or a statement from a financial institution
- (4) Other Liabilities: obligation on a contract
- (5) Unpaid taxes: reportable for past due taxes for previously closed tax periods

#### **GROSS INCOME**

- (1) The average gross income of the owner(s) over the last three years does not exceed \$350,000.00
- (2) Determine whether the income was unusual and not likely to occur in the future.
- (3) Determine whether the earnings were offset by losses
- (4) Determine whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm
- (5) Review other evidence that income is not indicative of lack of economic disadvantage and the total fair market value of the owner's assets exceed \$6 million

If the Applicant's PNW is determined to exceed \$1.32 million, the Applicant may rebut the decision by appealing in writing directly to the U.S. Department of Transportation (USDOT) within 90 days from the date of the determination letter. The appeal letter should state the Applicant's rationale for challenging the determination and should address or refute each of the specific reasons that are outlined in the determination letter.

#### **49 CFR Part 26.69 (Determinations Concerning Ownership)**

The AUCP reviews and analyzes documents from the following list to determine the ownership of a firm:

- (1) Articles of Incorporation (Corporation )
- (2) By-laws and amendments (Corporation )
- (3) Stock certificates and stock transfer ledger ( Corporation)
- (4) Shareholder agreements ( Corporation)
- (5) Minutes of the most recent stockholders and Board of Directors meetings (Corporation )
- (6) Bank resolution and bank signature cards
- (7) Partnership agreements (Partnership)
- (8) Official Certificate of Formation (LLC)
- (9) Real and substantial contribution commensurate with ownership
- (10) Property titles or lease agreements
- (11) Operating agreement (LLC)
- (12) Loan agreements

#### 49 CFR Part 26.71 (Determinations Concerning Control)

The AUCP reviews and analyzes documents from the following list to determine the control of a firm:

- (1) Disadvantaged owner(s) control of the Board of Directors
- (2) Disadvantaged owner(s) holding highest office in the firm
- (3) Minutes of all Board of Directors meetings noting election of officers and delegations of authority
- (4) Third party agreements
- (5) Documented restrictions on ownership control
- (6) Bidding documents recently submitted identifying the project and the contractor
- (7) Resume of applicant, non-disadvantaged owners, other key personnel
- (8) Bylaws, operating agreement, partnership agreement
- (9) Professional license, if applicable
- (10) Qualification Statement
- (11) Section 4 of application
- (12) Scope of Work on a contract

All DBE firms must have a State of Alaska professional license and/or certification before DBE certification can be granted for the regulated business activity in Alaska. The following are examples of regulated professions:

- (1) Construction Contractor – Alaska General or Specialty Contractor License
- (2) Architectural and Related Services – Alaska Architect License
- (3) Electrical – Alaska Electrical Administrator
- (4) Engineering and Related Services – Alaska Civil Engineer License
- (5) Landscape Architect – Alaska Landscape Architect License
- (6) Storm Water Pollution Prevention Plan (SWPPP) – Alaska Certified Erosion & Sediment Control Lead (AK-CESCL) Certificate
- (7) Traffic Maintenance - ATSSA (Traffic Control Supervisor, American Traffic Safety Services Association) or IMSA (Work zone Safety Specialist, International Municipal signal Association)
- (8) Mechanical HVAC – Alaska Mechanical Administrator License

The AUCP reviews and analyzes the business profile, disadvantaged owner(s) resume, non-disadvantaged owner(s) resume, key personnel resume, qualification statement, contracts, professional licenses and/or certificates if applicable, and the NAICS codes description printed from census.gov. We also consider the onsite visit interview. For professions that are licensed by the State of Alaska, Department of Commerce, Corporations, Business, & Professional Licensing division, a professional license is required in order for the firm to be certified in the corresponding NAICS Code.



#### 49 CFR Part 26.81 (Alaska Unified Certifications Program)

The AUCP was approved by the USDOT May 8, 2003 and currently has 21 members.

Alaska Department of Transportation and Public Facilities	Alaska Industrial Development and Export Authority	Alaska Railroad Corporation	Alyeska Pipeline Service Company
The Municipality of Anchorage	Center for Community, Inc. (Sitka AK)	Central Area Rural Transit System, Inc.	Cook Inlet Tribal Council
The City of Fairbanks	Inter Island Ferry Authority	The City and Borough of Juneau	The City of Kodiak
The Matanuska-Susitna Borough	The City of Nenana	The City of North Pole	The North Slope Borough
The North Star Borough	The City of Palmer	The City and Borough of Sitka	The City of Skagway
The City of Wasilla			

ADOT&PF serves as the single location for certifying DBEs.

#### 49 CFR Part 26.83 (Certifications Procedures)

##### (1) Assigning Applications

The AUCP does not assign applications to AUCP entities, the AUCP processes all applications in house.

##### (2) On-Site Visits

Onsite visits are performed during the initial certification process. Onsite visits are performed if the AUCP believes it is appropriate in light of changed circumstances.

##### (3) Certifications Decisions

The Certification Specialist has the authority to certify the firm without the approval by the Contract Compliance & DBE Certification Officer. The Certification Specialist's adverse action, such as a denial, must be approved by the Contract Compliance & DBE Certification Officer

##### (4) Fees

The AUCP does not charge a fee for certification.

##### (5) Application Review Timeline

The AUCP must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. Decisions on applications must occur within 90 days of receiving all of the information

required. We may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

#### **(6) Removal of DBE eligibility**

The procedures in 26.87 are followed to remove a DBE's eligibility.

#### **(7) Notices of Change**

Firms must notify the AUCP in writing within 30 days of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

Approximately thirty (30) days before the annual anniversary of your certification date, the AUCP provides the firm with a 'No Change' Affidavit and supporting documents. These documents can be faxed, mailed, or emailed to the AUCP.

#### **(8) Supporting Documentation**

The supporting documents required with the Annual 'No Change' Affidavit are a business contact form and the most recent business federal taxes. If additional information, like an employee list, is required the AUCP will reach out via phone, email, and/or certified letter to request the information. Our process does not include terms like 'expiration' or re-certification'.

#### **(9) Audits**

The AUCP does not perform regular audits of its certified firms.

### **49 CFR Part 26.85 (Interstate Certification)**

The AUCP chooses not to accept the applicant firm's home state certification. The applicant firm must provide a copy of the application, all supporting documents, and any other information it has submitted to the home state. The applicant must be certified in its home state in order to be eligible for certification by the AUCP. Within seven days of receiving all of the required information from the applicant firm, we request a copy of the onsite visit review report from the home state UCP, any onsite visit updates, and any evaluation of the firm based on the site visit. We search for the firm's record on DOCR's web-based database. If applicable, we search for Alaska professional license and/or certificate on Alaska Department of Commerce, Community, and Economic Development, Corporations, Business & Professional Licensing. We analyze the provided information; and unless we have determined that there is good cause to believe that the home state's certification is erroneous (or should not apply in Alaska) we must, no later than 60 days from the date on which we received from all the information required, send to the applicant firm a notice that it is certified and place the firm on our directory of certified firms.

### **49 CFR Part 26.86 (Denials of Initial Requests for Certification)**

The AUCP will notify the applicant firm by certified mail. The notification includes the regulations, dateline, and where to send the appeal letter. The firm may reapply after a year. The applicant firm may withdraw any time before the AUCP makes the determination. If the applicant firm withdraws its application before the AUCP makes a determination, then it may reapply any time. The AUCP posts denial information on DOCR's web-based database. We do not post the withdrawn application on the DOCR's web-based database.

#### 49 CFR Part 26.87 (Removing DBE Eligibility)

Any person may file a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. Anonymous complaints are not accepted. In a timely fashion, the AUCP must review the records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary. The Certification Specialist and/or Officer may conduct an onsite review on an unannounced basis at the firm's office and job sites. If we determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, we must provide written notice to the firm that we propose to find the firm ineligible, setting forth the reasons for the determination. If we determine that such reasonable cause does not exist, we must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons must specifically reference the evidence in the record on which each reason is based.

The AUCP will send a certified letter of the Notice of Intent (NOI) to remove DBE eligibility. The DBE has 15 days, from the date the NOI was sent, to submit a request for an informal hearing or present information and arguments in writing without going to a hearing. If we do not hear from the DBE, our office will send a certified letter to notify the firm that they have been decertified. The firm can file an appeal, in writing, to the USDOT within 90 days of the date of the final decision from the AUCP. The AUCP will include the regulations and the address for the DBE to file an appeal

The informal hearing will be presided by a neutral third party, such as a Civil Rights Manager from another state. The AUCP records the informal hearing and creates an audio transcript. The DBE remains certified until, and unless, it is decertified through the due process set forth in section 26.87

#### 49 CFR Part 26.88 (Summary Suspensions of Certification)

The AUCP immediately suspends the firm's certification when the disadvantaged owner(s), whose ownership and control is relied upon for DBE certification, perishes or is incarcerated. The AUCP notifies the DBE of the suspension by certified mail, return receipt requested, to the last known address of the disadvantaged owner(s). The suspension is in effect when the DBE receives, or is deemed to have received the Notice of Suspension. The DBE may voluntarily withdraw from the program, or the DBE must provide the AUCP information demonstrating that the firm is eligible notwithstanding its changed circumstances. The AUCP will lift the suspension and reinstate the firm's certification, or commence a decertification action, under CFR 26.87 within 30 days of receiving the information. The AUCP decision to suspend a DBE is not appealable to the US Department of Transportation. If the AUCP fails to either lift the suspension and reinstate the firm, or commence a decertification proceeding as required by 26.88 (g), then it is appealable to the US Department of Transportation under CFR 26.89 as a constructive decertification.

#### 49 CFR Part 26.91 (USDOT Certifications Appeals)

The AUCP adheres to the USDOT certification appeal decisions.

#### 49 CFR Part 26.109 (Confidentiality, Cooperation, and Intimidation or Retaliation)

The AUCP only releases the record to the DBE. We release the records to the USDOT when the DBE files an appeal. We release the records to the decision maker during an informal hearing. We release the on-site review report to other UCPs. The PNW files are stored in locked cabinet drawers.