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### ATTACHMENTS

- Attachment 1: Organizational Chart
- Attachment 2: Payment Monitoring Form
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Sub-Part A General Requirements & Information

Name
City of Tallahassee

Location
Tallahassee, Florida

Trade Area
Leon County and three surrounding counties

Business Support
Manufacturing, Agriculture, Distribution Centers, Retail Sales, State Government, and Educational Facilities

Public Body
City Commission

Signature Body
Ms. Anita Favors Thompson, City Manager

Local Contact/DBELO
Mr. Ben Harris, City MBE/DBE Administrator

Address
435 Macomb St, P.O. Box A11
Tallahassee, Florida 32301

Telephone Number
(P) (850) 891 – 6500 (F) (850) 891-6592

Email
benjamin.harris@talgov.com

The City of Tallahassee (the City) requires all city departments to continuously seek to include DBE businesses in its contracting activities. The City’s Federal Contracting Program is subject to the Federal Department of Transportation’s 49 CFR Part 26 Participation by Disadvantaged Business Enterprises requirements.

Since the City of Tallahassee will receive an annual grant during the reporting period of $250,000 or more for planning or development, or operating in a federal fiscal year, authorized by the statute for which this part applies, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding $250,000 in DOT funds in that Federal fiscal year.
Section 26.1.23 Policy Statement and Objectives

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

It is the policy of the City to recognize the authority and applicability of the United States Department of Transportation's Rules and Regulations governing Disadvantaged Business Enterprise participation thus having an equal opportunity to receive and participate in DOT-assisted contracts. The City is also committed to the implementation of these Rules and Regulations through its approved DBE Program. Furthermore, the objectives of the City are:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts

2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.

4. To ensure that only firms which fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.

5. To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

6. To help remove barriers to the participation of DBEs in DOT-assisted contracts.

Mr. Ben Harris, City of Tallahassee MBE/DBE Administrator, has been designated as the DBE Liaison Officer (DBEO). In this capacity, Mr. Harris is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Tallahassee in its financial assistance agreements with the Department of Transportation.

This policy position for The City of Tallahassee will be implemented by the adoption of the Disadvantaged Business Enterprise Program.

The City of Tallahassee has disseminated this policy statement to the City Manager, Mayor and City Commission of the City of Tallahassee and all of the components of our organization via interoffice memorandums. We have distributed this statement to DBE and non-DBE business communities that perform work for the City on DOT-assisted contracts via local newspapers, local chambers of commerce, on the City’s website, local trade organizations, professional organizations and local minority, women and disadvantaged business organizations.

3-12-13

Date

Ms. Anita Favors Thompson, City Manager
Section 26.3 Applicability

The City of Tallahassee is the recipient of Federal funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The terms used in this Program have the meanings as defined in 49 CFR 26.5, and The City of Tallahassee expressly incorporates all of the definitions contained in 26.5, including:

1. **Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121. (a) 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. (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

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

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

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

5. **Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or City program.

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

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

8. **Disadvantaged Business Enterprise or DBE** means a for-profit small business concern—(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) Whose management and daily
business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

12. **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.

13. **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.

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

15. **Native Hawaiian Organization** means any community service organization serving Native Hawaiian 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.

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

17. **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.

18. **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.
19. **Primary Industry Classification** means the four digit Standard Industrial Classification (SIC) code designation, which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes.

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

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

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

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

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

25. **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.

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

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

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

29. **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 Sec. 26.65(b) of 49 CFR Part 26.

30. **Manufacturer** is a firm which operates or maintains a factory or establishment which produces, on its premises, the materials or supplies obtained by the City or a contractor.

31. **Regular Dealer** is a firm which owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular Dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A Regular
Dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers will not be regarded as manufacturers or Regular Dealers under this DBE program.

32. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged: (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa; (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; (iii) Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tongam, Kirbati, Juvale, 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.

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

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

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 (a) Record Keeping Requirements

The City of Tallahassee will report DBE participation to DOT as follows:

As a Federal Grant Recipient, The City of Tallahassee will submit DBE accomplishment annually through "DOORS" for airport accomplishments and "TEAM" for transit accomplishments.
The City of Tallahassee will report DBE participation to the relevant operating administrations FAA, FTA, and FHWA using the Uniform Report of DBE awards or Commitments and Payments.

Section 26.11(c) Bidders List

The City of Tallahassee will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. For every firm, the following information must be included:

1. Firm’s Name
2. Firm’s Address
3. Firm’s status as a DBE or non-DBE
4. Firm’s Age
5. Firm’s Annual gross receipts

The bidders list will be obtained via a contract clause requiring prime bidders to report the names/addresses, and other information, of all firms who quote to them on subcontracts. The DBELO will continue to gather the information detailed above on all prime contractors who submit bids/quotes on contractors. (See Attachment 1)

Section 26.13 Federal Financial Assistance Agreement

The City of Tallahassee has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)
The City of Tallahassee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City’s DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
This language will appear in financial assistance agreements with sub-recipients.

Section 26.13(b) Contract Assurance:
We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City has received grants in excess of $250,000 for planning or development, we will continue to carry out this program until all funds with DOT financial assistance have been expended. We will provide all updates representing significant changes in the program to DOT. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding $250,000 in DOT funds in that federal fiscal year.

Section 26.23 Policy Statement

The Policy Statement is elaborated on page four of this program.

Section 26.25 DBE Liaison Officer (DBELO)

Mr. Ben Harris, MBE/DBE Administrator for the City of Tallahassee, Florida is designated as the DBE Liaison Officer (DBELO). Mr. Harris can be reached at: City of Tallahassee, 435 N. Macomb St. Renaissance Center Tallahassee, FL 32301. His phone number is (850) 891-6458, and e-mail benjamin.harris@talgov.com).

The DBE Liaison Officer has direct, independent access to the City Manager, who is the equivalent to the CEO of an organization, on DBE Program Issues and also reports directly to the Director of Economic and Community Development. An organization chart displaying the DBELO's position in the organization is found in Attachment 1A-C to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials - to include the assistance of the City Attorney, Public Works, Engineering & City Capital Projects and Purchasing & Contracting staff and consultant(s) as needed provide legal, technical and coordination support to assist in the administration of the program.

The DBELO has a staff of 1 professional employee assigned to the DBE program.

The DBELO has primary responsibility for these duties which shall be conducted, as needed, to ensure 49 CFR Part 26 compliance:

1. Advises the City governing body on DBE matters and achievement.
2. Advises the Assistant City Manager and staff on DBE matters.
3. Developing, managing, and implementing the DBE Program on a day-to-day basis;
4. Carrying out technical assistance activities for DBEs;
5. Identifying Disadvantaged Business Enterprises to participate in the Program.
6. Disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to compete for FAA-assisted contracts awarded by the City.

7. Gathers and reports statistical data and other information as required by DOT.

8. Reviews third party contracts and purchase requisitions for compliance with this program.

9. Works with all departments to set overall annual goals.

10. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

11. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.

12. Analyzes the City’s progress toward goal attainment and identifies ways to improve the progress.

13. Participates in pre-construction and pre-bid meetings.

14. Participates with legal counsel and project directors to determine contractor compliance with good faith efforts.

15. Plans and participates in DBE training seminars and workshops.

16. Certifies DBEs according to the criteria set by DOT’s 49 CFR, Part 26 guidelines and acts as the City liaison to the Uniform Certification Process.

17. Provides outreach activities to DBEs and community organizations to advise them of opportunities.

18. Provides DBEs with information and assistance in preparing bids, obtaining bonding, insurance and other business needs.

19. Maintains and updates the City’s Directory of certified DBEs.

Other personnel who have been assigned DBE program responsibilities include, but not limited to the following:

1) The Procurement Services Manager, who is responsible for:

   a. Ensuring that solicitations contain the clauses and goals required by this Program.
   
   b. Bid Protests

2) The Designated City Staff, who is responsible for:
a. Providing information to the DBE Liaison Officer on contracting opportunities, together with a breakdown of subcontracting possibilities;

b. Consulting with the DBE Liaison Officer on procurement policies, including bonding, licenses, and other requirements;

c. Explaining the DBE participation guidelines at pre-bid conferences;

d. Provide administrative support by collecting all applicable information not limited to bid documentation, bids, change orders, commission agenda items with support documentation, prepare bidders list, collect all subcontractor documentation, maintain project and contract files, prepare DBE accomplishment report for review by the DBELO and other city departments.

e. Finance staff will maintain such data as grant information, account payable data, pay requests, lien waivers, spending data, etc.

f. Other staff and/or consultant(s) shall maintain inspection reports, monitoring reports, certified payroll reports for development of labor compliance reports and such project management data, to assist the DBELO with ensuring compliance with 49 CFR Part 26.

3) The City Attorney’s Office, which is responsible for reviewing contracts for legal sufficiency.

Services to Assist DBEs to Compete

In implementing the goals set out in this Program, the Liaison Officer will provide a number of services to the DBE community, which are designed to increase their ability to compete in the contracting market. The basis of this service will be an information center designed to increase the awareness of DBEs toward potential contracts and contract procedures. The arrangement of solicitations, time slots for the presentation of bids, the specifications and delivery schedules for DBE participation in the contracts will be made available through the Liaison Officer who may also provide assistance to DBEs to help in overcoming financial or technical problems.

Some of the services offered by the DBELO are listed below:

1. Arranging solicitations or requests for proposals, time for presenting bids or proposals, quantities, specifications and delivery schedules so as to facilitate DBE participation.

2. Providing assistance to DBEs in overcoming barriers in the procurement process such as the inability to obtain bonding, financing or technical assistance.

3. Carrying out information and communication programs on contracting procedures and specific contracting opportunities in a timely manner.

These procedures will be applied to all types of DOT-assisted contracts, including those for professional, technical, consultant or managerial services; construction; and the procurement of materials, supplies, personnel, facilities and equipment.
Efforts will be made to facilitate DBE participation in prime and subcontracting opportunities.

**Other Actions**

The following are other actions (good faith efforts) that may be taken in order to facilitate DBE participation:

1. Provide information to DBE firms about the organizations, functions and full range of contractual needs.

2. Offer instructions and clarification on bid specifications, the City's procurement policy, procedures and general bidding requirements.

3. Maintain a file of successful bid documents from past procurement and permit DBEs to review and evaluate these documents.

4. Conduct debriefing sessions to explain why certain bids were unsuccessful.

5. Provide DBE firms with information on future procurement and contracting schedules.

The information, data and services required above may be distributed through a combination of written materials, handbooks, seminars, workshops, specialized assistance or such other forms as the DBELO determines to be appropriate and effective. The DBELO may also request assistance from DBE trade associations or any other assistance agency which is capable and willing to aid in efforts to assure DBE contractors the opportunity to compete.

In addition to the preparatory actions listed above, the DBELO will inform DBE contractors of actual opportunities through a combination of practices determined to be most successful. These practices should include, but are not limited to:

1. The placement of bid notices in the Local Newspapers, Minority Newspapers, and other regional newspapers for other specific contracts.

2. The development of mailing lists for newsletters including DBEs and their associations.

3. The bid notices may be sent to DBE trade associations, technical assistance agencies, social and economic development groups, and DBEs with capabilities relevant to the bid notice as identified by the DBELO's data bank.

4. DBEs and DBE organizations may be provided with lists of majority firms who are bidding as prime contractors.

5. A lead time of at least 20 days may be used by both the DBELO and firms bidding as prime contractors for advertisement of all invitations for bids in order that all firms have ample time to develop a complete bid package or proposal, and secure necessary assistance.
6. A pre-bid conference may be held to provide firms with an opportunity to ask questions about DBE requirements; and serve as a “match-maker” forum for Prime and Sub-Contractors.

Section 26.27 DBE Financial Institutions

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The City’s investigations with the National Bankers Association (NBA), an agency which tracks minority owned banks, indicate that there are no banks in the local area which are known to be owned by socially and economically disadvantaged individuals. The City will continue its investigations via NBA. The City will investigate any new banks established in the community in the future, which are owned by socially and economically disadvantaged individuals and make use of their services when feasible. When a bank owned and operated by socially and economically disadvantaged individuals, is opened, at any time during the period of this approved program, the city will provide notification to prime contractors in the bid documents, and encourage the Prime contractors to make use of those banks. We will also re-evaluate the availability of DBE financial institutions every eighteen months.

The City is signatory to the Florida Department of Transportation’s Unified Certification Program, the following is applicable to the City’s DBE Program:

It is the policy of the Florida Department of Transportation UCP 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. Currently, the Florida Unified Certification Program does have any certified DBE financial institutions. The following are other financial institutions that are believed to be owned and controlled by socially and economically disadvantaged individuals. The various supportive services providers that work with the Department will provide this information to DBEs.

**Continental National Bank of Miami**
Contact: Rolando Mollinedo, VP & Accounting Manager
1801 Southwest First Street
Miami, FL 33135
Routing and Transit (ABA) Number: 066009456
Phone: (305) 643-8254
Fax: (305) 643-8258

**Great Eastern Bank of Florida**
Contact: Richard Berdy, EVP, COO & CFO
4601 Northwest 72nd Avenue
Miami, FL 33166
Routing and Transit (ABA) Number: 067014071
Phone: (305) 716-9000
Fax: (305) 716-9721
Interamerican Bank
Contact: Augustin F. Velasco, CEO
9190 Coral Way
Miami, FL
Routing and Transit (ABA) Number: 267087769
Phone: (305) 223-1434
Fax: (305) 223-0865

Bank United
Contact: Ricardo J. Garcia
7970 NW 36 Street
Mail Code: NB-039
Doral, Fl. 33166
Phone: (305) 592-6641
Fax: (305) 698-4282

Section 26.29 Prompt Payment Mechanisms

The City of Tallahassee will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to all subcontractors within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

The City penalties/sanctions/consequences for non-compliance to these prompt payment and retainage provisions include, but are not limited to, nonpayment of Prime Contractor invoices. The City’s monitoring process for this provision is as follows:

1. The Prime Contractor shall submit with each invoice, a report of DBE expenditures on a DBE Payment Monitoring Form (Attachment 2).
2. The report shall show all DBE and non-DBE subcontractors, the amount of their subcontract, the amount earned to date, the amount earned for that respective invoice and the amount remaining to be earned.
3. The report shall also have each DBE subcontractor verify the amounts earned and paid to date.
4. The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Payments to the contractor(s) may be delayed until the progress report is submitted as required.
Section 26.31 DBE Directory

The City of Tallahassee will refer interested persons to the Unified Certification Program DBE directory available from the Florida Department of Transportation Disadvantaged Business Enterprise Program's website at ww3.dot.state.fl.us/Equal Opportunity Office/biznet/mainmenu.asp.

Additionally, the DBELO has established, maintain and update a DBE Directory, located on the City's website at www.talgov.com. Hardcopies of the City's DBE Directory shall be located at City of Tallahassee, Renaissance Building 435 Macomb Street, Tallahassee, FL 32301. The Directory is available to the public and to contractors.

The Directory contains the following minimum information on each firm listed:

1. Firm's Name
2. Type of Work
3. Address
4. Telephone Number
5. DBE status
6. Contact Person
7. Date of most recent DBE Certification
8. North American Industry Classification (NAICS) Codes

Companies listed in the Directory are classified by the major type of work by the applicable NAICS code which the company is capable of performing.

The DBE Directory is available to bidders interested in meeting DBE goals or to locate DBEs capable of performing work. All information in the Directory is reviewed and updated when a firm has been certified.

In the event a bidder desires more information about a listed DBE, they are encouraged to solicit that information from the firm directly by contacting the person listed in the Directory.

Section 26.33 Over-Concentration

The City of Tallahassee has not identified any areas of over-concentration in the types of work that DBEs perform.

Section 26.35 Business Development

The City does not participate in a Business Development Program in accordance with Appendix C of the DBE regulations requiring term limits in developmental and transitional stages. However, the City has developed a mentor – protégé program for review and approval by City administration. This program is to assist the City with meeting its goals through race-neutral means and to assist DBEs to operate outside a remedial program, such as the DBE program.
Section 26.37 Monitoring and Enforcement Mechanisms

The City will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

The City will utilize the legal instrument of a contract clause to ensure compliance with the bid specifications. After award of the contract, The DBELO will conduct such audits and reviews as necessary to ensure the City that the contractor is in compliance.(Attachment 3)

Contractors and DBE contractors must maintain DBE records for (3) three years after contract performance, and they must make these records available for inspection by the City and the DOT. This reporting requirement also extends to any certified DBE subcontractor.

Records of all progress payments made by prime contractors are required.

These records will be periodically verified by obtaining certified statements from DBE subcontractors.

The City will keep a running tally of actual payment to DBE firms for work committed to them at the time of contract award.

Other appropriate actions taken to ensure that prime contractors and subcontractors comply with the DBE provisions will include the following:

1. Desk audits to review all materials and information concerning the contractor's compliance.

2. On-site reviews which include interviews, visits to project locations, and inspection of documents and/or information not available at the desk audit that pertains to the contractor's compliance.

3. Any additional investigation which may be deemed necessary due to a lack of proper recordkeeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence of unsatisfactory performance; other evidence as may warrant further investigation.

The DBELO will make prompt compliance determinations regarding its prime contractors. Documentation of noncompliance will include the specific areas in which the contractor/subcontractor failed to comply. In these instances, appropriate legal action consistent with the DBE and other contract provisions will be taken.

Other possible regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities are shown in attachment 3 of this document.
SMALL BUSINESS AMENDMENT TO THE DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM PLAN

A. Objective (49 CFR Part 26.39)

The City is committed to assisting in the development of small business enterprises through the
awarding of contracts and purchase orders for goods, and services. Thus the City has
developed a small business enterprise component in its procurement incentive programs. The
impact of the small business enterprise component is to:

1. Provide an additional race- and gender-neutral tool for the City to use in its efforts to
ensure that all segments of its small business community have a reasonable and
significant opportunity to participate in City and federally funded contracts.

2. Further the City’s public interest to foster effective broad-based competition from all
segments of the contracting, consulting and vendor communities, including, but not
limited to, disadvantaged business enterprises, minority business enterprises, woman
business enterprises, small business enterprises, and micro-small business enterprises.

3. Remain committed to taking all reasonable steps to eliminate obstacles to small
businesses that may preclude their participation in procurements as prime contractors or
subcontractors.

B. Small Business Program and Small Business Set-Asides

Recognizing that the DBE Program goals should be met through a mixture of race conscious
and race neutral methods and, that by definition, DBE firms are small businesses; the City
seeks to implement a small business element into its current DBE policy in accordance with
applicable law. The City is including this element to facilitate competition by and expand
opportunities for small businesses.

The City of Tallahassee has developed a small business development program. The City will
actively implement its program elements to foster small business participation. The City will
meet its objectives using a combination of the following methods and strategies:

1. The City shall establish a race-neutral tiered small business program.

2. The City’s tiered SBE program consists of SBE (Tier 1) and micro-SBE (Tier 2) firms.
(Section C of this Section 26.39 for definitions)

3. Tier 1 Set asides: Where feasible, the City of Tallahassee will establish SBE participation
goals on a percentage of the total value of all prime contract and subcontract awards under
$300,000 as set asides for participation by small businesses on:

   a. FAA-assisted contracts.

   b. FTA assisted contract.

   c. FHWA/FDOT assisted contracts.
A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review federally-assisted purchases and contracts to assess identity of small business opportunities, giving consideration to the size and scope of each purchase or contract. This determination will be made based on the estimated availability of small businesses able to provide the requisite scopes of work regardless of DBE status. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on a federally-assisted contract, the project manager and DBELO will document why a small business set-aside is inappropriate and the factors which were considered in making that determination, including project scope and estimated availability of firms.

If no small businesses bid on set-aside projects or the bids submitted are deemed to be too high and unreasonable based upon the nature of the service and prices for similar services, then all bids shall be rejected and the project will be re-bid in the normal manner to all prospective bidders. When bids are received they will be evaluated and incentives awarded for SBE participation in accordance with the terms and conditions of contract bid language.

4. Unbundling: The City, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The City will conduct contract reviews on each federally-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. This determination will be made based on the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Similarly, the City will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses. The City will assist prime contractors or prime consultants in identifying portions of work which may be unbundled and performed by small businesses. The City will document the factors used to determine whether or not a federally-assisted contract will be unbundled or bid separately.

On prime contracts not having DBE contract goals, prime contractors are encouraged to subcontract opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

5. The City will utilize alternative procurement strategies and structuring solicitations to facilitate the ability of mentor-protégés and/or joint ventures that consist of small businesses, including DBEs, to compete for and perform prime contracts.

6. The City will set SBE goals on formal and informal contracts.

7. The City will set department goals for SBE utilization. SBE utilization will be reviewed as a part of a department director’s performance evaluations.

C. Definitions

1. Small Business (Tier 1):

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Size standard eligibility is based on business sector or industry in the economy, the average number of employees for the preceding twelve months and on sales volume averaged over a three-year period. Small businesses must meet the
definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

2. Disadvantaged Business Enterprise:

A for-profit small business (as defined by the Small Business Administration) —

a. What 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.

b. Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) described in 49 CFR Part 26. The current PNW cap is $1.32 million. Whose average annual gross receipts, as defined by SBA regulations over the firm's previous three fiscal years are less than $22.41 million.

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

Has been certified as a DBE by the Florida Department of Transportation Unified Certification Program, of which the City is a participant (FDOTUCP) in accordance with 49 CFR 26.

3. Micro Small Business Enterprise (MSBE) concern (Tier 2) means a small business concern as defined pursuant to this policy which is 25 percent of SBA's average annual revenue (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts. A micro small business firm has been in operation for six consecutive months and has a valid business tax certificate if applicable.

4. A “set-aside” (Tier 2) is the reserving of a contract or a portion of a contract exclusively for participation by micro small businesses.

D. Certification and Verification Procedures

Small Business Enterprises are to submit copies of their certification letters from the state of Florida DOT or City of Tallahassee (as long as the same eligibility standards are used, thus local business location preference is not allowed for DBE certification.). Firms that have not been certified by the aforementioned are to submit for verification business tax returns for the last three years and a copy of their business license. If the industry requires professional licensing then a copy of the professional license shall be submitted.

The City will accept the following certifications for participation in the small business element of the City’s DBE Program with applicable stipulations:

1. FDOT DBE Certification – DBE Certification by the FDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by FDOT or other UCP certifying entities.
2. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

For the purposes of the small business element of the City's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be strongly encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on US DOT federally-assisted contracts.

E. Outreach and technical assistance

The City of Tallahassee sponsors and participates in outreach and training opportunities for entrepreneurial development of small businesses through various partnerships. The City of Tallahassee provides financial assistance to the Economic Development Council which in turn provides technical assistance, business development services and programs to its' members and small businesses. The City of Tallahassee identifies small businesses which could benefit from the FAMU Bonding and Guarantee Program and provides referrals to those firms to participate in the program. Furthermore, the City of Tallahassee staff participates in business outreach sessions conducted by local municipalities and non-profit agencies which are designed to introduce small, minority, women and disadvantaged-owned businesses to the City of Tallahassee's procurement processes and practices. The City of Tallahassee has participated in and sponsored conferences and outreach sessions conducted by: The Greater Tallahassee Chamber of Commerce, the Capital City Chamber of Commerce, the Big Bend Minority Economic Development Week Committee, The Big Bend Minority Chamber Of Commerce, The Economic Development Council, The State of Florida, Department of Management Services and FAMU Small Business Development Center. Additionally, the City of Tallahassee advertises contracting opportunities through various outlets, including local newspapers, minority and women-based publications and trade publications as well as on its website.

As described above, the City of Tallahassee will utilize a variety of methods to facilitate small business participation. Additionally, refer SBEs (those also certified as DBEs) to the state of Florida’s DOT Supportive Services provider for entrepreneurial development assistance

F. Mentor – Protégé - Joint Venture Programs

The City shall implement a Mentor- Protégé and a Joint Venture program for small businesses as a part of the City’s SBE/DBE Business Development Program.

G. Reporting

The effectiveness of these components will be measured by a review of data indicating prime, subcontractor and supplier awards to SBEs. Program effectiveness measurements will also include efforts by the City staff to provide prime contracting opportunities for SBEs. In order to ensure the effective tracking of these efforts, the following shall be done:

1. Each contractor shall continuously maintain, compile, and provide to the MBE/DBE Office, monthly, information relating to its use of SBEs on the City and federally funded projects. This information shall include without limitation the following information for each of the SBE/DBE subcontractors and suppliers utilized by the Contractor on the project: a description of the type of work, by NAICS code, of contracts awarded to SBEs; the dollar value of contracts awarded to
SBE/DBEs; and contact information for the SBEs. Additionally, the Contractor shall provide information regarding its progress toward attaining the SBE/DBE goal on the project.

2. Within thirty (30) days after the end of a contract in which there was an SBE goal, each contractor shall provide the MBE/DBE Office with a report that summarizes the information provided pursuant to this section, including without limitation: the identity of and contact information for each SBE to whom the contractor has awarded a subcontract or supplier agreement; the type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and the total percentage of the value of the contract subcontracted to SBE subcontractors and/or suppliers.

3. The Procurement Services Department shall provide the MBE/DBE Office with information regarding every City contract on which the prime contractor is an SBE or on which an SBE is part of a joint venture or mentor protégé team serving as the prime contractor. The information shall include the name and contact information of the SBE, the type of contract, and the dollar value of the contract.

4. The MBE/DBE Office shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each contractor and information from the Procurement Services Department regarding the City’s use of SBE’s as prime contractors. The consolidated report will identify and assess the awards to SBEs of City contracts, prime contractors’ use of SBE subcontractors and suppliers, prime contractors’ progress in achieving SBE subcontract goals, and other SBE development and contracting efforts. Specifically, the MBE/DBE Office will maintain records and prepare reports showing:

   a. Awards to SBE subcontractors and suppliers, including names of contractors and subcontractors, nature of the work/services performed, and the percentage of SBE participation per contract. The City will obtain regular reports from prime contractors on their progress in meeting contractual SBE commitments;

   b. Specific efforts by Contractors to identify and award contracts to SBEs;

   c. Copies of direct mailings by Contractors to SBEs;

   d. City contracts awarded to SBE’s or prime contractors in which an SBE was a joint venture partner or part of a mentor protégé team. This information shall include without limitation the name and contact information of the SBEs, the type of contract, and the dollar value of the contract;

   e. Pre bid conference information as it relates to the Small Business Enterprise Program;

   f. Requests for assistance from SBEs interested in bidding/proposing on City contracts and subcontracts;

   g. Workshops, seminars and training programs conducted for SBEs; and

   h. Efforts to assist SBEs in acquiring bonding and insurance.

5. The MBE/DBE Office will submit annual SBE development reports to the City Management. These reports shall include a summary of the information described above, plus an analysis of the total dollar value of City contracts/subcontracts awarded to SBEs and DBEs during the preceding year, categorized by prime contracting dollars, subcontracting dollars, and supplier
dollars. The percentage of the total dollar value of these contracts that was awarded to SBEs and DBEs during the preceding year shall also be provided.

H. Assurances

The City makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law.

2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element (Tier 1) of the DBE Program.

3. There are no geographic or local preferences or limitations imposed on federally-assisted contracts and the DBE Program is open to small businesses regardless of their location, who meet the certification standards of 49 CFR Part 26.

4. There are no limits on the number of contracts awarded to firms participating in the DBE Program.

5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and

6. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

I. Implementation Schedule

The City will approve the small business element of the DBE Program and will implement it within nine months of the Operating Administrations (OA) - FAA, FTA and FHWA, approval of this element.

Sub-Part C Goals, Good Faith, Counting

Quotas (49 CFR 26.43)

The City of Tallahassee does not and will not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

Methodology

The City will annually establish overall goals if is anticipated that the award prime contracts exceeding $250,000 in DOT funds in a Federal fiscal year in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City does not anticipate awarding more than $250,000 in DOT funds in prime contracts within the Federal fiscal year, we will not develop an
The City will annually establish overall goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

In accordance with Section 26.45(f) the City will submit its overall goal to DOT tri-annual on August 1 as determined by FAA. In establishing the overall goal each year, City will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City’s efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 435 N. Macomb St., Third Floor, Tallahassee, FL 32301 for 30 days following the date of the notice, and informing the public that the City and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Goal Setting and Accountability

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;

2. Establish specific steps and milestones to correct the problems identified in the analysis; and

3. We will submit the plan to the appropriate Operating Agency [FAA, FHWA and/or FTA] within 90 days of the end of the affected fiscal year.

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4. Should the City not be one of the identified entities above, the City will perform the analysis, establish and implement a corrective action plan and maintain information/records regarding the analysis and efforts made.

Transit Vehicle Manufacturers (§26.49)

The City as a Federal Transit Administration (FTA) recipient will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has compiled with the requirement of 49 CFR Part 26.49. Alternatively, the City may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

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

Section 26.51(d-g) Contract Goals

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

Contract goals will be established on those DOT-assisted contracts that have subcontracting possibilities. However contract goals may not be established on every contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

Contract goals will be expressed as a percentage of total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts

Award of Contracts with a DBE Contract Goal: 26.53(a)
In those instances where a contract-specific DBE goal is included in a procurement/solicitation, the City will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of good faith efforts (26.53(a) & (c))

The City of Tallahassee treats bidders/proposers compliance with good faith efforts requirements as a matter of responsiveness in all instances where a contract goal has been established. Bidders/proposers are to make good faith efforts to identify and subcontract
portions of DOT assisted contracts to DBEs. The bidders/proposers can demonstrate that he/she has done so either by meeting the contract goal or documenting good faith efforts to the DBELO. Bidders/proposers who do not succeed in obtaining enough DBE participation to meet the established contract goal are required to, and must submit, with their bid/proposal, evidence demonstrating Good Faith Efforts in order to remain under consideration for a contract.

The City of Tallahassee will not award contracts to bidders/ proposers until the DBELO has determined that the “good faith efforts determination” has been made. In compliance with 26.53, the City assures that good faith efforts are required in every instance where a contract goal has been established.

The DBELO is responsible for determining whether a bidder/proposer who has not met the contract goal has, in fact, documented sufficient good faith efforts to be regarded as a responsive bidder/proposer. The City of Tallahassee shall incorporate Appendix A to Part 26 as its reference for good faith evaluation standards. (See Attachment 5) We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))
Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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

In order to comply with 26.53 (b)(2)(i-v), each bidder/offeror is required to submit, with his/her bid or proposal, documentation showing the following:

A. Attending pre-bid meetings if any were held.

B. Advertising in local papers, minority/women focus media, and trade papers for a period of at least 15 days before bids or proposals are due. (media schedules permitting); and recruiting DBEs via DBE organizations.

C. Notify DBEs, in writing, of subcontracting opportunities.

D. Following up initial solicitations.

E. Efforts to divide work into areas for subcontracting to DBEs.

F. Providing adequate information about plans and specifications.
G. Attempts to negotiate in good faith with DBEs. Such efforts are to be shown by producing the names, addresses, telephone numbers, particular subcontractors, and information regarding each subcontract opportunity that was offered to each DBE.

H. Provide help to the DBEs in overcoming bonding, financial, and insurance problems relevant to the subcontract.

I. Use of DBE organizations for DBE recruitment.

J. Good faith efforts as found in Appendix A to Part 26.

In order to comply with 26.53 (b)(2)(i-v), each bidder/offeror is required to submit, with his/her bid or proposal, Intent to perform as a disadvantaged business enterprise; bid opportunity; and statement of good faith efforts, which are documents requesting all of the items required by these aforementioned portions of 26.53. (See Attachment 5, 6, and 7)

Section 26.53 (d) Administrative Reconsideration Procedures

Within 3 business days of being informed by the City of Tallahassee that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Michael Parker, Director of Economic and Community Development, 850-891-6500. Michael.Parker@talgov.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether he/she met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet, in person, with our reconsideration official to discuss the issue regarding whether he/she met the goal or made adequate good faith efforts to do so. The City will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding whether the bidder met the goal or made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Section 26.53 (f) Good Faith Efforts: DBE Substitution and Termination

DBE SUBSTITUTIONS

It is the intent of this policy provision to insure that DBE firms identified in bid proposals are the firm(s) with which the prime contractor actually does business. However, the prime contractor may, under specific circumstances, substitute the original certified DBE firm with another certified DBE firm. Nevertheless, such substitution shall only be made with the prior approval of the MBE/DBE Office based on a written statement of good cause. The DBE participation percentages shall not be lower than provided for in the original bid.

A. Prime contractors who substitute DBEs without the prior written approval of the DBELO may be subject to actions for breach of contract and dollars spent with the unauthorized DBE will not be counted towards satisfaction of the DBE goal. The prime contractor will still be responsible for meeting the DBE goals as stated in the original contract.
B. A prime contractor may not terminate a DBE subcontractor listed in response to a bid (or an approved substitute DBE firm) without prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

C. Written consent will be given only if the DBELO agrees, for reasons stated in the request, that the prime contractor has good cause to terminate the DBE firm.

D. For purposes of this paragraph, good cause includes but is not limited to the following circumstances:

1) The listed DBE subcontractor fails or refuses to execute a written contract;
2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
3) The listed DBE subcontractor becomes bankrupt or insolvent;
4) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and/or debarment proceedings in accordance with city ordinances or applicable state law;
5) The City has determined that the listed DBE subcontractor is not a responsible contractor;
6) The listed DBE subcontractor voluntarily withdraws from the project and provides to the DBELO written notice of its withdrawal;
7) The listed DBE is ineligible to receive DBE credit for the type of work required;
8) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
9) Other documented examples of good cause submitted to the DBE Manager justifying the termination of the DBE subcontractor.

10) Good cause does not exist: if the failure/refusal of an DBE subcontractor to perform work results from bad faith or discriminatory action of the prime; if prime seeks to terminate DBE to self-perform the DBE contractor’s portion of work, or to substitute another DBE or non-DBE after contract award without prior written approval from the DBE Office.

E. Before submitting a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the DBELO, of its intent to request to terminate and/or substitute, and the reason for the request.

F. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, as a prime or 51% as a subcontractor with its own workforce or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function. (See Attachment 8)

G. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph F. (above section), the DBE may present evidence to rebut this presumption. The
City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

H. The prime contractor must give the DBE five days to respond to the prime contractor’s notice of intent to terminate or substitute and also advise the DBELO as well. The DBE firm must provide reasons, if any, to the DBELO why it objects to the proposed termination of its subcontract and why the prime contractor’s action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period may shorter than five days.

I. In addition to post-award terminations, the provisions of this section apply to pre-award deletions or substitutions for DBE firms put forward by vendors, contractors or proposers in negotiated procurements.

Section 26.55 Counting DBE Participation Toward Meeting the Goals

The City will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The participation of a DBE subcontract toward a contractor’s final compliance with its DBE obligations will not be counted until the amount has actually been paid to the DBE.

Further, City of Tallahassee will count participation toward its DBE:

1. Once a firm is determined to be an eligible DBE under 49 CFR Part 26, the value of the “work actually performed” by DBE is counted toward the DBE goal.

2. The City of Tallahassee and its contractors will count toward the DBE goals the portion of the total dollar value of a contract with a certified joint venture equal to the percentage of ownership and control of the DBE partner in the joint venture.

3. The City of Tallahassee and its contractors will count toward the DBE goals the value of the “work actually performed” by a firm owned and controlled by two socially and economically disadvantaged individuals, each having a 50% interest in the firm.

4. The City of Tallahassee will count toward its Disadvantaged Business Enterprise goal only expenditures to DBEs who perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the DBELO will evaluate the amount of work subcontracted, industry practices, and other relevant factors.

5. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to the City of Tallahassee to rebut this presumption. The decision by the City of Tallahassee is subject to review by the concerned operating administration...the FAA.

6. The City of Tallahassee and its contractors will count toward the DBE goals 60 percent of expenditures for materials and supplies required under a contract and obtained from
a DBE Regular Dealer, and 100 percent of such expenditures obtained from a DBE manufacturer.

7. The City and its contractors may count toward the DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

   a. The fees or City’s charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or City is determined by the City to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   b. The fees charged for delivery of material and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the City to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   c. The fees charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or City is determined by the City to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Sub-Part D Certification Standards

Section 26.61 – 26.73 Certification Process

The City will use the certification standards of Subpart D - Part 26 and the certification procedures of Subpart E - Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The DBELO will make certification decisions based on the facts as a whole.

The act of simply filling out the Disclosure Affidavit, Certification Application, in and of itself, does not mean automatic certification with the City. The review process covers all items on the Schedules. Potential DBEs applying for certification will be notified in writing as to whether their application meets, or does not meet the eligibility standards.

Process

For information about the certification process or to apply for certification, firms should contact Mr. Benjamin Harris, City of Tallahassee, 435 Macomb Street, Tallahassee, FL 32301 (P) (850) 891-6500 Email: Benjamin.Harris@talgov.com or FDOT, Mr. Arthur Wright 850-414-4747 arthur.wright@dot.state.fl.us

The City, through its DBELO, may certify the eligibility of DBEs and joint ventures involving DBEs for DOT-assisted contracts to be let by the City.
Any business which desires to participate as a DBE will be required to complete and submit an Application for DBE Certification (Attachment 11) to the DBELO. Any business which desires to participate as a joint venture DBE will, in addition, be required to complete an Application for DBE Joint Venture Certification (Attachment 10). The schedules must be signed by the authorized representative of the business and notarized. The required Schedule must accompany the DBE participation information submitted to the DBELO by bidder/proposer.

**Uniform Certification Standards**

The DBELO will take at least the following steps in determining whether a firm may be certified as a DBE:

1. Randomly perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation.

2. Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals.

3. Analyze the ownership of stock in the firm, if it is a corporation.

4. Analyze the bonding and financial capacity of the firm.

5. Determine the work history of the firm, including contracts it has received and work it has completed.

6. Obtain or compile a list of equipment owned by, available to the firm, and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program.

7. Obtain a statement from the firm indicating the type of work it prefers to perform as part of the DBE program.

**On-site Certification Visits**

Per guidance from the Department of Transportation, office and job site visits may be omitted from the investigation in this instance:

1. When the DBELO recertifies a firm which it previously reviewed on-site, and eligibility issues (e.g., change in ownership) have not arisen which makes a second visit necessary. In the absence of such issues, an on-site visit need be conducted only once.

Once certified, a DBE will be required to submit a no change affidavit or update its submission by submitting a new affidavit. Firms are notified upon certification that a new Schedule A must be submitted whenever there is a change in the firm’s ownership or control.

**Section 26.67) Personal Net Worth**

The City requires disadvantaged owners/applicants and currently-certified DBEs whose eligibility under Part 26 we review, to submit a statement of personal net worth (PNW) with
applications. If the presumed disadvantaged individual’s PNW exceeds $1.32 million, that individual’s presumption of economic disadvantage is rebutted. When an individual’s presumption of social/economic disadvantage has been rebutted, his or her ownership and control of the applicant firm cannot be used for DBE eligibility under this part unless the individual makes an individual showing. (See Attachment 3 – Personal Financial Statement).

The City will exclude the individual’s equity in his/her primary residence, and the individual’s equity in the applicant firm per 26.67.

Sub-Part E Certification Procedures

Section 26.81 Unified Certification Program

The City is a member of the Unified Certification Program (UCP) administered by the state of Florida Department of Transportation. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Section 26.83 (a) & (c) Continued Eligibility

The DBELO will review the eligibility of DBE firms which are certified under former Part 23 to make sure that they meet the standards of Subpart D of Part 26. The DBELO will complete this review no later than three years from the most recent certification date of each firm.

For firms which the DBELO has certified or reviewed and found eligible under Part 26, a desk audit may be conducted every three years. In addition, the DBELO may randomly perform on-site visits.

Section 26.83 (j) “No Change” Affidavits and Notices of Change

The UCP requires all DBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

The UCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j).

The UCP requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until 12 months have passed from our action.

Section 26.87 Removal of a DBE’s Eligibility
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Section 26.87 Removal of a DBEs Eligibility
Mr. Benjamin Harris, who is the initial decision-maker for decertification determination procedures, can be reached at: City of Tallahassee, 435 N. Macomb St. Tallahassee, FL 32301 (P) (850) 891 – 6500; e-mail (Benjamin.harris@talgov.com).

The DBE Program office may suspend or revoke an offending DBE’s eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such DBE’s acting as a Conduit, failing to comply with the provisions of the DBE Program, failing to perform a Commercially Useful Function on a project, failing to submit information, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The DBE Program office may further modify the list of areas for which a DBE is certified, if the DBE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the DBE is not qualified to perform work in a particular area. However, nothing in this DBE Program or in any action or inaction by the DBE office or the DBELO shall be deemed a representation or certification that a particular DBE is qualified to perform work in a particular area.

If the City proposes to remove a DBE’s certification we will follow procedures consistent with 26.87. To ensure separation of functions in a decertification, we have determined that MBE/DBE Advisory Committee will serve as final decision maker in decertification proceedings. We have established an administrative “firewall” to ensure that the DBELO will not participate in any way in the decertification hearing proceedings against the firm (including the decision to initiate such a proceeding).

Whenever the DBELO makes the determination that a firm is not eligible, or comes to believe that a firm with a current certification is no longer eligible, the firm will be afforded the rudiments of due process prior to revoking its eligibility. The steps to be used are:

1. A letter will be sent to the firm, stating that the City is contemplating de-certification, or the firm has been denied certification. A brief description of the reasons for the proposed action will be included.

2. The firm will be given an opportunity to respond, in person and in writing, to present information and arguments. An informal meeting or administrative hearing shall be part of the process, but a formal adversary proceeding will not be used. The MBE/DBE Advisory Committee will serve as the administrative body.

3. Should the MBE/DBE Advisory Committee uphold the DBELO’s initial decertification or certification denial, the Chairperson of the MBE/DBE Advisory Committee shall advise the firm, in writing, of the decision.

4. The denial of certification by the DBELO is final for the particular contract and any other contracts being let at the time of the denial (except when the Department of Transportation reverses the denial, following an appeal). Firms denied certification may correct deficiencies in their ownership and control documents and reapply for certification after 12 months.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to: US Department of Transportation
The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

Sub-Part F Compliance and Enforcement

Section 26.109 Information, Confidentiality, Cooperation

The City will safeguard from disclosure to third parties any information which may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the City will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without written consent of the submitter.

Monitoring Payments to DBEs

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

The City will keep a running tally of actual payment to DBE firms for work committed to them at the time of contract award.

The City will perform interim audits of each contractor's payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the schedule of DBE participation.