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**MULTI-MODAL TRANSPORTATION SERVICES DIVISION  
DISADVANTAGED BUSINESS ENTERPRISE POLICY  
ESTABLISHED SEPTEMBER 1999, REVISED JUNE 2014**

**POLICY STATEMENT**

**Introduction:**

The Douglas County Board of Commissioners hereby adopts and approves the following Disadvantaged Business Enterprise (DBE) Program/Policy for its Multi-Modal Transportation Services Division (MMTS). Hereafter in other parts of this document, Multi-Modal Transportation Services Division may be identified as MMTS or Douglas County. This DBE program/policy is adopted in accordance with 49 CFR, Part 26, as published in the Federal Register Tuesday, Feb. 2, 1999. A copy of that issue of the Federal Register is attached to this policy.

**Definition of Terms (26.5)**

Douglas County hereby adopts the definitions contained in Section 26.5 of Part 26 for this program.

**Applicability (26.3)**

Douglas County is the recipient of federal transit funds authorized by federal transit laws in Title 49 U.S. Code Chapter 53, as amended by HR 4348, the "Moving Ahead for Progress in the 21<sup>st</sup> Century Act," or "Map-21."

**Policy Statement (26.23)**

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

It is the policy of Douglas County to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

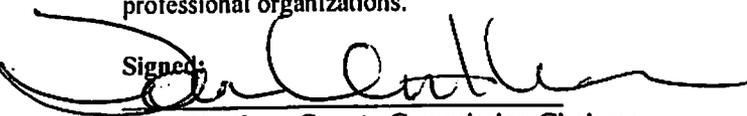
**Objectives (26.1)**

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

**DBE Liaison.** Gary Watson, Multi-Modal Transportation Services Division Manager, has been designated as DBE Liaison Officer. In the capacity of DBE Liaison Officer, Gary Watson/MMTS Division Manager, 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 Douglas County in its financial assistance agreements with the United States Department of Transportation.

Douglas County has disseminated this policy statement to the Douglas County Board of Commissioners and all other applicable components of the county government. MMTS has also distributed this statement to DBE and non-DBE business communities that perform work for Douglas County MMTS on DOT-assisted contracts. This was accomplished through direct mailings to specific DBEs and non-DBEs, and to minority-oriented publications and professional organizations.

Signed:

  
Tom Worthan, County Commission Chairman

Date:

6-17-14

**Non-discrimination Requirements (26.7)**

Douglas County 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, Douglas County MMTS 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 of individuals of a particular race, color, sex or national origin.

**Record Keeping Requirements (26.11)****Reporting to DOT: 26.11(b)**

Douglas County will report DBE participation to DOT as follows:

Douglas County will report DBE participation on a semi-annual basis using DOT Form 4630. These forms will reflect payments actually made to DBEs or DOT-assisted contracts.

Per 49 CFR Part 26, Subsection 11, Federal Transit Administration grantees are to submit a semi-annual Uniform Report of DBE Commitments/Awards and Payments.

The deadline for submitting these reports is June 1 for the period October 1 through March 31, and December 1 for the period April 1 through September 30.

By these deadlines, the reports must be downloaded in the TEAM system and marked "Ready for Regional Review."

The Rideshare/MMTS Division Manager is responsible for accurate completion and timely submission of these reports. The Division Manager may receive information to assist in completing the reports from the Assistant Division Manager who works closely with the DBE community in identifying potential DBEs and alerting them of potential contracting opportunities.

In the absence of the Division Manager, the responsibility of accurate completion and timely submission of the semi-annual report goes to the Assistant Division Manager.

Once the reports are timely downloaded into TEAM, Rideshare/MMTS will notify the FTA Region 4 Civil Rights staff via e-mail that the reports are in TEAM and are ready for regional review.

**Bidders List 26.11(b)**

Douglas County will create 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. The bidders list will include the name, address, DBE/non-DBE status, age and annual gross receipts of firm.

We collect this information in the following ways:

Utilizing a contract clause requiring prime bidders to report the names/addresses and possibly other information of all firms who quote to them on subcontracts.

Requesting that firms quoting on subcontracts report information directly to Douglas County.

**Federal Financial Assistance Agreement 26.12**

Douglas County has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

**Assurance 26.13(1)**

Douglas County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract on in the administration of its DBE program or the requirements of 49 CFR part 26. Douglas County shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. Douglas County'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 Douglas County of its failure to carry out its approved program, the Department may impose sanction 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. 3801et. Seq.)

The language will appear in financial assistance agreements with sub-recipients.

**Contract Assurance 26.13b**

Douglas County will ensure that the following clause is placed 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 Douglas County deems appropriate.

**DBE Program Updates (26.21)**

Since Douglas County has received an FTA grant of \$250,000 or more in planning capital, and or operating assistance in a federal fiscal year, Douglas County will continue to carry out this program until all funds from DOT financial assistance have been expended. Douglas County will provide to DOT updates representing significant changes in the program.

**Policy Statement 26.23**

The Policy Statement is elaborated on the first page of this program.

**DBE Liaison Officer (DBELO) 26.25**

Douglas County has designated the following individual as its DBE Liaison Officer (DBELO): Gary Watson, Multi-Modal Transportation Services Division Manager, 8800 Dorris Road, Douglasville, Ga. 30134. Phone: 770-920-7516 or 770-949-7665; Fax: 770-920-7515; E-Mail: [gwatson@co.douglas.ga.us](mailto:gwatson@co.douglas.ga.us).

In this capacity, Watson/MMTS Division Manager is responsible for implementing all aspects of the DBE programs and ensuring that Douglas County complies with all provision of 49 CFR part 26. Watson/MMTS Division Manager has direct, independent access to the Chairman of the Douglas County Board of Commissioners concerning DBE program matters.

An organizational chart displaying the DBELO's position in the organization is attached to this policy:

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

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contract and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes Douglas County's progress toward goal attainment and identifies way to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/governing body on DBE matters and achievement.
- Chairs the DBE Advisory Committee.
- Participates in pre-bid meetings.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

- Plans and participates in DBE training seminars.
- Acts as liaison to the Uniform Certification Process in Georgia.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains Douglas County's updated directory on certified DBEs.

#### **DBE Financial Institutions (26.27)**

It is the policy of Douglas County 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.

MMTS asked the Douglas County Finance Department to provide a list of minority-owned financial institutions in Douglas County. To date, MMTS, has not identified any minority-owned financial institution in Douglas County.

Minority-owned financial institutions in the metro Atlanta area include, but are not limited to:

- Citizens Trust Bank, 75 Piedmont Ave., Atlanta, GA 30303; 404-659-5959.
- First Southern Bank, P.O. Box 1019, Lithonia, GA 30058; 770-987-3511.

Information on the availability or lack of availability of such minority-owned institutions can be obtained from the DBE Liaison Officer.

#### **Directory (26.31)**

Douglas County has access to an up-to-date Georgia DOT UCP directory that identifies all firms eligible to participate as DBEs. This directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is revised annually. The directory will be made available to any individual or company submitting a request for it. In addition, a copy of the directory is available for review at the Douglas County MMTS office, 8800 Dorris Road, Douglasville, GA 30134. The directory is also available on the Georgia DOT website at: [www.dot.ga.gov/doingbusiness/dbepgrams](http://www.dot.ga.gov/doingbusiness/dbepgrams).

A copy of the State Unified Certified Directory is available for review at the offices of the Douglas County Multi-Modal Transportation Services Division.

#### **Overconcentration (26.33)**

Douglas County has not identified that overconcentration exists in the type of work that DBEs, perform for Douglas County. Douglas County will re-evaluate for overconcentration every 18 months.

#### **Business Development Programs (26.35)**

Because of its limited number of federally-funded projects and small staff (4 full-time people), MMTS does not have a formal Business Development Program at this time. However, MMTS will willingly provide DBEs with advice, suggestions and any other assistance within its capabilities on an informal basis.

Douglas County will re-evaluate for the need for this type of program every 18 month.

#### **Required Contract Clauses (26.13, 26.29)**

Contract Assurance: Douglas County MMTS will ensure that the following clause is placed in every DOT assisted contract and subcontract:

- The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirement 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.

#### **Prompt Payment (26.29)**

Douglas County 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 15 days from the receipt of each payment the prime contractor receives from Douglas County. (26.29 b).
- The prime contractor agrees further to return retainage payments to each subcontractor within 14 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 Douglas County. This clause applies to both DBE and non-DEB subcontractors.
- 26.29(d). Monitoring and enforcement of prompt payments and return of retainage. Douglas County will require that each subcontractor provide written notification on company letter when it has submitted an invoice for work completed to the prime contractor of for return of retainage. Further, Douglas County will required that each subcontractor provide written notification on company letterhead that it or did not receive prompt payment for invoices or return of retainage from the prime contractor. The DBE Liaison Officer will review the letter of invoice notification and return of retainage and letters of prompt payment to determine if indeed payment was made promptly within the guidelines established by this policy. Consequences to the prime contractor for non-compliance may include, but are not limited to: 1. Future payments to subcontractors being made directly by Douglas County to ensure prompt payment, and 2. A memo explaining non-compliance on the prime contractors part being put in the file of the prime contractor, which could impact their eligibility for future Douglas County projects.

#### **Monitoring and Enforcement Mechanisms 26.37**

Douglas County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 DFR part 26.

Douglas County 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 provided in 26.109.

Douglas County will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Douglas County will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by daily review and inspection by the DBE Liaison Officer of the work being performed and payrolls and other documentation that is submitted. Douglas County can declare breach of contract if the prime contractor is not providing the DBE work stated in the contract.

#### **Small Business Participation 26.39**

Douglas County has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DEB small business).

Douglas County's purchasing process allows some small contracts to be awarded with non-competitive bids or a limited number of bids or quotes. This gives Douglas County flexibility in awarding some contracts to local small businesses, both DBE and non-DBE without having to go through a lengthy, formal bidding process. Douglas County Rideshare/MMTS already utilizes several small businesses because of this flexibility. Because of this flexibility, Douglas County will, at time, "unbundle" a large contract opportunity into several smaller contract opportunities to increase opportunities for small businesses.

Douglas County holds an annual meeting to explain its DBE program and opportunities for both DBEs and small businesses. These businesses are encouraged to take two steps: 1. Become certified as a DBE, and 2. Become certified as a vendor for Douglas County. This opens up a number of contracting opportunities for small local businesses, both DBE and non-DBE. The Douglas County staff offers guidance and assistance in registering as a DBE and a Douglas County vendor. At this annual meeting, the small businesses and DBEs are apprised of potential Douglas County projects that they may bid on or participate in.

Douglas County has existing policies in place that together, represent its Small Business Program. These policies include:

1. A pricing tier that allows Douglas County to award some contracts to small businesses without competitive bidding or with telephone or verbal quotes.
2. A simplified process for being certified as a Douglas County vendor which does not put an unfair administrative or financial restraint on small businesses.
3. Providing assistance to small businesses in the DBE certification process or the Douglas County vendor certification process.
4. Notification to all businesses, large and small, through the local media and Douglas County website of opportunities to bid or submit quotes on upcoming projects.
5. One staff member specifically assigned to participate in minority and small business endeavors such as the Douglas County Black Community Connection.
6. During the last four years, the only contract Douglas County/MMTS has had for more than \$100,000 was for van purchases. All other contracts were small enough in scope for small businesses to bid for the work on a level playing field.
7. Maintaining a relationship with DBEs and small businesses through regular contact and an annual meeting.

Douglas County uses the Small Business Administration's definition of a small business concern: The definition reads: "SBA defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three year period. Douglas County maintains a file of examples of SBA general size standards.

#### **Set-asides or Quotas 26.43**

Douglas County does not use quotas in any way in the administration of this DBE program.

#### **Overall Goals (26:45)**

Douglas County establishes its DBE goal based on the federally-funded projects it anticipates undertaking during a period of three fiscal years. The goal-setting exercise is designed to determine, as accurately as possible, the level of DBE participation in those federally-funded projects.

The goal-setting methodology includes three steps:

- Establishing a Base Figure
- Adjusting the Base Figure, if necessary
- Developing a Race/Gender-Neutral and Race/Gender-Conscious Split of DBE participation

#### **STEP ONE: BASE FIGURE**

The purpose of Step One is to come up with a measurement of the actual relative availability of DBEs to perform the types of contracts (both prime and sub) that Douglas County intends to let. More specifically, Douglas County is trying to determine what percentage DBEs (or firms that could be certified as DBEs) represent all of firms that are ready, willing and able to compete for DOT-assisted contracting.

Douglas County calculates this percentage by dividing the number of DBEs ready, willing and able to bid for the types of work it will fund this year by the number of all firms (DBEs and non-DBEs) ready, willing and able to bid for the types of work Douglas County will fund in a fiscal year.

Douglas County's market is not necessarily the same as its political jurisdiction. Douglas County does not put geographical boundaries on its "local market." Instead Douglas County chooses to utilize Georgia Department of Transportation(GDOT) lists of certified and pre-qualified contractors and consultants and GDOT's Unified Certified Program listing of qualified DBEs as its basis for determining eligible participants in federally funded projects. In years past, Douglas County has had successful relationships with firms as far as 100 and 150 miles away.

These Georgia Department of Transportation lists of all certified contractors/consultants and DBE contractors/consultants serve as the main source of information for Douglas County in its DBE calculations. Douglas County has found this to be the most accurate means of identifying qualified DBEs for its federally-funded projects.

To calculate the Step One Base figure, Douglas County uses a simple equation. The number of DBEs will be in the numerator, and the number of all firms (DBE and non-DEBs) will be in the denominator.

For example, Douglas County identified 20 DBEs ready, willing and able to engage in light construction and 100 firms overall ready, willing and able to engage in light construction. Divide 20 DBE firms by the 100 overall firms to get 20 percent, which represents the relative availability of DBEs to perform the types of light construction contracts (both prime and sub) that Douglas County intends to let.

It is important to make certain that the DBE firms in the numerator and denominator are as similar as possible to the DBEs and non-DBEs in the denominator.

#### **STEP TWO: ADJUSTED FIGURE**

Step Two of Douglas County's goal setting calculation process is intended to adjust the Step One Base Figure to make it as precise as possible. Douglas County considers all evidence available in its jurisdiction to determine whether such an adjustment is necessary. However, the most significant data Douglas County uses in making this determination is past participation (the volume of work DBEs has performed for Douglas County in recent years).

While Douglas County has to consider making adjustments to its Base Figure, it is not required to make such an adjustment. If evidence does not suggest such an adjustment is necessary, then no adjustment should be made. But if evidence suggests that an adjustment is warranted, it is important to ensure that there is a rational relationship between the data Douglas County is using to make the adjustment and the actual numerical adjustment made. Douglas County will provide a clear explanation of which information sources were considered, how the Step Two adjustment was made, or why Douglas County determined that no adjustment was warranted.

If Douglas County feels that an adjustment is needed in the Base Figure, the adjustment will likely be made based on past DBE participation. Douglas County will calculate median past participation to make this adjustment.

Median past participation is determined in the following manner:

The median is the middle number in any group of numbers.

The best way to determine the median is to first arrange the values in a list from low to high. For example, if you have the number 1, 3, 6 and 8, the median would be the average of 3 and 6, or 4.5

With this principle in mind, Douglas County may calculate its median and past participation percentage and use that figure to adjust its Step One Base figure by taking the average of its median past participation figure and its Step One Base figure. Past participation should not be given disproportionate weight and therefore, Douglas County should not simply average its Step One Base figure with a whole list of past years' participation rates. An example may be helpful. Assume that Douglas County's participation for the past four years has been 18 pct., 15 pct., 12 pct. and 11 pct. And the Step One analysis results in a Step One Base Figure of 9 pct. In order to obtain a Step One Base Figure adjusted for past participation, Douglas County must do the following:

First, arrange the past participation values in order from low to high: 11 pct., 12 pct., 15 pct., 18 pct.

Then take the middle percentage to obtain the median past participation percentage. If, as here, there are an even number of percentages, the median is derived averaging the middle two values (12 pct. and 15 pct.) Obtain the average of 12 pct. and 15 pct. by adding them together and dividing by 2. This gives Douglas County as 13.5 pct. median past participation percentage.

Finally, obtain a Step One Base Figure adjusted for past participation by taking the average of the Step One Base Figure and the median past participation. This average is obtained by adding together the Step One Base Figure (9 pct.) and the median past participation percentage (13.5 pct.) and dividing by 2. In other words, 9 pct. plus 13.5 pct. equals 22.5 pct. Divided by 2 equals 11.25 pct. Therefore 11.25 pct. is Douglas County's Step One Base Figure adjusted for past participation.

### **RACE/GENDER-NEUTRAL and RACE/GENDER-CONSCIOUS SPLIT**

Douglas County must meet the maximum feasible portion of its overall goal by using race/gender-neutral means of facilitating DBE participation. Race/gender-neutral DBE participation occurs when a DBE wins a contract or subcontract that did not have contract specific goals, or when the DBE status was not considered in making the award. Race/gender-neutral does not mean that no efforts were made to facilitate DBE participation.

When determining this split, Douglas County must carefully explain why it projected that it could achieve the level of race/gender-neutral participation that is proposed and the specific reasoning and data that support the conclusion. The following consideration may be used in developing that explanation:

- Considering the amount by which Douglas County exceeded its goals in the past
- Considering past participation by DBE prime contractors
- Considering past participation by DBE subcontractors on contracts without goals
- Considering MBE/WBE/DBE participation pursuant to race/gender-neutral state or local programs
- Considering concrete plans to implement new race-neutral methods
- Considering past history of inability to achieve goals
- Monitoring DBE participation to determine whether Douglas County needs to adjust its use of race/gender-conscious measures

As part of its DBE goal submission, Douglas County will include language similar to the following: *Douglas County's overall goal is \_\_\_pct. for Fiscal Years 20XX to 20XX. Douglas County will achieve \_\_\_pct. of that Goal through race/gender-neutral means and \_\_\_pct. through race/gender-conscious means.*

### **OUTREACH, PUBLIC PARTICIPATION**

Douglas County submits its overall goal to FTA on August 1 of the year specified by FTA.

Before establishing the overall goal each year, Douglas County will consult with, among others, the National Organization of Minority Architects, the Atlanta Hispanic Chamber of Commerce, the Georgia Chamber of Commerce, the Atlanta Urban League, the Atlanta Metro Black Chamber of Commerce and the Women's Economic Development Agency of Atlanta, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effect of discrimination on opportunities for DBEs, and Douglas County's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, Douglas County will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours of the MMTS office, 8800 Dorris Road, Douglasville, GA 30134, for thirty days following the date of the notice, and informing the public that Douglas County and DOT will accept comments on the goals for 45 days from the date of the notice. Douglas County will publish this notice in the Douglas County Sentinel, a newspaper of local distribution. Normally this notice will be published by June 1 of each year.

Douglas County's overall goal submission to FTA will include a summary of information and comments received during this public participation process and Douglas County's responses. Douglas County will begin using its overall goal on October 1 of each year, unless Douglas County has received other instructions from FTA or, if the goal is established on a project basis, by the time of the first solicitation for an FTA-assisted contract for the project. Douglas County's goal will remain effective for the duration of the three year period established and approved by FTA.

### **Transit Vehicle Manufacturers (26.49)**

Douglas County MMTS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Douglas County MMTS 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.

### **Goal Setting and Accountability 26.47**

If the awards and commitments shown on Douglas County's Uniform Report of Awards of Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, Douglas County will:

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

Establish specific steps and milestones to correct the problems identified in the analysis, and

Submit the plan to FTA within 90 days of the affected fiscal year.

### **Meeting Overall Goals/Contract Goals 26:51**

**Race Neutral:** Douglas County will meet the maximum feasible portion of its overall goals using race-neutral means of facilitating DBE participation. In order to do so, Douglas County will actively seek certified DBE businesses to bid on certain projects, and when possible, feasible and within Douglas County purchasing guidelines, award some small contracts to DBEs without competitive bidding or with limited bidding. Douglas County is in the metropolitan Atlanta region, which includes a significant number of certified DBEs capable of bidding on and being awarded prime contracts. Depending on the type work to be done, Douglas County will make contact with certain DBE firms and encourage them to bid as the prime contractor. If the DBE firms say they cannot bid as a prime contractor, Douglas County will assist them in identifying a prime contractor with whom they can partner as a subcontractor.

Douglas County will use contract goals to meet any portion of the overall goal that Douglas County 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 Douglas County's overall goal that is not projected to be met through the use of race-neutral means.

Douglas County will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Douglas County will not establish a contract goal on every such 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).

Douglas County will express its contract goals as percentage of the total amount of a DOT-assisted contract.

### **Good Faith Efforts (26.53)**

#### **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, Douglas County 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 on its bid.

#### **Information to be submitted: 26.53(b)**

Douglas County's MMTS treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

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

### **Demonstration and Evaluation of Good Faith Efforts 26.53(a) & (c)**

The MMTS Division Manager is responsible for determining whether a bidder/offerer who has not met the contract goal has documented sufficient good faith efforts to be regarded as unresponsive.

The process used to determine whether good faith efforts have been made by a bidder are as follows:

1. The metropolitan Atlanta region has dozens of certified DBEs. A prime contractor should be able to identify at least one DBE to participate in the performance of a contract. If a prime contractor is unfamiliar with the DBE process or the availability of DBEs, Douglas County will provide guidance and assistance to that prime contractor.
2. Douglas County will provide a complete, current listing of DBEs in the Atlanta region to the prime subcontractor(s).
3. Douglas County will offer to pair a DBE with a prime contractor.
4. After all of these steps, if a prime contractor still contends it is unable to partner with a DBE, the MMTS Division Manager will require a written statement from the prime contractor detailing the efforts to locate a DBE. The MMTS director will review the bidder's documentation and then compare it to Douglas County's certified DBE list and will confirm with certain DBEs their availability to work on the project(s) in question. From that, an evaluation will be conducted to determine if the bidder has contacted sufficient DBEs about doing the work, and if sufficient effort was put forth to reach a contract agreement with a DBE. If the MMTS director determines a good faith effort was not put forth, the prime contractor may not be awarded the contract. Douglas County will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before Douglas County commits to the performance of the contract by the bidder/offeror.

### **Administrative Reconsideration (26.53d.)**

Within five days of being informed by Douglas County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following reconsideration official: Randy Hulsey, Director, Douglas County DOT, 8700 Hospital Drive, Douglasville, GA. 770-920-4924. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make documented 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 it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with Douglas County's reconsideration officials to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. Douglas County will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Good Faith Efforts When a DBE is Replaced/Terminated on a contract with contract goals 26.53(f)**

Douglas County requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Douglas County's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulations.

Before transmitting to Douglas County its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to Douglas County prior to consideration of the request to terminate. The DBE will then have five days to respond and advise Douglas County of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, Douglas County will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to make the contract goal. Douglas County will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, Douglas County will require the prime contractor to obtain Douglas County's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, Douglas County will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

#### **Sample Bid Specification**

The requirements of 49 CFR part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of Douglas County to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ pct. has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR, part 26 to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required 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 firm will perform; (3) the amount of the participation of each DBE firm participating; (4) written documentation of the bidder/offeror's confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

#### **Counting DBE Participation (26.55)**

Douglas County will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

#### **Certification (26.61-27.73)**

Douglas County does not certify DBEs. Instead Douglas County participates in a Unified Certification Program overseen by the Georgia Dept. of Transportation.

#### **Unified Certification Program 26.81**

Douglas County is a member of Unified Certification Process administered by the Georgia Department of Transportation. The UCP will meet all of the requirements of this section. Douglas County will use and count for DBE credit only those DBE firms certified by Georgia DOT.

#### **Contract information for GDOT:**

DBE Program, Georgia DOT  
One Georgia Center  
600 West Peachtree St., NW, 7<sup>th</sup> floor  
Atlanta, GA 30308  
404-631-1972

#### **Procedures for Certification Decisions 26:83-26.91**

Douglas County (the UCP administered by Georgia DOT) will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of the Georgia DOT certification procedures and/or UCP program is included as an attached to this program and is available at the Multi-Modal Transportation Department office.

Any firm or complaint may appeal a GDOT decision in a certification matter to U.S. DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave SE  
West Building, 7<sup>th</sup> Floor

Washington, D.C. 20590

**Information, Confidentiality, Cooperation 26.109**

Douglas County will safeguard from disclosure to third parties information that may reasonable be regarded as confidential business information, consistent with federal, state and local law. Any Freedom of Information requests will be referred to the Douglas County Records Department.

Notwithstanding any contrary provisions of state or local law, Douglas County will no release personal financial information submitted in response to the personal net worth, requirement to a third party (other than DOT) without the written consent of the submitter.

**Monitoring Payments to DBEs**

Douglas County 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 Douglas County or U.S. DOT. This reporting requirement also extends to any certified DBE subcontractor.

Douglas County will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual payment amount paid to DBE subcontractors equals or exceeds the dollar amounts state in the schedule of DBE participation.