

# COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
Fax (251) 580-2500  
[www.baldwincountyal.gov](http://www.baldwincountyal.gov)

MEMBERS  
DISTRICT 1. JAMES E. BALL  
2. MATTHEW P. MCKENZIE  
3. BILLIE JO UNDERWOOD  
4. CHARLES F. GRUBER

December 20, 2022

Ms. Cian Harrison, Clerk/Treasurer  
Ms. Wanda Gautney, Purchasing Director  
Ms. Loren Lucas, BRATS Accounting Manager  
Ms. Katrina Taylor, Grants Coordinator

**RE: Disadvantaged Business Enterprise Program Update**

Dear Staff:

The Baldwin County Commission, during its regularly scheduled meeting held on December 20, 2022, adopted the **enclosed** *Baldwin County Commission Disadvantaged Business Enterprise (DBE) Program* in accordance with regulations of the U.S. Department of Transportation (DOT) 49 CFR Part 26 for Federal Transit Administration (FTA) funded projects.

Sincerely,

CHARLES F. GRUBER, Chairman  
Baldwin County Commission

JB/clc Item CD2

ENCLOSURE(S)

# Baldwin County Commission

## Disadvantaged Business Enterprise (DBE) Program



December 20, 2022

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## Transportation/Disadvantaged Business Enterprise Plan Statement

The Baldwin County Commission (County), as a recipient of Federal Transit Administration grant funds, 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 County receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26.

It is the plan of the County to ensure that DBE's as defined in part 26, have an equal opportunity to receive and participate in DOT/FTA-assisted contracts. It is also our plan:

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

**Ann Simpson, Director of Transportation, Baldwin Regional Area Transit System (BRATS)** has been delegated as the DBE Liaison Officer. In that capacity, she is responsible for implementation oversight related to all aspects of the DBE program, including coordination with other appropriate officials. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the DOT.

The County will post this Plan on its website at [www.baldwincountyal.gov](http://www.baldwincountyal.gov). The Plan will serve as the basis for all DOT/FTA-assisted procurement including Request for Qualifications (RFQ), Request for Proposals (RFP), and Bid Solicitations. The written plan will also be made available for reference to the Baldwin County information call center, (251) 937-9561, extension 2264.

## SUBPART A - GENERAL REQUIREMENTS

### **Objectives**

The objectives are found in the Plan Statement.

### **Applicability**

Baldwin County Commission (County) is the recipient of Federal Transit Administration (FTA) funds through both the Alabama Department of Transportation (ALDOT) and the U.S. Department of Transportation (DOT).

### **Definitions**

The terms used in this program have the meanings defined in 49 CFR §26.5.

### **Nondiscrimination Requirements**

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 on the basis of race, color, sex, or national origin.

### **Federal Financial Assistance Agreement Assurance**

County has signed all required assurances, applicable to federally assisted contracts and their administration. Such assurances are available upon request.

County will ensure that the following clause is placed in every DOT/FTA assisted contract and subcontract:

Contract Assurance 49 CFR Part 26. 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 County deems appropriate, which may include, but is not limited to: 1) withholding monthly progress payments; 2) assessing sanctions; 3) liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.

## SUBPART B - ADMINISTRATIVE REQUIREMENTS

### **DBE Program Updates**

County will continue to carry out this program until it has established a new goal setting methodology or until significant changes to this DBE Program are adopted. County will provide to the DOT/FTA overall goal and goal setting methodology and other program updates on an annual basis or as required.

### **DBE Liaison Officer (DBELO)**

County has designated the following individual as our DBE Liaison Officer (DBELO):

Ann Simpson  
Baldwin County Commission  
Director of Transportation  
Baldwin Regional Area Transit System  
251.972.6817 Ext. 7295  
Ann.Simpson@baldwincountyal.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the County Administrator concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has an adequate staff to assist in the administration of the program. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT/FTA.
2. Work with County's legal counsel as required for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Work with purchasing officer to ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Analyze County's progress toward goal attainment and identify ways to improve progress.
6. Advise the Baldwin County Commission on matters impacting DBE plan and achievement.
7. Provide DBEs with information and assistance in working with the County's DBE program.
8. County recognized DBEs will be certified using the DOT/FTA process; however, the County will work to coordinate with the Uniform Certification Process in the State of Alabama as needed.

## **DBE Financial Institutions**

It is the plan of County to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community; however, based on County experience with handling its own funds, we do not anticipate that this will provide a definitive list of viable individuals and/or firms. To the extent that these firms are listed on the ALDOT DBE list, the County will gladly make referral to prime contractors; however, to use these institutions for County funds would likely not be feasible. The County is required to use financial institutions covered under the Security for Alabama Funds Enhancement "SAFE" Program, per Title 41, Chapter 14A of the Code of Alabama 1975, as amended, to provide a uniform program for the security of public funds deposited with financial institutions in the State of Alabama. The financial institutions used by Baldwin County meet SAFE programmatic requirements but are also subject to the Community Reinvestment Act (CRA)<sup>1</sup> requirements; therefore, the DBELO can share both the ALDOT DBE list, as well as information about the financial institutions used by the County that would possibly be able to assist with banking/lending needs, as part of a CRA obligation. Also, see information as detailed in Attachment 2.

### **Directory**

County will utilize the State of Alabama's Department of Transportation (ALDOT) [directory of DBEs](#). The ALDOT directory utilizes the certification process of 49 CFR Part 26; however, the Alabama Department of Economic and Community Affairs (ADECA) Office of Minority Business Enterprise (OMBE) also certifies DBEs and maintains a directory (see [ADECA OMBE Directory](#)) which is available as an optional reference. The ADECA directory does not necessarily adhere to the DOT certification standards of 49 CFR Part 26; however, both ALDOT and ADECA OMBE personnel are notified with respect to all Baldwin County DOT/FTA procurement actions.

### **Overconcentration**

County has not identified any types of work in DOT/FTA-assisted contracts that have an overconcentration of DBE participation. If, in the future, County identifies the need, it will be addressed.

### **Business Development Programs**

County does not currently propose a business development and/or mentor-protégé program component of its DBE Plan. If, in the future, County identifies the need for a local program, it will be addressed. Otherwise, the County will refer persons and/or

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<sup>1</sup> The [Community Reinvestment Act of 1977](#) (CRA) encourages certain insured depository institutions to help meet the credit needs of the communities in which they are chartered, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of such institutions. All institutions regulated by the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision that meet the asset size threshold are subject to data collection and reporting requirements.

business to existing resources including the [University of South Alabama Small Business Development Center](#) for assistance in business development and [The Guide to Government Contracting for Alabama Small Businesses](#) as published by the Alabama Procurement Technical Assistance Center. Small businesses will also be referred to the Greater Mobile Development Corporation (GMDC) located at 1411 Montlimar Drive; Mobile AL 36609 for business loans as may be needed. GMDC is the local Small Business Administration (SBA) lending partner for Baldwin County.

### **Prompt Payment Mechanisms**

County will include the following clauses or equivalent in each DOT/FTA-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause remaining in compliance with State Law. This clause applies to both DBE and non-DBE subcontractors.

### **Monitoring and Enforcement Mechanisms**

Award of any procurement is subject to verification that the business is not excluded from participation with federally funded programs based on a search of entity specific information using [SAM.gov](#).

County will provide a monitoring mechanism to verify that work committed to DBEs as contract award is actually performed by the DBEs. County will bring to the attention of the DOT/FTA any false, fraudulent, or dishonest conduct in connection with the program, so that DOT/FTA 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 in 26.107. County will also consider similar action under its own legal authorities, including but not limited to responsibility determinations in future contracts and breach of contract actions.

### **Fostering Small Business Participation**

County will attempt to structure bids such that small businesses, including DBEs, can reasonably compete for contracts and/or participate through subcontracting opportunities provided by prime contractors. Information regarding the County's DBE program will be provided to the [University of South Alabama Small Business Development Center](#) to help foster referrals by small businesses seeking to do business with governmental agencies.



## SUBPART C - GOALS, GOOD FAITH EFFORTS AND COUNTING

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

County will not use quotas in any way in the administration of this DBE Program.

### **Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program.

In accordance with Section 26.45, the County will set and submit its overall goal as required.

County will publish a notice of its proposed goal, on its website, as well as other locations as may be appropriate.

The notice will include information relative to submission of comments and/or questions regarding the proposed goal for a 30-day comment period. County's overall goal submission to DOT/FTA will include a summary of information and comments received during this public participation process and responses.

County will begin using our overall goal on October 1 of each year, unless other instructions are received from DOT/FTA. If the County establishes a goal on a project basis, the County will begin using the goal by the time of the first solicitation for a DOT/FTA-assisted contract for the project.

### **Breakout of Estimated Race-Neutral and Race-Conscious Participation**

County will use 100% race-neutral means of obtaining DBE participation unless and until a need for use of race-conscious, participation is determined.

### **Contract Goals**

County will monitor overall goals to determine any need for contract goals as determined by the ability or inability to meet overall goals using race-neutral methods.

### **Good Faith Efforts Procedures**

Good faith effort procedures are not applicable when there are no contract goals. Reference Attachment 4 for information regarding good faith efforts for construction projects.

### **Counting DBE Participation**

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

## SUBPART D - CERTIFICATION STANDARDS AND PROCEDURES

By utilizing the ALDOT Directory and DBE Certification process, the County ensures that only properly certified DBE firms will participate in our program.

Information regarding DBE certification procedures is available through the [ALDOT website](#). To apply for registration - [ALDOT DBE Registration](#).

## SUBPART E - COMPLIANCE AND ENFORCEMENT

### **Information, Confidentiality and Cooperation**

County will safeguard from disclosure to third parties' information that may be regarded as confidential business information, consistent with Federal, state and local laws.

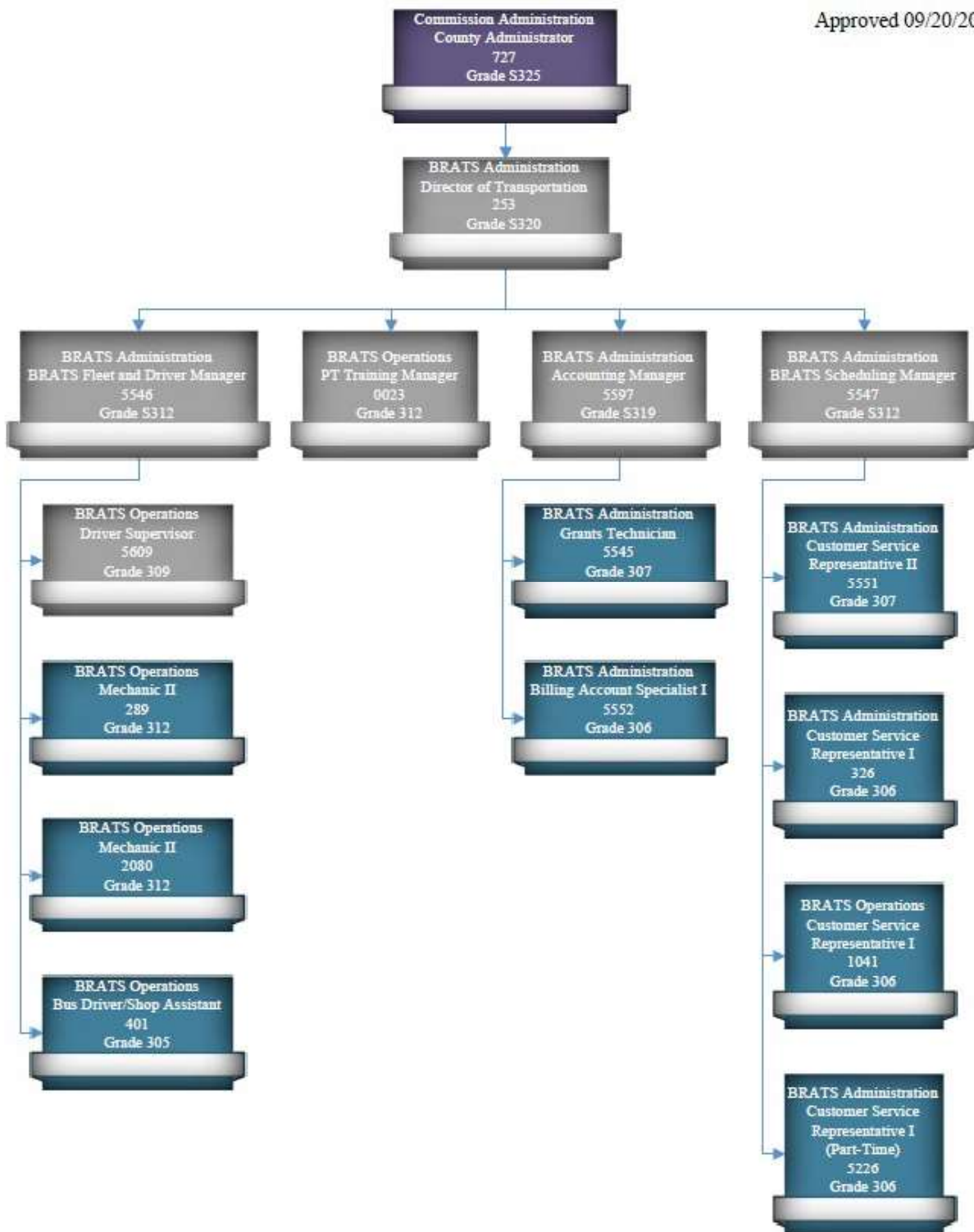
### **Monitoring Payments to DBEs**

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

County reserves the right to perform interim audits of contract 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.

# Attachment 1 Organizational Chart

Approved 09/20/2022



## Attachment 2 Overall Goal Calculation & Goal Setting Methodology

### **Baldwin County Disadvantaged Business Enterprise** Overall Goal Calculation & Goal Setting Methodology

In setting the DBE goal, Baldwin County (County) is attempting to establish a "level playing field." This level playing field is defined as the amount of DBE participation that can realistically be expected for Baldwin County procurement actions related to BRATS FTA purchases, given the limited pool of DBEs within the County and the State of Alabama as a whole.

In conformity with 49 CFR 26.45(c)(4), Baldwin County adopts the DBE goal as currently used by the State of Alabama Department of Transportation (ALDOT). The current ALDOT DBE goal for FY 2023 is 3.58%; however, this is subject to change when recalculated for the upcoming fiscal year. No adjustments will be made to this numerical goal, as it has been established based on 49 CFR 26.45 and Baldwin County has insufficient data at this time to develop a localized goal.

The County has considered various factors in establishing this goal, as follows:

- Fuel purchase represents the largest portion of procurement for BRATS and the Baldwin County market for fuel supply is substantially similar to the State of Alabama overall.
- Baldwin County has a DBE registration process in place (see Attachment 3) and registered firms may select to be electronically notified on any Baldwin County bids (inclusive of categories self-selected by the firm); however, information obtained regarding each firm does not ensure eligibility based on DOT certification standards per Subpart D of 49 CFR Part 26. Further, the registration process does not utilize the forms as provided at Appendix E (Individual Determinations of Social and Economic Disadvantage) and G (Personal New Worth Statement) of 49 CFR Part 26. ALDOT's process does utilize these forms and ALDOT participates in the Unified Certification Program (UCP).
- DBE certification is sufficiently complex such that small, localized companies do not see the benefit of going through the registration process relative to the value of contracts for low dollar/low skills procurement actions. Baldwin County is aware that these firms do participate in the bidding process; however, they are competitive on price without having to undertake the DBE registration/formal certification process. Technical assistance referrals to the [University of South Alabama Small Business Development Center](#) will be used

to help foster DBE registration and further development of these local firms.

The current and future updates to the ALDOT DBE goal will be utilized by Baldwin County for its DBE goal and will be made public on our website in accordance with the process outlined within the Baldwin County DBE Program; Transportation/Disadvantaged Business Enterprise Plan.

# Attachment 3 Baldwin County Disadvantaged Business Registration Form



**Baldwin County Commission**  
Purchasing Department  
Disadvantage Business Enterprise Registration Form

Purchasing Department  
312 Courthouse Square, Suite 15  
Bay Minette, AL 36507  
[www.baldwincountyal.gov](http://www.baldwincountyal.gov)  
Fax 251.580.2536  
Email [purchasing@baldwincountyal.gov](mailto:purchasing@baldwincountyal.gov)

Please fill in this form and email or print and fax

\* fields are required

\*Legal Company Name: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

\*Street Address: \_\_\_\_\_

\*City: \_\_\_\_\_ \*State: \_\_\_\_\_ \*Zip Code: \_\_\_\_\_

Website Address: \_\_\_\_\_ Email: \_\_\_\_\_

\*Contact Name: \_\_\_\_\_ \*Position or Title: \_\_\_\_\_

\*Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

### Identification as a Disadvantaged Business Enterprise

51% Ownership and Management of the company is controlled by:

- Female:  Yes  No  Not Applicable
- African American:  Yes  No
- Asian American:  Yes  No
- White:  Yes  No
- Hispanic:  Yes  No
- American Indian:  Yes  No
- Other:  Yes  No

\*First year of business: \_\_\_\_\_

Gross revenue for the past three years, or the business income if established less than three years:

Year \_\_\_\_\_ \$ \_\_\_\_\_

Year \_\_\_\_\_ \$ \_\_\_\_\_

Year \_\_\_\_\_ \$ \_\_\_\_\_

Please complete this registration form and return by fax or email:  
Fax: 251.580.2536 Email: [purchasing@baldwincountyal.gov](mailto:purchasing@baldwincountyal.gov)

\* fields are required

## Attachment 4 Bid Solicitation Language

The Baldwin County Commission will utilize the attached Bid Solicitation Language template for construction projects. This template includes information about DBE participation, contractor reporting requirements, legal and contract remedies, required federal clauses, and provides forms that will assist the awarded contractor in meeting the Baldwin County Commission's DBE goal or documenting their good faith efforts to do so.

### **TO BE LISTED IN THE TABLE OF CONTENTS:**

#### Instructions to Proposers

- 1) Disadvantaged Business Enterprise (DBE) Participation

#### DBE Payment and Reporting Requirements

- 1) Contractor Reporting Requirements
- 2) Legal and Contract Remedies
- 3) Required Federal Clauses

#### Attachments

- 1) DBE Letter of Intent
- 2) DBE Affidavit
- 3) DBE Unavailable Certification
- 4) Prompt Payment Affidavit

## Instructions to Proposers

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

The requirements of 49 CFR, Part 26, apply to this contract. In connection with the performance of this Contract, the successful bidder agrees to cooperate with the \_\_\_\_\_ in meeting its commitments and goals to ensure that Disadvantaged Business Enterprises (DBEs), as defined in Title 49 CFR, Part 26, have an equal opportunity to receive and participate in this DOT/FTA-assisted project.

To be recognized as a DBE, a firm must become certified through the Alabama United Certification Program (AL UCP). Requirements, certification guidelines and applications are available at <https://cpmsapps2.dot.state.al.us/alucp>

Requirements and goals for Disadvantaged Business Enterprise participation in this Project are as follows:

A minimum of three point five eight percent (3.58%) of the total contract price, as awarded, shall be established as a goal to be made available to certified DBEs.

Prior to Contract award, the apparent successful bidder shall submit a written acknowledgement of the above goal and shall include names of DBE subcontractors, addresses of contact persons, a description of work to be performed, dollar values of each proposed DBE subcontract and proof of the subcontractors eligibility as a DBE. This information shall be submitted on Attachment \_\_\_\_ - DBE Letter of Intent and Attachment \_\_\_\_ - DBE Affidavit that are furnished with this solicitation.

If the goals are not met, the bidder must demonstrate that sufficient good faith efforts were made to meet the DBE contract goals and shall document the steps that were taken to obtain DBE participation (see Attachment \_\_\_\_ - DBE Unavailable Certification.) Failure to provide required documentation of good faith efforts may be reason for disqualification of the Bid/Proposal.



## Specific Contractual Terms and Conditions

### DBE PAYMENT AND REPORTING REQUIREMENTS

1) Contractor Reporting Requirements

The prime contractor understands that expenditures made to DBEs will be recognized and measured as required by Title 49 CFR, §26.55.

The prime contractor agrees to make available to the \_\_\_\_\_ and/or the Baldwin County Commission, upon request, a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with the provisions of Title 49 CFR, §26.53.

The \_\_\_\_\_ will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the \_\_\_\_\_ and/or the Baldwin County Commission or the DOT. This reporting requirement also extends to any certified DBE subcontractor.

The \_\_\_\_\_ and/or the Baldwin County Commission shall also be permitted to perform interim audits of contract payments to DBEs. Said audits will consist of reviewing payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

2) Good Faith Efforts

The following is a list of types of actions which will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means the interest of all certified DBE's who have the capability to perform work under the contract. This shall include attendance at pre-bid meetings, advertising and /or written notices. The bidder shall allow sufficient time to allow the DBEs to respond to the solicitation.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It will be the responsibility of the bidder to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or materials consistent with the available DBE's. Evidence of negotiations shall include the names, addresses, and telephone numbers of DBE's that were considered and a description of the information provided regarding the plans and specifications for the work selected for

subcontractors, and evidence as to why additional agreements could not be reached for DBE's to perform the work.

- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Use of services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations that aid in the recruitment and placement of DBEs.

3) Legal and Contract Remedies

The prime contractor understands that the \_\_\_\_\_ 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 of Program Fraud or Civil Penalties rules) provided in Title 49 CFR, §26.109. The prime contractor understands that the \_\_\_\_\_ will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

4) Required Federal Clauses

The prime contractor shall ensure that the following clauses are placed in every solicitation, contract and subcontract associated with this DOT-assisted project:

- a. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in U. S. Department of Transportation Financial Assistance Program. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%.
- b. 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 Title 49 CFR, Part 26, in the award and administration of this DOT-assisted Contract. 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 \_\_\_\_\_ deems appropriate, which may include, but is not limited to:
  1. Withholding monthly progress payments
  2. Assessing sanctions
  3. Liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible
- c. Bidders/offerors are required to document sufficient DBE participation (see Attachment \_\_\_\_ - DBE Letter of Intent and Attachment \_\_\_\_ - DBE Affidavit) to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in

Title 49 CFR, §26.53. Award of this Contract is conditioned on submission of the following:

1. The names and addresses of DBE firms that will participate in this Contract
2. A description of the work each DBE will perform
3. The dollar amount of the participation of each DBE firm
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation will assist in meeting the contract goal
5. Written confirmation from the participating DBE as provided in the prime contractor's commitment
6. If the contract goal is not met, evidence of good faith efforts to do so (see Attachment \_\_\_\_ - DBE Unavailable Certification)

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- 5) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the \_\_\_\_\_. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after 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 \_\_\_\_\_. This clause applies to both DBE and non-DBE subcontractors (see Attachment \_\_\_\_ - Prompt Payment Affidavit.)
- 6) The prime contractor agrees not to terminate for convenience a DBE subcontractor, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from the \_\_\_\_\_. The prime contractor must promptly notify the \_\_\_\_\_ whenever a DBE subcontract related to this contract is terminated or the subcontractor fails to complete its work. Should such a situation arise, the prime contractor agrees to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated.

**ATTACHMENT – DBE Letter of Intent**

This form is to be completed by the Prime Contractor and each DBE Subcontractor

To: \_\_\_\_\_  
**(Name of Proposer)**

The undersigned intends to perform work in connection with the above project as a DBE (circle one):

Individual \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venture \_\_\_\_\_

The Disadvantaged Business Enterprise status of the undersigned is confirmed:

1. On the AL UCP list of Disadvantaged Business Enterprises dated \_\_\_\_\_; and
2. On the attached Disadvantaged Business Enterprise Affidavit.

The undersigned is prepared to perform the following work in connection with the above project (Specify in detail particular work items or parts thereof to be performed):

\_\_\_\_\_  
\_\_\_\_\_

The DBE contractor will perform this work at the following price: \_\_\_\_\_

The following commencement date has been projected for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with prime contractor, conditioned upon the prime contractor's execution of a contract with the \_\_\_\_\_.

Name of Disadvantaged Business Enterprise: \_\_\_\_\_

Address of Disadvantaged Business Enterprise: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT – DBE Affidavit**

This form is to be completed by each DBE Subcontractor

State of \_\_\_\_\_

Date: \_\_\_\_\_

County: \_\_\_\_\_

The undersigned, being duly sworn, deposes and says that he/she is the (sole owner, partner, president, treasurer, or other duly authorized official of a corporation) of

\_\_\_\_\_  
(Name of Official)

\_\_\_\_\_  
(Name of DBE)

and certifies that since the date of its certification through the AL UCP, the certification has not been revoked nor has it expired nor has there been any change in the minority status of

\_\_\_\_\_  
(Name of DBE)

\_\_\_\_\_  
(Signature and Title of Person Making Affidavit)

Sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

NOTE: The proposer must attach the DBE's most recent certification letter or document to this affidavit.

**ATTACHMENT – DBE Unavailable Certification**

This form is to be completed by the Prime Contractor to document good faith efforts to solicit DBE participation

I, \_\_\_\_\_, the \_\_\_\_\_  
 (Name) (Title)

of \_\_\_\_\_ certify that on \_\_\_\_\_  
 (Proposer/Prime Contractor) (Date)

I contacted the following Disadvantaged Business Enterprise to obtain a proposal to perform the following work item(s):

<u>DBE Organization</u>	<u>Work Items Sought</u>	<u>Form of Proposal Sought (e.g., materials, materials &amp; labor, labor only, etc.)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

To the best of my knowledge and belief, said Disadvantaged Business Enterprises were unavailable for work on this project, unable to prepare a proposal, or were not selected for the work sought for the following reason(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT – Prompt Payment Affidavit**

Either section (A) or (B) of this form is to be completed by the Prime Contractor

- (A) The undersigned affirms, to the best of his/her knowledge and belief, that:
- (1) The undersigned understands and agrees that the Contractor is required to pay all Subcontractors for all work that any Subcontractor has satisfactorily completed no later than thirty (30) days after the Contractor has received payment from the \_\_\_\_\_ for that work.
  - (2) The undersigned understands and agrees that the Contractor is required to pay retainage amounts, if any, to a Subcontractor no later than thirty (30) days after the \_\_\_\_\_ has released retainage to the Contractor for that portion of the work.
  - (3) The undersigned understands and agrees that any delay in or postponement of payment to any Subcontractor by the Contractor requires the Contractor to demonstrate good cause and to receive prior written approval by the \_\_\_\_\_.
  - (4) The undersigned understands and agrees that the \_\_\_\_\_ will not pay the Contractor for Services performed or Deliverables submitted unless and until the Contractor certifies that the Subcontractors have been promptly paid for the work or services they have performed under all previous payment requests, as evidenced by the filing with the \_\_\_\_\_ the Contractor's sworn statement that the Contractor has complied with the prompt payment requirements.

The undersigned solemnly declares and affirms under penalty of perjury that the above and foregoing are true and correct, and that he/she is authorized on behalf of the Contractor to sign this affidavit.

_____ Signature	_____ Company Name
_____ Official's Name and Title	_____ Date

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- (B) The undersigned solemnly declares and affirms under penalty of perjury that no Subcontractors will be used in the performance of the work or services

and, as such, the statutory prompt payment requirements are inapplicable. The undersigned further declares that he/she is authorized on behalf of the Contractor to sign this affidavit.

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Signature

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Company Name

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Official's Name and Title

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Date