

§ 26.1

- 26.47 Can recipients be penalized for failing to meet overall goals?
- 26.49 How are overall goals established for transit vehicle manufacturers?
- 26.51 What means do recipients use to meet overall goals?
- 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- 26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

- 26.61 How are burdens of proof allocated in the certification process?
- 26.63 What rules govern group membership determinations?
- 26.65 What rules govern business size determinations?
- 26.67 What rules determine social and economic disadvantage?
- 26.69 What rules govern determinations of ownership?
- 26.71 What rules govern determinations concerning control?
- 26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

- 26.81 What are the requirements for Unified Certification Programs?
- 26.83 What procedures do recipients follow in making certification decisions?
- 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?
- 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?
- 26.86 What rules govern recipients' denials of initial requests for certification?
- 26.87 What procedures does a recipient use to remove a DBE's eligibility?
- 26.89 What is the process for certification appeals to the Department of Transportation?
- 26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

- 26.101 What compliance procedures apply to recipients?
- 26.103 What enforcement actions apply in FHWA and FTA programs?
- 26.105 What enforcement actions apply in FAA programs?
- 26.107 What enforcement actions apply to firms participating in the DBE program?
- 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

49 CFR Subtitle A (10–1–07 Edition)

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

AUTHORITY: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914,

Office of the Secretary of Transportation

§ 26.5

or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

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

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

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

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

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

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

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

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

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

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

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).

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

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

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

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.