



MaineDOT

Disadvantaged Business Enterprise Program

Maine Department of Transportation
Civil Rights Office
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**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

Policy Statement

Office of Commissioner

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The Maine Department of Transportation (MaineDOT) is committed to engaging small disadvantaged, minority and woman-owned business enterprises as defined herein in all contracts to the maximum feasible extent, and will continue working to ensure the maximum feasible opportunity for these businesses to participate in contracts financed in whole or in part with federal funds.

The MaineDOT's Disadvantaged Business Enterprise (DBE) Program has been carefully designed to incorporate 49 CFR Part 26, issued in February 1999, replacing 49 CFR Part 23, as amended. This new Program, as set forth herein, is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field," and foster equal opportunity in U.S. Department of Transportation-assisted contracts; improve the flexibility and efficiency of the DBE Program; and reduce burdens on small businesses.

In keeping with MaineDOT's multi-modal focus, responsibility for carrying out the Program is Department-wide. All of MaineDOT will ensure that its contractors, subcontractors, and other parties indicated by federal law will meet the Program requirements. For guidance or questions regarding this Program, contact the Civil Rights Office.

Additionally, MaineDOT recognizes the importance of small businesses in Maine's economy, and will work cooperatively with any and all other parties who also act in good faith to enhance development and growth opportunities of small businesses owned by disadvantaged individuals, minorities and women.

MaineDOT is committed to maintaining regular, open, constructive communication with both minority and majority interests. The Department continues to encourage frank and open discussions about the Program. I hope you will join with me and the Department's staff to ensure the success of this DBE Program. We need your input, ideas and experiences to enhance the growth of these businesses in Maine.

On behalf of the entire Department, we look forward to working with you.

Sincerely,

David A. Cole, Commissioner
Maine Department of Transportation

Dated

Key Individuals at MaineDOT

Commissioner

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Deputy Commissioner

Bruce VanNote..... (207) 624-3000

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As of 8/09

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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ATTACHMENTS TO MAINEDOT DBE PROGRAM

Attachment A	*Annual Bidder Information and Contractor Survey (<i>revised 7/05</i>)
Attachment B	* DBE Proposed Utilization Form - Consultant (<i>revised 2/08</i>)
B1	* DBE Proposed Utilization Form - Contractor (<i>revised 2/08</i>)
Attachment C	+DBE Contract Specific Special Provision and Directions
Attachment D	Prompt Payment Provision (<i>revised 3/00</i>)
Attachment E	DBE Directory (sample version)
Attachment F	Uniform Certification Application including Personal Financial Statement
Attachment G	Maine Freedom of Information Act and Confidentiality of DBE Records
Attachment H	MaineDOT Civil Rights Office Organizational Chart
Attachment I	MaineDOT Regulation regarding Debarment
Attachment J	Glossary of Applicable Terms (49 CFR Part 26.5)
Attachment K	Appendix to 49 CFR 26, Individual Determinations of Social and Economic Disadvantage
Attachment L	Appendix to 49 CFR 26, Guidance Concerning Good Faith Efforts
Attachment M	Certification of Final DBE Payment: All Modes
Attachment N	Commercially Useful Function Guidance Memorandum

***Indicates Required Submissions for Contractors/Consultants**
+Applicable ONLY If MaineDOT Requires Project Specific DBE Goal

**MAINE DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 26**

Annual Program Overview

In accordance with 49 CFR Part 26, the Maine Department of Transportation (MaineDOT) will establish a Disadvantaged Business Enterprise (DBE) participation level. The DBE participation level is determined annually and interested parties should contact the EEO Coordinator to verify the current DBE goal.

This program is applicable to all modal operations including: Highway, Transit, Aviation, and Rail (Northern New England Passenger Rail Authority by FTA decree).

To comply with 49 CFR Part 26, MaineDOT established a DBE Program Advisory group that met March through August 1999. The group membership included contractors, consultants, DBE/non-DBE firms, FHWA, and MaineDOT representatives. MaineDOT helped establish a State Highway Agencies work group from Rhode Island, New Hampshire, Vermont and Maine. State FHWA representatives and Eastern Resource Center staff participated. The group worked to cooperate, coordinate, and communicate on DBE matters germane to the program. This collaborative approach was beneficial to the States and end users because many Contractors/Consultants/DBE's work in one or more States and through sharing common experiences and by working cooperatively in overlapping areas of operation, Maine believes it can enhance the deliverer of our DBE program. States created and utilize a common uniform DBE Certification Application.

Nationally, complaints and challenges to the DBE Program have occurred; MaineDOT's historical experience does not reflect the national picture. Maine's DBE program has operated with industry stakeholders working together with the MaineDOT to carry out the DBE program. DBE firms and other Contractors work together to improve professional and operational relationships in order to comply with the regulations. Without continued and ongoing meaningful commitment by all parties to carry out this program, U.S. DOT, through Federal Regulation 49 CFR Part 26, requires MaineDOT to take specific remedial corrective action.

This Program continues the spirit of partnership and goes beyond a dialogue on commercialism by continuing to provide support to DBE firms in the transportation industry. MaineDOT's program has been narrowly tailored such that, *when* and *if* discrimination to DBE businesses is noted, remedies can be swiftly implemented to correct the specific discrimination.

The number of firms certified and who, for a variety of reasons, are no longer certified, the number of firms obtaining certification through the program, and the seasonal nature of construction work impacts the pool of eligible firms. Given that, MaineDOT's challenge is to implement 49 CFR Part 26 in a flexible and effective manner in order that Maine's program is responsive. Local market conditions impact the program through business start up and closure.

Federal Nondiscrimination Assurance

MaineDOT does not and will not discriminate on the basis of race, color national origin, or sex as well as sexual orientation, as per the Maine Human Rights Act, in the award and performance of any MaineDOT/U.S. DOT assisted contract or in the administration of 49 CFR Part 26. Further, MaineDOT ensures nondiscrimination in the award and administration of MaineDOT/U.S. DOT assisted contracts as required in the regulation. 49 CFR Part 26 is to be incorporated in all MaineDOT federal-assisted contracts. U.S. DOT may impose sanctions as provided under Part 26 and may refer, for enforcement purposes, under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) matters it deems necessary.

MaineDOT will not preclude or exclude any person or group from participation in, deny benefits of, or otherwise discriminate on basis of award.

Program Applicability and Assurance: Section 26.13 Federal Financial Assistance Agreement

MaineDOT has signed the following assurances, applicable to all U.S. DOT-assisted contracts and their administration:

Assurance: 26.13(a) MaineDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The MaineDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT

assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by U.S. 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 MaineDOT 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. 3801 et seq.).

Contract Assurance: 26.13b

MaineDOT will ensure that the following clause is placed in all U.S. DOT-assisted contracts and subcontracts:

“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”.

This program supersedes all previous versions. MaineDOT affirms intentions to meet requirements of 49 CFR Part 26. MaineDOT intends to meet DBE participation commitments by race/gender neutral applications. If race/gender neutral efforts fail to achieve established DBE participation levels, contract goals will be implemented on a project-by-project basis ensuring compliance with 49 CFR Part 26 will be imposed, race/gender conscious goals which will be higher than the established participation level. Each bidder is individually responsible for knowing and complying with imposed race/gender conscious goals at bidding, award and execution of the contract. Failure to comply at bid, award or in execution of the work can result in bid rejection, overturning of award or termination of contract.

Annual advertisement and implementation will occur each year, 49 CFR Part 26 remains in effect unless otherwise directed by U.S. DOT. Annually MaineDOT will advertise the upcoming Federal Fiscal Year commitment level. Implementation will occur by October 1 each year.

DBE Program Notice Publication

MaineDOT will annually publish the DBE participation level notice in the Kennebec Journal, Bangor Daily News, and the Portland Press Herald daily newspapers, and on MaineDOT's website. The Annual Goal will be posted on the website: www.maine.gov/mdot/disadvantaged-business-enterprise/dbe for 30 (thirty days following the date of the notice). Persons wishing to make specific written comments on the goal portion of the Program may do so for 45 days subsequent to the date of the notice.

DBE Program Applicability to Modal Entities

This DBE program is applicable in all federal financially supported activities via Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA) including manufacturers and suppliers of transit and marine passenger/vehicle vessels. Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify (49 CFR Part 26.13) that it has complied with these requirements. All FTA-assisted entities having or intending to have a contract including sub-recipients must comply and utilize MaineDOT's DBE Program. MaineDOT may, at its discretion, and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of transit vehicle manufacturers complying with this element of the program. Upon execution of each procurement opportunity, transit vehicle manufacturers are to furnish proof of compliance to MaineDOT.

Recipients of other federal financial assistance for which DBE program requirements are necessary and who have historically relied (in whole or part) on MaineDOT's DBE Program including DBE certification and the Directory of DBE Certified Businesses are also expected to comply. Contractors that work on or as part of MaineDOT's federal-assisted projects must comply with 49 CFR Part 26.

DBE Financial Institutions

MaineDOT has not been able to identify any Minority or Women (DBE) Financial Institutions in Maine. MaineDOT continuously search for services which assist the DBE community and when institutions are identified, MaineDOT will publicize use of these services.

Glossary of Terms

Terms are found in 49 CFR§ 26.5. (See Attachment J) The following additional terms in this program are defined below:

Capacity means the ability of a DBE as evidenced by past performance.

Disadvantaged Business Enterprise Proposed Utilization Plan means the reporting form Contractors and/or Consultants must furnish MaineDOT each time the firm presents a bid on a Federally Assisted project. The completed form reflects the firm's efforts to mainstream DBE firms in their project team.

Disadvantaged Business Enterprise Semi-Annual Reporting Form means the reporting form Contractors/Consultants must furnish MaineDOT at the end of each reporting period for which they are under contract to MaineDOT.

Mentor/Protégé refers to a business arrangement whereby a Contractor assists a DBE firm through an MaineDOT approved learning program whereby the Contractor provides certain skills and resources (from bidding, estimating, administrative knowledge) in order to assist the DBE with business development.

Personal Net Worth

Personal Net Worth refers to the net value of assets of an individual remaining after total liabilities are deducted, not including the individual's ownership interest in an applicant or participating DBE firm or the individual's equity interest in his/her primary place of residence or the business. An individual whose personal net worth exceeds \$750,000 is presumed not to be economically disadvantaged, and thus, can not be certified to participate in the DBE program.

Process for Submitting DBE Proposed Utilization Form on Bid Opening Day

Contractors: All bidders must provide, via separate sealed envelope, the information required by the DBE regulation that identifies which DBE firms are to be used on any given project at time of bid.

Consultants must provide information required by the DBE regulation that identifies which DBE firms are to be used on any given project. Firms must include their DBE Proposed Utilization Form plan with each technical/price proposal.

Supplementing DBE Proposed Utilization Form commitments: Primes may amend/add to, their DBE Proposed Utilization Form after award, for purposes of additions only, by submitting a new DBE Proposed Utilization Form and checking off Revision. All other revisions, other than for scope of work changes imposed by MaineDOT, must be presented in writing to MaineDOT Civil Rights Office and, 1) must be concurred to by the prime and DBE via a jointly signed letter, 2) for non-performance, documentation, notification and termination must have concurrence from the MaineDOT Civil Rights Office. Letters must explain why the action is necessary, and what, if any efforts parties took to address the matter prior to determining a contract change was necessary.

DBE Proposed Utilization Forms for MaineDOT Imposed Contractual Goals. Should MaineDOT determine that the overall DBE participation level is not met, MaineDOT will institute contract goals. Bid Proposals will identify the goal and require bidder's to submit DBE participation at the same time as the bid is presented for bid opening. Should specific project goals be determined necessary, MaineDOT will only set DBE participation levels for a specific period in order to remediate the DBE discrimination. At that time, Bidders must take good faith effort and document those steps taken to comply. Failure to comply will result in bid rejection (See Attachment L)

After award, a Contractor/Consultant deemed to have failed to honor their DBE commitments, will be subject to sanctions as contained herein.

Each MaineDOT modal entity's project manager is responsible for assuring Contractors/Consultants submit all reports as required by 49 CFR Part 26, and/or by MaineDOT. Contractors/Consultants who do not comply can be subject to sanctions, not limited to with-holding of progress payments.

Civil Rights Office Manager and Staff

The Civil Rights Office Manager is located within the Civil Rights Office in the Bureau of Project Development. The Civil Rights Office Manager or designee has direct and independent access to the Commissioner, Chief Engineer, and Program Director(s) in matters concerning the DBE program.

Operational matters concerning post awards, goal attainment, in-field problems, reporting and verification matters should be directed to the Contracts Administrative Unit at 624-3410.

DBE Directory updates, errors, omissions, and semi-Annual Report submissions should be directed to the Civil Rights Office, DBE Program manager at 624-3066.

Address written inquiries to: Maine Department of Transportation, Civil Rights Office, 16 State House Station, Child Street, Augusta, ME 04333-0016.

DBE Uniform Certification Application and Directory of DBE Certified Businesses

MaineDOT's **Uniform Certification Application** and **Directory of DBE Certified Businesses** can both be obtained online at MaineDOT's internet homepage at:

<http://www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php>

In addition, firms can obtain a written copy of MaineDOT's Directory of DBE firms by name, address, telephone/facsimile number, and the type of work performed by directly contacting MaineDOT's Civil Rights Office. However, the most current version is available on-line, at the above given address.

For those without Internet capacity, MaineDOT's Directory of DBE Certified Businesses is available in print directly from the Civil Rights Office. (See Attachment E)

Those required to utilize MaineDOT's Directory of DBE Certified Businesses are reminded to use the most current version of the DBE Directory always available on the website.

Uniform Certification Program

MaineDOT's is Maine's only DBE certification program. All U.S. DOT modal entities, recipients and sub recipients including MPO, SPO and others must utilize MaineDOT's certification program including the application and directory of certified firms, and must accept certifications by MaineDOT (in and out-of-state alike).

MaineDOT welcomes those applicants whose work can directly assist MaineDOT in meeting its stated transportation industry objectives. Applicants for MaineDOT certification will be only considered eligible under USDOT regulations, currently defined in 49 CFR Part 26 Subparts D and E.

Certification process: to be certified as a DBE, and for currently certified firms to remain in good status, a firm and the majority owner must meet all eligibility requirements including furnishing the Personal Financial Statement. Certification and renewal decisions are based on the facts as a whole. As such, the burden of proof for all applicants and those seeking renewal must furnish all evidence required under 49 CFR Part 26. For information about the certification process or to request an application (See Attachment F) contact MaineDOT's Civil Rights Office, at (207) 624-3066 or go to MaineDOT webpage at: <http://www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php>

Applicants whose business homestate is Maine, and who submit a completed application will undergo both a desk (paper) audit and field audit interview (which will be held at the office of the applicant firm). MaineDOT is under no obligation to either accept or consider any application which is not complete. Incomplete applications are not acceptable. The burden of proof to comply with all requirements of the application process is with the applicant. The applicant may elect to furnish a completed application or terminate the request for DBE certification until such time as a complete application can be presented.

In-State applicants: MaineDOT's DBE Certification processor will process certification applications including conducting both desk and field audits. All determinations to certification are issued by MaineDOT's Civil Rights Office. Determinations are made within 90-days after the complete application and all supporting documents are accepted by MaineDOT.

Firms and their owners who fail to submit all necessary documentation may be afforded a one-time, 20-day extension to complete submissions. Applicants are exclusively responsible to furnish all information honestly, accurately and completely satisfy questions by MaineDOT in order to be fully considered for certification. Applicants failing to respond after the date of the aforementioned extension shall have all materials returned to them and MaineDOT will terminate the application process without prejudice. An applicant may terminate MaineDOT's consideration of its application by requesting in writing that MaineDOT cease action and return all materials to the applicant.

If an applicant is granted MaineDOT certification, the firm will be notified in writing, will commence being listed in MaineDOT's DBE Directory; and will have full benefit of MaineDOT's DBE Program.

If an applicant is denied, he/she will receive written notification via certified mail explaining MaineDOT's determination, as it relates to 49 CFR Part 26 Subpart D and E. Without exception, if the applicant elects to "correct the record" he/she may reapply 12 months from the month/date that MaineDOT issued its denial memorandum. If the recipient believes MaineDOT erred in its determination, it may elect to Appeal MaineDOT's action to U.S. DOT (see Certification Appeal). However, MaineDOT's determination stands until such time as overturned by U.S. DOT or the applicant reapplies and is granted certification.

Out-of-state applicants: MaineDOT practices reciprocity with only those entities certifying under 49 CFR Part 26. In order to apply, all out-of-state applicants must satisfy that they possess current homestate 49 CFR Part 26 certification status. Absent such current proof, MaineDOT will not consider an applicant, nor will any MaineDOT Contractor/Consultant receive DBE credit for work done by any firm not certified by MaineDOT prior to bidding said work. Applicants are required to apply using the Uniform Certification application (attachments/documentation are not necessary). All out-of-state applicants must furnish proof of current home state DOT certification when applying for MaineDOT certification.

Out-of-state bidders are required to furnish proof of its homestate Department of Transportation certification, under the guidance of Federal Regulation 49 CFR Part 26, prior to actually bidding/proposing MaineDOT work. Prime bidders are reminded when considering utilizing an out-of-state firm to have proof of home state Department of Transportation eligibility. No retroactive

certification is allowed. Any firm (in or out-of-state) having current certification by US Small Business Administration (U.S. SBA) will be certified by MaineDOT unless MaineDOT believes the firm is not eligible. In these cases, MaineDOT shall report findings to the appropriate certifying entity. These applicants must furnish proof of certification status at the time requesting MaineDOT status. Based upon current U.S. SBA certification, MaineDOT will issue certification. Applicants must complete MaineDOT's application (excluding attachments) or provide a copy of U.S. SBA's written certification recommendation, a narrative description of the firm's scope of work, and information about the firm's ownership, control, expertise or abilities.

Primes who subcontract with non-MaineDOT certified firms for purposes of DBE credit will not receive credit for use of non MaineDOT certified DBE firms, and Primes may have their bid or proposal rejected for failure to demonstrate good faith effort (GFE) to meet the DBE program goal.

Initial Certification denials: any firm may appeal MaineDOT's decision directly to U.S. DOT within 90 days of MaineDOT's action. Send appeals to U.S. DOT with a copy to MaineDOT's Civil Rights Office. Address appeals to: U.S. Department of Transportation, Office of Civil Rights, Certification Appeals Branch, 400 7th St., SW, Room 2104, Washington, DC 20590.

MaineDOT certification decisions are final unless overturned by U.S. DOT.

Removal or Decertification as DBE: any firm may remove itself from the program at any time by written notice or by failure to respond to renewal obligations.

When, MaineDOT intends to remove a Maine-based DBE's certification, MaineDOT will advise the DBE in writing, which will outline reasons for the action. DBEs are afforded an opportunity to present, to MaineDOT, written/oral arguments as to why they should not be decertified. Regardless of a DBE firms desire to be heard, MaineDOT will schedule and conduct a review of the facts. Accordingly, the DBE will be advised of the date, time and place of the review. DBEs may be represented by Financial, Legal or business advocate. However, the DBE owner must be present at the fact review session, or when unable, a duly notarized statement reflecting actual reasons for absence must be provided upon commencing the fact review session.

The DBE and MaineDOT will have one 30-minute period in which to present arguments. Written evidence followed by personal interviews is acceptable. Following initial arguments, each party will have a 10-minute rebuttal period. No fact(s) other than those cited in the initial review are admissible, and only those matters applicable to and contained in MaineDOT's initial written letter will be allowed.

The presiding officer is the Manager, Civil Rights Office, or designee. The presiding officer will issue a finding no later than 15 business days from the date the facts were heard. This action is final.

DBE firms failing to respond to annual renewal or recertification obligations will not be reminded of their obligation. The obligation to satisfy annual obligations and recertification requirements is wholly the responsibility of the DBE firm.

All correspondence including notice of intent and the final statements are sent via U.S. Postal Service, certified return receipt. DBEs refusing to accept notice are immediately removed without further action.

Reinstatement will not occur. Applying anew is required.

Recertifications: MaineDOT will review the eligibility of all Maine-based DBEs certified under former Part 23, to ensure they meet the standards of Subpart D of Part 26.

All MaineDOT certified DBE firms must submit in writing to MaineDOT, Civil Rights Office, any/all changes of circumstances affecting it's ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26, or notice of any material changes in the information provided with the owner's initial application for certification within 30 days of the sustentative change to eligibility.

MaineDOT requires all MaineDOT certified DBEs submit, annually, a "no change" affidavit meeting the requirements of §26.83(j) along with a Personal Financial Statement and copies of their most current business Federal Income Taxes.

Prior to the firm's annual certification date, MaineDOT's Civil Rights Office will provide the firm with the necessary renewal documents. The DBE shall comply not more than 30 days after receipt of the notification. MaineDOT will not issue notices of reminder beyond the initial notification. Failure to comply will result in removal of the firm's DBE listing in the Directory of Certified Businesses.

Failure to comply with these provisions will affect the firm’s continuing eligibility as a MaineDOT certified business. All DBE responses must be in writing and must include the documentation.

Any firm not complying with provisions of renewal or recertification, will have only the work it is currently under subcontract(s) for counted toward any DBE goal. Failure to comply with any section of the above cited will cause MaineDOT to move to the Decertification/Removal procedure.

Personal Financial Statement: (PFS) is incorporated in the Uniform DBE Certification Application. PFS are also part of the owners continuing eligibility and at least annually the PFS must be furnished. (See Attachment F) Only those spouses who impact the certification status need to submit a PFS.

Once MaineDOT’s Civil Rights Office completes review of the PFS, the form will be scanned into the department’s secured system and shredded to protect company confidentiality. Failure to comply with any section of the above cited will cause MaineDOT to move to the Decertification/Removal procedure.

Unit-by-Unit Program Responsibilities

TASK	RESPONSIBLE PARTIES	49 CFR REFERENCE
1. Collect & report statistical data as required by USDOT. Multi-modal semi annually and annual reports exclusive of goal setting	Civil Rights Office	26.11
2. Review subcontracts & third party contracts & purchase requisitions for compliance with this program.	Civil Rights Office, Project Development, Contract Administrator	
3. Work with all Bureaus to set overall annual goals.	Civil Rights Office	26.41
4. Posts all bid notices are on the MDOT website.	Contracts/ACO	
5. Identifies contracts w/ goals & takes bids & monitors results.	Contracts , Civil Rights Office, Contract Administrator, ACO	26.73 26.41 26.43
6. Analyzes MaineDOT progress toward meeting race neutral goal & identifies ways to improve progress.	Civil Rights Office	26.47 26.55 26.51
7. Participates in pre-bid meetings.	Each mode as needed	
8. Advises public & DBE of opportunities and contract needs.	Civil Rights Office	

TASK	RESPONSIBLE PARTIES	49 CFR REFERENCE
9. Determines contractor compliance with DBE utilization. Prepares report of accomplishment toward DBE race/gender neutral goal. When necessary adjusts goal accordingly.	Civil Rights Office	
10. Provides DBE with information and technical assistance.	Civil Rights Office, ACO, Contracts, Audit	26.51(b)(4)
11. Certifies DBEs (instate and use reciprocity for out-of-state firms according to criteria set by USDOT).	Civil Rights Office	
12. Prepares MaineDOT response on USDOT appeals of certification.	Civil Rights Office	
13. Provides outreach to DBE firms.	Civil Rights Office	26.51(b)(4)
14. Maintains MaineDOT's Directory of Certified DBEs.	Civil Rights Office	
15. Where contract goals apply Administrative reconsideration prior to award. Decision w/in 24 hours. Once decision is made, no appeal.	Civil Rights Office, Contract Administrator	
16. Provides/Responds to matters concerning Prompt Payment.	Project Development/ Contracts, Civil Rights Office, Contract Administrator	26.29
17. Determines commercially useful function of DBE.	Civil Rights Office, Project Development,	
18. Determines & applies DBE credit to Primes.	Civil Rights Office, Contracts, ACO	26.109
19. Annually approves long term DBE truck or equipment leases & advises project personnel.	Civil Rights Office	
20. Annually gather Bidders Information by end-April in order to analyze information for goal setting methodology.	Civil Rights Office	26.55

Over Concentration

MaineDOT has not determined an over concentration in any areas. When evidence is noted, MaineDOT will take specific remedial steps. These may include but are not limited to:

- reduced/no contractual credit for Contractors/Consultants who utilize businesses in over concentrated areas;

- some “incentive” benefit to Contractors/Consultants who expand/initiate new contracting arrangements with DBEs in non over concentrated areas;
- and public relations or marketing campaign to promote “other” business opportunities in the DBE program than those more traditionally known.
- Current areas of possible over concentration which are of concern include: landscaping, trucking, striping, flagging and guardrail.

MaineDOT may adjust the Program in response to the level of utilization of non-DBE firms in any area MaineDOT determines as being over concentrated. This is accomplished via periodic reviews conducted.

Contractors and consultants are encouraged to promote DBE relationships which reflect the array of businesses represented in MaineDOT’s Directory of DBE Certified Businesses.

Required Contract Clauses

The following clause will appear in every federal contract. “The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex as well as sexual orientation, as per the Maine Human Rights Act, 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 MaineDOT deems appropriate.” (Quoted as cited in 49 CFR Part §26.13(b)).

Prompt Payment

In accordance with 49 CFR Part §26.29, MaineDOT will include the provision on Prompt Payment in every MaineDOT/USDOT assisted Contractor’s contract. In addition, Section 104.5.2 of MaineDOT’s Contract Provisions contains the actual requirements. Prompt Payment is applicable in every subcontract (DBE and non-DBE alike) and requires the Contractor to pay subcontractors for all work satisfactorily performed and invoiced no later than 30 days from the date the Contractors receives payment from MaineDOT for that subcontractor’s work. Retainage must be returned to the subcontractor within 30 days after the date that the subcontractor’s work is satisfactorily completed. (See Attachment D)

All Contractors/Consultants are required to complete and submit the “Certification of Final DBE Payment”.

Disputes involving subcontractor payments are codified in Maine State Statute: 23§ 52-A. 2 Settlement of claims by subcontractor. Further, MaineDOT Standard Specifications, at 104.5 Prompt Payment, A. Pay When Paid, and B. Retainage, the Department clearly states Contractor’s duties and liabilities under the contract. (See Attachment D)

Monitoring and Enforcement Mechanisms

MaineDOT will advise U.S. DOT of false, fraudulent, or dishonest conduct in connection with the program so U.S. DOT can take any and all necessary steps up to and including any criminal or civil actions warranted as provided in the regulation and Maine State Law. (See Attachment I)

The DBE may present evidence to rebut this presumption. MaineDOT may determine that the firm is performing a CUF given the type of work involved and normal industry practices.

Decisions on CUF matters are subject to review by the operating administration, but are not administratively appealable to US DOT.

Good Faith Efforts

Pre-Award GFE: When MaineDOT determines the overall goal is not being achieved and MaineDOT Imposed Contract goals are required. MaineDOT will identify the DBE goal in bid documents. In these instances, Contractor DBE inclusionary results as recorded on the **DBE Imposed Contract** form is **considered part of a bidder’s responsiveness**. Should MaineDOT's Civil Rights Office find the submission appears lacking in DBE effort, it will advise the bidder’s designated official as soon as possible after bid opening. The Low Bidder will be afforded the opportunity to demonstrate why a good faith effort (GFE) finding is warranted. This review will be conducted by the Project Development Director, or designee. The low bidder must request a review, in writing, by close of business on the same day in which bid opening occurred. A formal review will occur within 24 hours of receipt of the written request for reconsideration. Requests must include representation of facts. Only matters outlined in this request will be considered. The Director of Project Development, or designee **will** make the

determination of findings known not later than 5 business days from the date the reviewed by MaineDOT's Director, Project Development occurred. All determinations by MaineDOT are final and cannot be appealed to U.S. DOT. For additional information bidders may consult 49 CFR Part 26, Appendix A-Guidance Concerning Good Faith Efforts. (See Attachment L)

Faxed or Hand Delivered requests to: Civil Rights Office at 207-624-3401. Hand delivered requests must be addressed to Maine Department of Transportation, Director, Project Development, c/o Civil Rights Office, #16 State House Station, Augusta, ME 04333-0016.

Post-Award Contract Effort: When a Contractor finds a DBE is unable/unwilling to meet the contract terms the Contractor must document steps taken to advise the DBE and MaineDOT Civil Rights Office of its intentions relative to continuing/terminating the subcontract. When a Contractor, in conjunction with MaineDOT Project Management believes no good faith effort is evident, the Contractor may take necessary steps to correct the deficiency up to and including termination of the subcontract.

No Contractor will be penalized for shortfalls arising from a DBE's unwillingness/inability to honor subcontract arrangements provided the Contractor can demonstrate, documented in writing, to MaineDOT's Civil Rights Office that:

- it acted diligently to communicate (in writing) their concerns
- conducted itself in a customarily acceptable business manner
- has not arbitrarily acted to remove and DBE without cause
- documented efforts to assist the DBE in fulfilling the terms of the subcontract or working arrangement
- made efforts to replace the DBE with another DBE
- report the DBE problems to MaineDOT Project Manager/DBE Program manager.

When a Prime can substitute another DBE to fulfill the subcontract, it shall do so without added cost to MaineDOT. Primes shall furnish Project Management and DBE Program manager with written documentation of inability/unwillingness to meet the contract terms prior to removing any DBE. Primes may remove a DBE when Federal/State criminal/civil violations have been found.

Changes to a subcontract must be coordinated with Project Management and documented through a change order.

If MaineDOT Project Development Director or designee, or the appropriate modal Director or designee has determined that a Prime has not acted in good faith, the Prime will be required to justify, through documentation, why MaineDOT should not take sanctions.

Reporting Discrimination Issues

Where a DBE believes it is being discriminated against, is not being integrated/considered by the Contractor/Consultant, the DBE should:

- document its concerns/issues in writing – cite date, time, personnel involved and specific matter
- submit documentation to the Contractor/Consultant’s management/CEO or in the case, of civil rights violation directly to the Company’s EEO Officer. Copies may be provided to MaineDOT Project Management; however, first course of action is directly with the Contractor. While MaineDOT is not a party to subcontractor/consultant agreements, the DBE Program manager may interview parties in an attempt to resolve issues or may refer the matter to appropriate Federal/State agency with jurisdiction in the matter.

Mentor Protégé Program

Mentor-Protégé Program Guidelines

- (A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or complete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.
- (B) (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect costs for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA and FAA programs.
(2) To be eligible for reimbursement, the mentor’s services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified

- by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor-protégé agreement.
- (C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé agreement. If the recipient chooses to recognize mentor-protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/subcontractor mentor-protégé agreement.

Counting DBE Participation

Primes must execute work according to MaineDOT Standard or Specific Project Specifications. Therefore, it is critical that the actual work to be performed by the DBE is identified on the DBE Proposed Utilization Work Plan (See Attachment B & B1 - Consultant and Contractor version as applicable) or in the case of MaineDOT imposed contract goal on the DBE Imposed Contract form (See Attachment C) If a DBE will perform only a partial amount of the item the Contractor must also record that information on the appropriate form. Only work *actually* performed by the DBE , including DBE Primes is creditable to the overall DBE participation level; therefore, a DBE not utilizing its own employees, equipment including owned or long-term leased trucks, will not assist the Prime in achieving DBE credit for DBE participation. DBE subcontractors/consultants and Primes are encouraged to examine Mentor/Protégé options when examining business opportunities as an approved Mentor/Protégé program is an acceptable format for developing additional expertise and getting DBE credit. Mentor/Protégé plans must be approved by the Civil Rights Office prior to a DBE commencing work.

Credit toward DBE participation:

Manufacturer	100%	Fabricating product in a commercial plant/factory/foundry
Subcontractor/consultant	100%	Credit for responsibly executing by managing/overseeing with it's own workforce more than one distinct element of work (includes cost of supplies, equipment, and materials obtained by the DBE for the work of the subcontract)
Suppliers/Regular Dealers	60%	Of item value, for furnishing products/material incidental to specific item/ reasonable administrative fee for firm which furnishes/ applies/delivers product to project

Trucking Owned/long-term leased	100%	Incidental to specific item
Service	Reasonable fee	Providing a service of supply

How is DBE participation counted toward goals?

- When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the DBE goal.

Count the entire amount of that portion of a construction contract that is performed by the DBE’s own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases/leases from the prime contractor or its affiliate. See Attachment N for further guidance).

Count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of an MaineDOT-assisted contract, toward DBE goals, provided MaineDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE’s subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

- When a DBE performs as a participant in a Mentor/Protégé arrangement/joint venture, count only that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract the DBE performs with its own forces toward DBE goals.

Goal Setting

Goal Setting Methodology

MaineDOT researches other sources of public and private entities located in Maine that have programs or which certify DBE firms and/or maintain a list of certified businesses. MaineDOT confirmed that our program is Maine’s only comprehensive Statewide program and directory. The city of Portland (Maine’s largest and most diverse city) has a directory of self declared minority-owned firms, and Bath

Iron Works, Maine's naval shipyard also maintains a business directory. Neither directory matches transportation industry NAICS Codes. MaineDOT works with other agencies, including industry based membership groups like AGC, and the U.S. SBA, Finance Authority of Maine (FAME) to continuously identify potential DBE firms. MaineDOT is unaware of other resources/directories pertaining to DBE firms.

MDOT Base Goal Setting and Adjustment Factors

Base calculations: The Numerator portion represents the total number of DBE firms that attempted to participate on MaineDOT projects, as reported by primes, or as evidenced by submitting bids as primes. The denominator represents the universe of all firms (including DBE firms) that either did or could attempt, if they chose, to participate in MaineDOT's capital improvement program, as reported by primes, or as evidenced by submitting bids as primes. The necessary information is obtained from prime contractors/consultants via the "Bidders List" letter sent in accordance with requirements of the 49 CFR Part 26.

MaineDOT used the DBE Directory to determine the ready, willing and able pool of likely DBEs and non-DBE firms. Dividing the number of DBEs by the number of all businesses, MaineDOT determined the base relative availability.

Thus according to 49 CFR Part 26, once MaineDOT has determined the relative availability, MaineDOT must analyze how this ready, willing and able group compares to that of all ready, willing and able businesses. The goal must reflect the determination of the level of DBE participation expected, absent the effect of discrimination.

Next MaineDOT must consider what, if any, evidence warrants base adjustments. This step is necessary to ensure that our DBE participation level accurately reflects the level of participation by DBE firms absent discrimination.

Adjustments to the denominator may include analysis of:

Current capacity – determination of DBEs capacity to perform work in MaineDOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

Disparity studies – conducted within jurisdiction and to the extent that this is not already accounted for in the base figure;

Opportunities – statistical disparities in the ability of DBEs to obtain resources such as financing, bonding, insurance, training, education, and access to union apprenticeship programs.

Please reference our website (www.maine.gov/mdot/disadvantaged-business-enterprises/dbe-home.php) for the formula used for the current goal setting and current annual goal.

Commercially Useful Function (CUF)

- Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a CUF on that contract.

A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, MaineDOT Project Manager must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction/contract/project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, MaineDOT will examine similar transactions, particularly those in which the DBE does not participate.

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, 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, MaineDOT will consider the DBE is not performing a CUF.

When a DBE is presumed not to be performing a CUF, the DBE may present evidence to rebut this presumption. MaineDOT may determine that the firm is performing a CUF given the type of work involved and normal industry practices.

Decisions on CUF matters are subject to review by the MaineDOT Civil Rights Office, but are not administratively appealable to US DOT.

Long-term Lease Trucks:

Factors that determine whether a DBE trucking company is performing a CUF include:

- the lease is set for at least 6 months including the entire operation, scheduling, maintenance and management over employees;
- additionally, the lease must include lessee and leaser, truck identification number, duration of lease, monthly payment or terms, and proof of insurability;
- the DBE is responsible for the management and supervision of the entire trucking operation , and
- the DBE must itself own and operate at least one fully licensed, insured, and operational truck used on each particular contract;

The Prime receives credit for the total value of the service the DBE provides the contract using trucks it owns, insures, and operates using drivers it employs,

The Prime receives credit for DBE using leased trucks under the following conditions:

- the DBE may lease trucks from another DBE firm, including an owner-operator, who is otherwise themselves is certified as a DBE;
- the DBE may lease trucks from a non-DBE firm, including an owner-operator; however, the Contractor who utilizes a DBE who leases trucks from a non-DBE is not entitled to credit as a result of the lease arrangement. A Prime utilizing the DBE does not receive credit for the transportation service provided by the lessee, since these services are not provided by a DBE;
- A lease agreement must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. When working on MaineDOT federally assisted

projects, leased trucks must at all times display the name/number of the DBE operator, and

- All long-term truck or equipment leases must be submitted annually to MaineDOT, Attention: Civil Rights Office by March 1 each year. Upon approval, MaineDOT Project Management will be furnished the listing of approved leased trucks. Each agreement is approved on an annual basis. Trucking businesses must furnish proof of lease agreements each year before a Contractor can receive DBE credit for their work. Only those approved agreements will be eligible for credit; and

Under no circumstances shall credit be allowed for the operation of equipment which is not under long-term lease, and only the actual fee charged in the administration of the operation will be creditable; and

Long-term leased trucks shall not be owned/controlled by the Prime or any subsidiary. Operators of long-term leased trucks must be employees of the DBE firm.

Suppliers/Regular Dealers:

- Count expenditures with DBEs for materials/supplies toward DBE goal in the following way:
- If the materials or supplies are obtained from a **DBE manufacturer**, count **100** percent of the cost of the materials or supplies toward DBE goals.
- A manufacturer is a firm that operates or maintains a factory of establishment that produces, on the premises the materials/supplies/articles/equipment required under the contract and of the general character described by the specifications;
- If the materials/supplies are purchased from a **DBE regular dealer**, count **60** percent of the cost of the materials or supplies toward the DBE goal. (Proof required; submit to MaineDOT Civil Rights Office).
- A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials/supplies/ articles/equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. (Proof required; submit to MaineDOT Civil Rights Office);

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question;
- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business only if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement (approved by MaineDOT Civil Rights Office) and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not considered regular dealers.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies required on the jobsite, toward the DBE goal, provided MaineDOT Contract Administrator determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials/supplies toward DBE goals.

Only firms currently certified as a DBE at the time of execution of the contract will have work counted toward the DBE goal.

Do not count toward the goal the dollar value of work performed under a contract with a firm after it has ceased to be certified. Work performed while certified is extended pursuant to the above formulas. MaineDOT will make every effort to provide "timely" notice to Primes of affected firms.

Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or MaineDOT's overall goal until the amount being counted toward the goal has been paid to the DBE.

Information Collection and Reporting

Bidders List: 49 CFR Part 26, requires bidders provide (MaineDOT) information about all DBE and non-DBE subcontracting firms which annually quote a Contractor/Consultants for MaineDOT work. Contractors/Consultants must furnish bidder information (See Attachment A) including the name, address, DBE/non-DBE status, age of firm, and estimated annual gross receipts of firms. The bidder list data will assist MaineDOT Civil Rights Office in identifying opportunities made available to DBE and non-DBE firms alike throughout the year. This information, required by section 26.45 of 49 CFR, will assist MaineDOT Civil Rights Office in calculating the overall DBE participation level. Primes are responsible to provide MaineDOT Civil Rights Office the information annually prior to April of each year. Primes are to use the Annual Bidder Information form to acquire data. (See Attachment A) **DO NOT HAVE SUBS SEND INFORMATION DIRECTLY TO MaineDOT.** Primes may include the requirement for bidder information as a provision of bidding with each bidder.

Monitoring Payments to DBE firms: as part of the DBE program Contractors/Consultants must maintain records of payment made to DBE firms for three years following the last payment on the contract. The Contractor/Consultant will make these records available for inspection upon request by representatives of MaineDOT/U.S. DOT.

Confidentiality

MaineDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal and Maine Law. Maine Freedom of Information Act (see Attachment List), safeguards certain information from release and MaineDOT will not release personal financial information submitted in response to the personal net worth as contained in the certification application to a third party, (does not apply to U.S. DOT) without expressed written consent.

ATTACHMENTS