



DBE PROGRAM PLAN

August 2025

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UNITED STATES DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
Atlanta Regional Commission

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Atlanta Regional Commission (hereafter ‘ARC’) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. ARC has received federal financial assistance from USDOT, and as a condition of receiving this assistance, ARC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of ARC to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts. It is also the policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for USDOT-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 DBEs.
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
8. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The General Counsel and Chief Compliance Officer has been designated as the DBE Liaison Officer (DBELO). In that capacity, the General Counsel is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded with the same priority as compliance with all other legal obligations that ARC incurs in their financial assistance agreements with USDOT.

ARC has disseminated this policy statement to its board members, and will distribute this statement to DBE and non-DBE business communities that perform work for ARC on USDOT-assisted contracts in the following manner:

1. This policy statement will be prepared as a handout, and made available at pre-bid conferences and outreach meetings that ARC conducts.
2. This policy statement will be posted on ARC’s website at <https://atlantaregional.org>.

Anna Roach, Executive Director, Atlanta Regional Commission

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

The Atlanta Regional Commission (“ARC”) is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

ARC is also the recipient of 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, II, and V of the Teas-21, Pub. L. 05178.

Section 26.5 Definitions

ARC will adopt the definitions contained in Section 26.5 for this program and will ensure that all definitions from the regulations are included and correct. ARC will add and include any new/amended definitions as they are provided by USDOT. ARC will not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to USDOT: 26.11(a)

ARC will report DBE participation to USDOT as follows:

ARC will submit to the FTA on a semi-annual basis (June 1 and December 1) a report of DBE participation using the Transit Award Management System (TrAMS). The report will reflect payments made to DBEs on USDOT-assisted contracts.

ARC will submit semiannually, by or before June 1 and December 1, the Uniform Report of DBE Awards or Commitments and Payments, as modified for use by FHWA recipients, via the FHWA Civil Rights Connect system (<https://fhwa.civilrightsconnect.com/>). The report will include information about all participating DBE firms.

Bidders List: 26.11(c)

ARC will capture and compile the bidders list information as described in § 26.11(c) and enter it into USDOT's designated system once it is established. This data will assist ARC in gathering accurate information on both DBE and non-DBE contractors and subcontractors who want to work on ARC's federally assisted projects. The list may also assist ARC in setting overall DBE goals and provide USDOT with data to assess how well ARC is meeting the objectives of § 26.1.

ARC will collect the following information about all DBE and non-DBE firms who bid as prime contractors and subcontractors on each of its federally assisted contracts:

- Firm name
- Firm address, including ZIP code
- DBE or non-DBE status of the firm
- Applicable NAICS codes for the scopes of work the firms sought to perform
- Age of the firm
- Annual gross receipts of firms

ARC will collect the data from all bidders for its federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements. ARC will collect this information using the Bidders List Data Collection form, as shown in [Attachment 8](#).

ARC will enter this data in USDOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), ARC will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Section 26.13 Federal Financial Assistance Agreement

ARC has signed the following assurances, applicable to all USDOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement signed with FTA (or a primary recipient) will include the following assurance:

The Atlanta Regional Commission (hereafter 'ARC') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. ARC's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 ARC of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR 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: 26.13(b)

ARC will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

ARC is required to have a DBE program plan meeting the requirements of this part as it will receive grants for planning or development and will award prime contracts, the cumulative total value of which exceeds \$250,000 in FTA funds in a federal fiscal year. ARC is not eligible to receive USDOT financial assistance unless USDOT has approved its DBE program plan, and ARC is in compliance with it and this part. ARC will continue to carry out the DBE program until all funds from USDOT financial assistance have been expended. ARC does not have to submit regular updates of the program, as long as it remains in compliance. However, ARC will submit significant changes in the program for approval.

Section 26.23 Policy Statement

The policy statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

ARC has designated the following individual as its DBE Liaison Officer:

Rhea L. Thomas, General Counsel/Chief Compliance Officer
Atlanta Regional Commission
229 Peachtree Street, NE, Suite 100
Atlanta, GA 30303
470.378.1494
RThomas@atlantaregional.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that ARC complies with all provisions of 49 CFR Part 26. The DBELO has direct,

independent access to the Executive Director 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 works with the procurement team to administer the program. The DBELO fulfills the following duties and responsibilities:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Works with all departments to set overall triennial goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals).
5. Analyzes ARC's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the County Council on DBE matters and achievements.
8. Provides DBEs, upon request, with information and assistance in preparing bids, and in obtaining bonding and insurance.
9. Participates in DBE training seminars.
10. Determines compliance of bidders/offers with good faith efforts in bid submittals.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

ARC has a policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors and consultants on USDOT-assisted contracts to make use of these institutions. At least triennially, ARC will search the FDIC Minority Depository Institutions registry¹, to identify the presence of minority-owned financial institutions in the Atlanta metropolitan area.

To date, the following financial institutions have been identified:

Citizens Trust Bank
5 Piedmont Ave
Atlanta, GA 30303
<https://ctbconnect.com/>

East West Bank
2727 Paces Ferry Road Southeast
Suite 150
Atlanta, GA 30339
<https://www.eastwestbank.com/>

¹ <https://www.fdic.gov/minority-depository-institutions-program/minority-depository-institutions-list>

Metro City Bank
5441 Buford Hwy NE #109
Doraville, GA 30340
<https://www.metrocitybank.com/>

Touchmark National Bank
3651 Old Milton Parkway
Alpharetta, GA 30005
<https://www.touchmarknb.com/>

Section 26.29 Prompt Payment Mechanisms

ARC requires that all subcontractors performing work on USDOT-assisted contracts be paid promptly for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

ARC has established, as part of its DBE program plan, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to the prime contractor.

ARC will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. ARC will hold retainage from prime contractors, and provide for prompt and regular incremental acceptances of portions of the prime contract; pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

ARC will consider a subcontractor's work to be satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by ARC. When ARC has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARC will proactively monitor prime contractors' compliance with subcontractor prompt payment and return of retainage requirements. ARC will share information regarding required documentation for payment with subcontractors. ARC will take steps to promote the timely submission by contractors of invoices for payment, and will also maintain adequate internal controls to facilitate timely payment to contractors.

Monitoring Payments to DBEs and Non-DBEs

ARC clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, ARC will undertake proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. ARC will require prime contractors to report documentation of payments to subcontractors monthly. The DBELO will review and verify that payments have been made and retainage has been returned to subcontractors in accordance with section 26.29.

ARC will require prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for ARC's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of ARC or USDOT. This reporting requirement extends to both DBE and non-DBE subcontractors,.

ARC uses a number of DBE forms, which can be found in [Attachment 3](#), to collect DBE information for initial project setup and for ongoing monitoring of DBE participation:

- DBE Project Compliance Review Checklist
- Listing of DBE Subcontractors
- DBE Monthly Report
- DBE Commercially Useful Function Report

The DBELO or ARC's representative will conduct onsite compliance reviews of FTA-funded projects. The DBELO will review all DBE subcontracts and payments; and will evaluate any DBE firms working on the project during the date of the visit. The DBELO will conduct a commercially useful function (CUF) review at least once during the project for all DBEs. The DBELO will also review monthly progress reports submitted by prime contractors to determine if they are on track to meet the DBE goal. Written certification will be documented by the DBELO on the DBE Project Compliance Review Checklist form.

Prompt Payment Dispute Resolution

ARC will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

A meeting will be scheduled with the prime contractor, subcontractor, DBELO and other appropriate ARC representative(s). Any meeting for the purpose of dispute resolution will include ARC representative(s) authorized to bind each interested party, including ARC representative(s) to take enforcement action.

ARC has established, as part of its DBE program plan, the following mechanism(s) to ensure prompt payment and return of retainage:

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

1. The affected subcontractor shall file a complaint with the prime contractor directly regarding payment.
2. If filing a complaint with the prime contractor does not result in timely and meaningful action by the prime contractor to resolve the prompt payment dispute, the affected subcontractor may contact ARC's DBELO.

3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by ARC to resolve prompt payment disputes, the affected subcontractor may contact the FTA Office of Civil Rights. The FTA Office of Civil Rights will investigate the nature and origin of the complaint and issue its resolution.

Enforcement Actions for Noncompliance of Participants

ARC will provide appropriate means to enforce the requirements of §26.29. These means may include:

- Assessing liquidated damages, in accordance with the contract, against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
- Advising subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issuing a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays, for the purposes of calculating liquidated damages, if milestones are not met.

ARC will actively implement the enforcement actions detailed above.

Section 26.31 Directory

The primary Disadvantaged Business Enterprise Directory for ARC comes from the Georgia Department of Transportation's (GDOT) UCP directory and contains listings of certified minority- and women-owned construction firms and material suppliers from throughout the state.

GDOT maintains an active list of certified disadvantaged businesses located throughout the state. Therefore, all of the firms listed in the directory have been certified by the state and in accordance with USDOT criteria. It should be noted also that these listings and certifications are periodically updated with some firms being added, while others are removed. The directory should enable prime contractors to proceed more easily in their attempts to comply with overall goals regarding DBEs for ARC's federally funded projects.

The directory lists the following details about each certified firm:

- Business name
- Business address
- Business phone number
- Firm website(s)
- Types of work the firm has been certified to perform as a DBE and/or ACDBE
- The specific North American Industry Classification System (NAICS) code(s) that describes the type of work a DBE and/or ACDBE is eligible to perform

The UCP directory may include additional data fields of other items that are readily verifiable in state or locally maintained databases, such as state licenses held, pre-qualifications, and bonding capacity. The UCP directory is an online system that permits the public to search and/or filter for DBEs by:

- Physical location
- NAICS code(s)
- Work descriptions
- All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

ARC will refer potential bidders to the GDOT UCP directory that is available online. The link for the directory can be found in [Attachment 2](#) to this program plan.

Also, the State of Georgia Department of Administrative Services, which maintains a list of small businesses², may be consulted to identify potential DBE firms.

Section 26.33 Overconcentration

ARC has not identified that overconcentration exists in the types of work that DBEs perform. However, the DBELO will continue to monitor the various categories every three years to ensure that non-DBE firms are not unduly burdened.

Section 26.35 Business Development Programs

ARC has not established a business development program. The DBELO will re-evaluate the need for such a program every three years. ARC will refer DBEs and non-DBEs who need business development services to:

- [Atlanta Small Business Development Center at Georgia State University](#)
- [Georgia Department of Transportation Supportive Services Consultant](#)
- [Georgia Tech's Procurement Assistance Center](#)
- [SCORE Atlanta](#)

Section 26.37 Monitoring and Enforcement Mechanisms

ARC implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, and describes and set forth these mechanisms in its DBE program plan.

Running Tally

ARC will implement a running tally mechanism to compare the cumulative DBE awards and commitments on federally funded projects to determine whether or not the implementation of contract goals is sufficient to meet the annual DBE goal. ARC will also implement a running tally to provide for a comparison of payments made to each DBE firm relative to the progress of work. The running tally mechanism will help ARC determine whether or not there exists a projected shortfall such that the prime contractor would need to address via good faith efforts to meet the DBE contract goal. ARC will use the [DBE Monthly Report form](#) in [Attachment 3](#) as its running tally mechanism to

² <https://ssl.doas.state.ga.us/gpr/loadSupplierSearch>

track the progress of DBE participation on its federally funded projects. The DBELO will maintain the running tally of DBE participation.

Monitoring Contracts and Work Sites

ARC will review contracting records and actively monitor work sites to ensure that work committed to DBEs at the contract award or subsequently (e.g., *as a result of contract modifications*) will actually be performed by the DBEs to which the work was committed, and such work will be counted according to the requirements of § 26.55. The DBELO will conduct all work site monitoring for counting and commercially useful function reviews. The monitoring of work sites to assess commercially useful functions will include interviewing staff members and supervisors at the job site, photographing people and equipment performing the work, reviewing invoices and supply payments, verifying vehicle and equipment ownership or lease (such as registration or lease agreements), and collecting any other supporting documents necessary to determine whether or not the business is performing a commercially useful function.

The DBELO will review all contracting records. ARC will require prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying that mandatory contract language is included in prime contracts and subcontracts, ensuring prohibited terms and conditions are absent, and confirming that the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. ARC will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

ARC has created an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The program element is included as [Attachment 4](#). ARC will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of the DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

ARC does not use quotas in any way in the administration of this DBE program. However, the use of race neutral set-asides for small businesses is permissible as a strategy under 26.39 (b) (1).

Section 26.45 Overall Goals

ARC will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding FTA-funded prime contracts exceeding \$670,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with [Section 26.45\(f\)](#), ARC will submit its overall three-year DBE Goal to the FTA by August 1 every three years.

DBE goals will be established in accordance with the two-step process as specified in 49 CFR Part 26.45. If ARC does not anticipate awarding USDOT/FTA-funded prime contracts the cumulative total value of which exceeds \$670,000 during any of the years within the three-year reporting period, ARC will not develop an overall goal; however, this DBE program will remain in effect and ARC will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. ARC will use the DBE Directory information and the United States Census Bureau's County Business Patterns database as the method to determine the base figure. ARC understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of [49 CFR Part 26.45\(c\)\(2\)](#), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. ARC will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in ARC's market. A description of the methodology to calculate the overall goal and the goal calculation(s) can be found in [Attachment 5](#) to this program. This section of the program will be updated on at least a triennial basis.

In establishing the overall goal, ARC will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ARC's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to ARC's goal setting process, and it will occur before submitting the goal methodology to the FTA for review pursuant to paragraph (f) of this section. ARC will document in the goal submission the consultation process that was utilized. Notwithstanding paragraph (f)(4) of this section, ARC will not implement the proposed goal until this requirement is fulfilled.

In addition, ARC will post a notice announcing the proposed overall goal before submission to the FTA on August 1st. The notice shall be posted on ARC's official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FTA, the revised goal will be posted on the official internet web site.

ARC's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

ARC will begin using the overall goal on October 1 of each year, unless it has received other instructions from USDOT. If the County establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Section 26.45 (e) - Project Goals

If permitted or required by the FTA, ARC will express its overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the FTA. A project goal is an overall goal, and it must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated. If ARC establishes a goal on a project basis, ARC will begin using its goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrence

ARC understands that it is not required to obtain prior FTA concurrence with the overall goal. However, if the FTA's review suggests that the overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the FTA may, after consulting with ARC, adjust the overall goal or require that ARC do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the FTA will be guided by the goal setting principles and best practices identified by USDOT in guidance issued pursuant to § 26.9.

Section 26.47 Goal Setting and Accountability

ARC cannot be penalized, or treated by USDOT as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless ARC fails to administer its DBE program in good faith.

ARC understands that, to be considered to be in compliance with this part, an approved DBE program plan and overall DBE goal, if applicable, must be maintained, and this DBE program must be administered in good faith.

ARC understands that if the awards and commitments shown on ARC's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, ARC will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
2. Establish specific steps and milestones to correct the problems identified in the analysis and to enable ARC to meet fully its goal for the next federal fiscal year.
3. Submit, within 90 days of the end of the federal fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FTA for approval.

Section 26.49 Transit Vehicle Manufacturers Goals

As a planning organization, ARC does not anticipate the acquisition of transit vehicles. As such, ARC does not establish goals for Transit Vehicle Manufacturers.

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

ARC will meet its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
3. Providing technical assistance and other services.

Other examples are found in §26.51(b).

Section 26.51(d-g) Contract Goals

ARC will not implement the use of contract goals in its solicitations.

Section 26.53 Good Faith Efforts Procedures

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

ARC does not utilize contract goals. Therefore, there is no obligation of the bidder/offeror to demonstrate good faith efforts.

Section 26.55 Counting DBE Participation

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

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

ARC will refer all matters pertaining to certification to the Georgia Unified Certification Program, which is managed by the Georgia Department of Transportation (GDOT) with the cooperation of the Metropolitan Atlanta Rapid Transit Authority (MARTA). The UCP program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP will make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Georgia Department of Transportation
Office of Equal Employment Opportunity
600 West Peachtree Street, NW (7th Floor)
Atlanta, GA 30308
(404) 631-1972 | (404) 631-1943 Fax
<https://www.dot.ga.gov/GDOT/pages/DBE.aspx>

A link to the certification application forms and documentation requirements is found in [Attachment 6](#) to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

GDOT currently manages the UCP for the State of Georgia, and ARC is a non-certifying participant (see [Attachment 9](#)). ARC will use and count for DBE credit only those DBE firms certified by the Georgia UCP.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to ARC

ARC understands that if it fails to comply with any requirement of this part, it may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the FTA, such as the suspension or termination of federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FTA program, any actions permitted under [49 U.S.C. chapter 53](#) or applicable FTA program requirements.

ARC understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103

Enforcement Actions Applicable to FHWA and FTA Programs

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the FTA Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **Compliance reviews.** The FTA may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the FTA to initiate a compliance review based on complaints received.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that ARC is in noncompliance with Part 26, the Office of Civil Rights will promptly send ARC, return receipt requested, a written notice advising that there is reasonable cause to find ARC in noncompliance. The notice will state the reasons for this finding and will direct ARC to reply within 30 days concerning whether it wishes to begin conciliation.
- (4) **Conciliation.**
 - a. If ARC requests conciliation, the FTA Office of Civil Rights shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The Office of Civil Rights may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
 - b. If ARC and the Office of Civil Rights sign a conciliation agreement, then the matter is regarded as closed and ARC is regarded as complying. The conciliation agreement sets forth the measures ARC has taken or will take to ensure compliance. While a conciliation agreement is in effect, ARC remains eligible for FHWA or FTA financial assistance.
 - c. The FTA shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If ARC fail to carry out the terms of a conciliation agreement, ARC is in noncompliance.
 - d. If ARC does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.
- (5) **Enforcement actions.**
 - a. Enforcement actions are taken as provided in this subpart.
 - b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.107

Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under [2 CFR parts 180](#) and [1200](#).

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FTA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

USDOT may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

USDOT may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Information, Confidentiality, Cooperation

Availability of Records

1. USDOT adheres to the Federal Freedom of Information and Privacy Acts when responding to requests about the DBE program and can release information unless prohibited by federal law.
2. Confidential business information, such as DBE certification applications, cannot be released to third parties without the firm's written consent. However, this information must be shared with USDOT during certification appeals or with other states for certification purposes.

Confidentiality of Information on Complainants

- Complainants' identities are kept confidential unless necessary for due process. If confidentiality hinders proceedings, complainants may need to waive this right to avoid investigation closure or dismissal.

Cooperation

- All participants in the DBE program must fully and promptly cooperate with USDOT and recipient compliance reviews, investigations, and other requests for information. Non-cooperation can lead to penalties, such as noncompliance findings, denial of certification, or suspension.

Intimidation and Retaliation

- Participants in the DBE program, including ARC, contractors, subcontractors, consultants, and any others must not intimidate, threaten, coerce, or discriminate against anyone for exercising their rights under this part or for participating in investigations. Violating this prohibition results in noncompliance with 49 CFR Part 26.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Fostering Small Business Participation Plan
Attachment 5	Overall DBE Goal Calculation
Attachment 6	Certification Application Forms
Attachment 7	Regulations: 49 CFR Part 26
Attachment 8	Bidders List Data Collection Form
Attachment 9	UCP Agreement

DRAFT

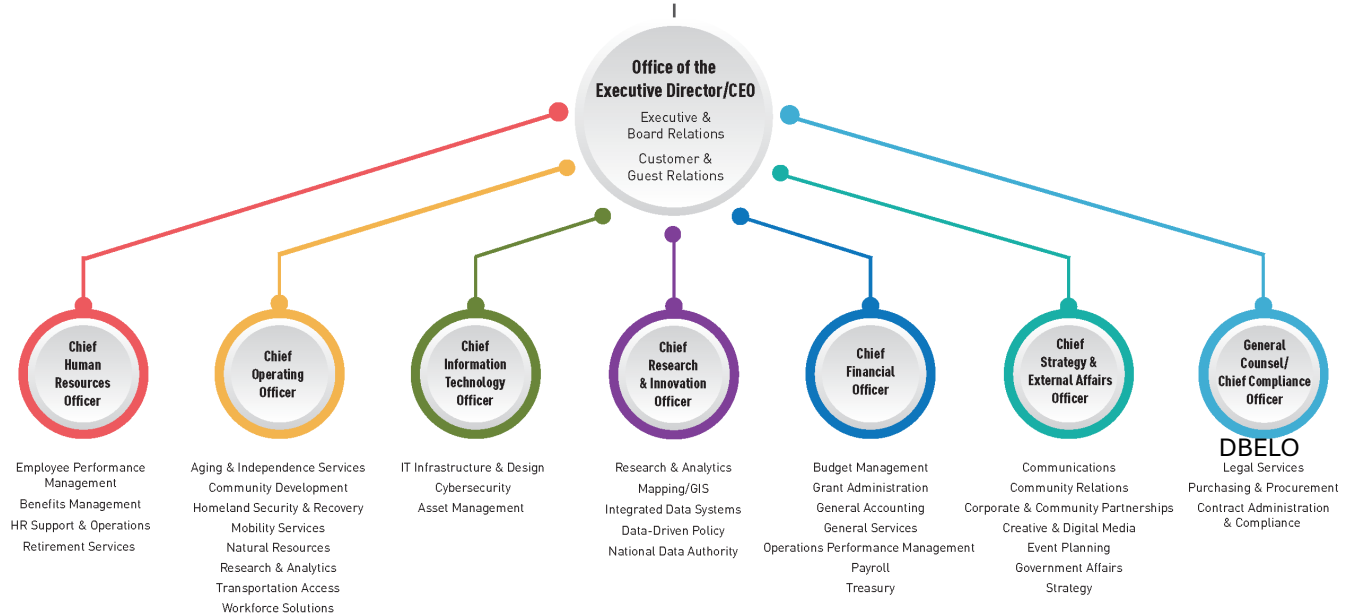
Attachment 1

Organizational Chart

Atlanta Regional Commission

Organizational Chart

Atlanta Regional Commission Board



Attachment 2

DBE Directory

The DBE Directory for the State of Georgia may be found at

<https://www.dot.ga.gov/GDOT/pages/DBE.aspx>.

Attachment 3

Monitoring and Enforcement Mechanisms

Atlanta Regional Commission

1. All participants are hereby notified that pursuant to Title 49 Code of Federal Regulations, United States Department of Transportation, Part 26 and the Disadvantaged Business Enterprise Participation Program for the Atlanta Regional Commission, they must affirmatively ensure that, in any contract entered into with ARC, DBEs will be afforded *equal* opportunity to participate in subcontracting activities. It is the policy of ARC to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is further the policy of ARC to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
2. All contracts between ARC and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with ARC's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Under authority granted by Georgia law, ARC may impose liquidated damages, contract suspension, or even contract termination.
3. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at the time of submission of bid must have prior approval of ARC's DBE Liaison Officer.
4. Should a DBE firm not certified by the Georgia Department of Transportation be proposed by a potential contractor as a part of his/her DBE plan efforts, the inclusion of said firm will not be considered a demonstration of making good faith efforts towards meeting the DBE goal.
5. In contracts with DBE contract goals, bids submitted which do not meet the DBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered non-responsive bids, and bidders will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Official (49 CFR 26.53). The bidder will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Official will make the determination on the sufficiency of the good faith efforts.
6. ARC reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsive and qualified bidder. A bid will not be considered responsive unless the bidder complies with Title 49 Code of the Federal Regulations, Part 26, and ARC's Disadvantaged Business Enterprise Program plan.
7. ARC shall require contractors to make good faith efforts to replace a DBE subcontractor that is terminated, or fails to complete its work on the contract for any reason, with another DBE subcontractor. If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must notify ARC immediately. 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, to the extent needed to meet the established contract goal. ARC shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBEs.

Additional information on ARC's Disadvantaged Business Enterprise Program can be obtained from the DBE Liaison Officer, **Rhea L. Thomas, General Counsel/Chief Compliance Officer, Atlanta Regional Commission, 229 Peachtree Street, NE, Suite 100, Atlanta, GA 30303, 470.378.1494, RThomas@atlantaregional.org.**

8. ARC will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
 - a. *Reviewing bid package documentation thoroughly, obtaining clarification, if necessary.*
 - b. *Reviewing monthly reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
 - c. *Monitoring progress of payments to DBEs through monthly reports from prime contractors.*
 - d. *Monitoring progress of DBEs work through on-site visits and communication with DBEs. ARC will implement a monitoring and enforcement mechanism that will include written certification that ARC has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during routine project site visits on a monthly basis. The DBELO will sign off on the written certifications.*
9. ARC will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
10. ARC also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. In addition, ARC will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.
11. In its reports of DBE participation to the USDOT, ARC will show both commitments and attainments, as required by the USDOT reporting form.

Attachment 9 contains a copy of 49 CFR Part 26, which describes federal regulations, provisions, and contract remedies available to ARC in the event of non-compliance by a participant.

DBE Commercially Useful Function Report

Project:	
AIP Number:	
Prime Contractor:	
DBE Firm:	
DBE Start/Complete	
CUF Review Date:	

GENERAL**Yes No N/A**

1. Does the DBE have its own employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE own the equipment being utilized to perform its work? If No, attach equipment list, ownership documents, and rental/lease agreements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the DBE self-performing the subcontract defined task for a specific item of work (distinct element) on the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

HAULING FIRMS**Yes No N/A**

1. Does the DBE hauling firm own and/or lease their trucks? (review ownership/vehicle registration and/or lease documents to verify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MATERIAL SUPPLIERS, DISTRIBUTORS, OR MANUFACTURERS/FABRICATORS**Yes No N/A**

1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the DBE had any materials drop shipped to the project site, was the invoice addressed to the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the DBE deliver materials to the site with their own and/or leased trucks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SUPERVISION**Yes No N/A**

1. Is the DBE self-performing work without assistance from the prime or another subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the DBE providing supervision of its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the supervisor a full-time employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Completed by:

Date:

Listing of DBE Subcontractors
(to be submitted with bid)

Project: _____

The Bidder hereby proposes the following DBE participation:

DBE Subcontractor/Supplier/Distributor	Work to be performed	NAICS Code	Subcontract Amount	Amount Applicable to Goal (suppliers = * .60; distributors = *.40)
Total DBE Participation				
Base Bid Amount				
DBE Participation Proposed (%)				
DBE Participation Goal (%)				

Bidder (Firm Name)	Signature	Date

DBE Monthly Report

Contractor:
Project:
AIP Number:
Date:

DBE Subcontractor/Supplier/Distributor	Committed Award	Total Prior Payments	Current Payment	Total	Date Paid to Vendor / Sub this Invoice	Percent
Totals						

Contractor Name:

Signature:

Title:

Date:

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DBE Project Compliance Review Checklist

Project:
AIP Number:
Prime Contractor:

Pre-Bid Checklist

- ☐ Review project to determine if a DBE contract goal is needed.
- ☐ Attend pre-bid meeting to inform bidders of DBE requirements.

Pre-Award Project Checklist

- ☐ Collect the Listing of DBE Subcontractors form.
- ☐ Collect letters of intent for all committed DBEs.
- ☐ If prime contractor is unable to meet the DBE goal, collect documentation of its good faith effort.

Post Award (Pre-Construction/Design) Project Checklist

- ☐ Collect fully executed (signed) subcontracts for all DBE firms.
- ☐ Review DBE subcontract(s) to ensure scope of work is consistent with what has been committed.
- ☐ Review contracts to verify that all required contract clauses are included.
- ☐ Ensure dollar value of DBE subcontract(s) is/are equal to or greater than the amount committed.

During Construction and/or Design Checklist

- ☐ Complete DBE Commercially Useful Function Report form, to verify that the DBEs are performing a commercially useful function.
- ☐ Verify that business names on equipment and vehicles are not covered with paint or magnetic signs (visual inspection of vehicles on site).
- ☐ Verify who employs the workers on site (visually inspect badges/IDs; establish reporting relationships of workers on site/review certified payrolls).
- ☐ Review supplier invoices and cancelled checks to verify what firm orders and pays for the necessary supplies being used by the DBE subcontractor.
- ☐ Ensure all DBE firms are paid promptly (within 10 days of payment to prime contractor per 49 CFR 26.29) by collecting and reviewing the DBE monthly report form.
- ☐ Document and file any correspondence related to terminations, substitutions, or deletions of DBE firms.
- ☐ If terminations, substitutions, or deletions were approved, collect documentation of prime contractor's good faith effort to find a replacement firm

Post Construction/Design Checklist

- ☐ Ensure DBE goal has been achieved by collecting and reviewing the final DBE report.
- ☐ If a shortfall exists, collect Good Faith Effort documentation from prime contractor explaining reasons shortfall took place.

Certification:

I, _____ hereby certify that the contracting records for the federally funded project have been reviewed and the work site has been visited/monitored.

Signature: _____

Date: _____

Attachment 4

Fostering Small Business Participation

A. Purpose and Objective of this Element

This element, 49 CFR Part 26.39, is included as an amendment to the DBE program plan for the Atlanta Regional Commission (“ARC”). This element is herein referenced as the Small Business Participation Plan (SBPP). This part calls for the inclusion of an element to

“structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.”

ARC hereby sets forth its plan to implement these requirements. ARC’s SBPP is also regarded as a substantial effort toward fulfilling the overall intent of 49 CFR Part 26.51, which is to meet the maximum feasible portion of its overall goal by using race-neutral means to obtain DBE participation. Therefore, implementation of ARC’s SBPP will be based on the standard of business size, without regard to race or sex of the business owner.

This element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors.

Further, ARC perceives the objectives of this section to be consistent with its DBE program policy statement, which says in part:

*“- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To help remove barriers to the participation of DBEs in DOT assisted contracts...
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.”*

B. SBPP Strategy

ARC intends to carry out the objectives of this part by employing the following strategies and supporting activities:

1. Establishment of a Race-neutral “Subcontracting Goal”

ARC proposes that, where feasible, certain prime contracts without a Disadvantaged Business Enterprise (DBE) contract goal will require prime contractors to provide subcontracting opportunities to qualified Small Business Concerns (SBCs), as defined herein, without regard to the race or sex of the business owner. The subcontracting goal will be based on verified business size and the availability of appropriate subcontracting opportunities. These opportunities must be structured at a scale that SBCs—including those that may also qualify as DBEs—can reasonably perform. ARC will evaluate the feasibility of establishing race-neutral subcontracting goals for each project. To support potential prime contractors, ARC will review projects in advance of solicitation and identify potential subcontracting opportunities to be included in solicitation documents. This process will help establish reasonable, race-neutral subcontracting goals.

2. Consideration of “Unbundling” of Large Contracts

ARC will give consideration to “unbundling” as a small business strategy.

C. Definitions for this Element

1. Small Business

For purposes of this program element, which is part of ARC's approved DBE program, "small business" shall have the same definition as "small business concerns" contained in 49 CFR 26.5:

"Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b). "

For additional clarification, here are some excerpts from the SBA regulations, 13 CFR, 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...." and,

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

Small business concerns must meet the business size standards, as defined by the SBA. The business size standards are based upon the average annual revenues, and they vary according to the type of business. More information can be found at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

2. Disadvantaged Business Enterprise

Disadvantaged Business Enterprise (DBE) means a for-profit small business concern (defined by SBA rules, above) that meets the standards of 49 CFR Part 26, i.e.

- *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;*
- *Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. (The current PNW cap is \$2.047 million.)*
- *Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;*
- *Has been certified as a DBE by a certifying member of the Georgia Unified Certification Program (GA UCP) in accordance with the full requirements of 49 CFR 26.*

It is understood that in the implementation of this element, not all of the small business concerns may be DBE firms. However, small businesses that are also owned and

controlled by individuals who meet the DBE standard will certainly be encouraged to seek DBE certification. Only certified DBE firms who participate as small business concerns, pursuant to this element, will be counted towards DBE race-neutral participation on FAA-assisted contracts in this program.

D. Verification Standards and Procedures

For purposes of this small business element, ARC will require the following verification and/or certification:

1. **Georgia Unified Certification Program (GA UCP) DBE Certification** – DBE certification by a certifying member of the GA UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a certifying member of the GA UCP. It should be noted that ARC is a non-certifying member of the GA UCP and relies on certification decisions of the Georgia Department of Transportation (GDOT). The GDOT certification staff applies the standards and procedures for DBE certification applicants contained in Subparts D and E of 49 CFR 26.61 – 26.91.
2. **Small business status** - A non-DBE certified potential small business concern may be required to complete a simplified application or provide, as evidence of small business status, the following information at time of response to a solicitation or a bid submittal:
 - a. A copy of the business tax returns for the most recent five-year period indicating the gross receipts; or
 - b. A notarized statement from a Certified Public Accountant indicating the firm's average gross receipts for the past five years.
3. **Use of Personal Net Worth:** ARC, in addition to the standards for small business concerns described above, plans to utilize the current personal net worth standards of the DBE program (49 CFR Part 26.67), presently at \$2.047 million.

E. Monitoring

ARC will monitor the participation of small businesses on federally funded projects that results from the implementation of the small business element. ARC will track and compile participant data achieved through the small business element in a manner that is similar to and consistent with tracking race-neutral participation in the DBE program. ARC will collect data on payments to small businesses on a monthly basis.

ARC will enforce the Small Business Element in the same manner as the DBE program. ARC will include language in the contract that details enforcement actions that ARC can invoke in the event of noncompliance.

F. Supportive Services

ARC is a non-certifying member of the Georgia UCP. ARC does not conduct DBE certifications, but it does rely on certifications of GDOT. While ARC does not provide direct supportive services or business development programs to DBEs or small businesses, ARC is aware of several valuable resources in the surrounding area. ARC will coordinate and make referrals to

potential and qualifying small business concerns to these services. Some of the resources are listed below:

ACE – Access to Capital for Entrepreneurs
84 Peachtree Street NW, Suite 8D
Atlanta, GA 30303
Phone: 678-335-5600
<https://aceloans.org/>

SCORE North Metro Atlanta
Phone: (678) 506-0718
<https://www.score.org/northmetroatlanta>

UGA Small Business Development Center At Kennesaw State University
3333 Busbee Dr NW #500
Kennesaw, GA 30144
Phone: (470) 578-6450
<https://georgiasbdc.org/kennesaw-office/>

G. Assurances

To ensure the successful implementation of the Small Business Participation Plan (SBPP), ARC, by way of review, accepts the following assurances:

1. The DBE program, including its small business element, is not prohibited by state law.
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program.
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the small business program is open to small businesses regardless of their location.
4. There are no limits on the number of contracts awarded to firms participating in the small business program.
5. ARC will strive to prevent any obstacles that could hinder the utilization of new, emerging, or untested businesses.
6. ARC will take aggressive steps to encourage those minority- and women-owned firms participating in the small business element of the DBE program that are eligible for DBE certification to become certified by the Georgia UCP.

H. Principal Responsible Person

The principal responsible person for overseeing and implementing ARC's SBPP will be the currently designated Disadvantaged Business Enterprise Liaison Officer (DBELO). The DBELO for ARC is **Rhea L. Thomas, General Counsel/Chief Compliance Officer.**

Attachment 5

Overall DBE Goal Calculation

(submitted separately)

Attachment 6

Certification Application Forms

The UCP DBE certification application for the State of Georgia may be found at <https://www.dot.ga.gov/GDOT/Pages/DBE.aspx>.

Attachment 7

Regulations: 49 CFR Part 26

The federal regulations, Title 49 Code of Federal Regulations Part 26, can be found at <https://www.ecfr.gov/>.

Attachment 8

Bidders List Data Collection Form

BIDDERS LIST DATA COLLECTION FORM

Firm Name	Firm Address + ZIP Code and Phone No.	DBE or Non-DBE Status (verify via UCP DBE Directory)	NAICS Code(s) of Scope(s) Bid	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M

Attachment 9

UCP Agreement

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
THE GEORGIA DEPARTMENT OF TRANSPORTATION,
And Atlanta Regional Commission**

This Memorandum of Understanding documents the participation of U.S. DOT Recipients and in certain instances, funding arrangements for the continued implementation and operation of the Unified Certification Program (UCP) in the State of Georgia.

PREAMBLE

WHEREAS, the Georgia Department of Transportation (GDOT), an agency of the State of Georgia, has undertaken a Unified Certification Program to certify all Disadvantaged Business Enterprises in the State of Georgia with the cooperation of The Metropolitan Atlanta Rapid Transit Authority (MARTA)

WHEREAS, the initial assessment involved compiling information and developing tools regarding the development of a UCP in the State of Georgia; and

WHEREAS, this MOU establishes the certification procedures for Disadvantaged Business Enterprises participating in federally funded projects; and

WHEREAS, the Georgia Department of Transportation has been and continues to be the Lead Agency for the Unified Certification Program and has accepted the responsibility for the statewide certification program, and;

WHEREAS, the State of Georgia Unified Certification Program is consistent with the laws, rules and regulations of Title VI of the 1964 Civil Rights Act and 49 Code of Federal Regulation, Parts 23 and 26 and,

WHEREAS, the U.S. DOT Recipients have a mission to:

1. Coordinate and participate in the certification review processes that affect socially and economically disadvantaged businesses.
2. Promote and maintain a UCP directory of socially and economically disadvantaged businesses.

Now, therefore, in consideration of the mutual promises and covenants herein contained, it is hereby agreed by and between the parties:

1) PURPOSE

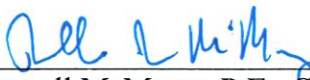
- a) This Memorandum of Understanding outlines the scope of work including any obligations and responsibilities.
- b) GDOT, FHWA, MARTA, FAA, FTA and other recipients will have access to all work completed as part of the Unified Certification Program.

2. SUPPORTIVE SERVICES FOR THE UNIFIED CERTIFICATION PROGRAM:

- a) All of the signatory parties have consulted and agreed on services required to complete the work described in the certification procedures and processes prior to the work beginning.
- b) All of the signatory parties agree to consult on the use of services for work described in the certification procedure and process provided that all services will be used for documentation and dissemination of the information on Disadvantaged Business Enterprises.

This agreement is entered into, by and between the Georgia Department of Transportation and **Atlanta Regional Commission**. This agreement will take effect at the time of approval by all entities.

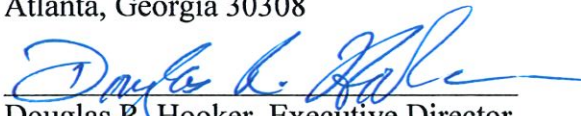
The signatory parties mutually agree to consult regarding any amendments or issues to be addressed. This agreement may be modified by written mutual consent of the signatory parties.



Russell McMurry, P.E., Commissioner
Georgia Department of Transportation
600 West Peachtree Street, N.W.
Atlanta, Georgia 30308

5/10/17

Date



Douglas R. Hooker, Executive Director
Atlanta Regional Commission
40 Courtland Street NE
Atlanta, GA 30303

4/24/17

Date

