

**The University of Alabama
DBE Program
Policy Statement**

Section 26.1, 26.23

Objectives/Policy Statement

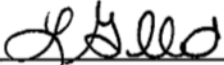
The University of Alabama (UA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. UA has received Federal financial assistance from the Department of Transportation (DOT), and as a condition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

It is the policy of UA to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also UA's policy to:

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

The Director of Contract Administration has been delegated as the DBE Liaison Officer. In that capacity, the Contract Administration Office is responsible for implementing all aspects of the DBE program under DOT-funded construction financial assistance programs. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by UA in its financial assistance agreements with the Department of Transportation.

UA has disseminated this policy statement to all purchasing components of our organization and has advertised in state-wide media the availability of the program for viewing on the University's website.



Dr. Lynda Gilbert, Vice President for Financial Affairs and Treasurer

6/11/08

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.3 Applicability

UA is 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. 105-178.

Section 26.5 Definitions

UA has adopted the definitions contained in Section 26.5 for this program.

Section 26.7 Nondiscrimination Requirements

UA 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, UA 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 DOT: 26.11(b)

UA will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments found in Appendix B of the June 2003 Final Rule. These reports will reflect awards, payments and commitments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

UA maintains a bidders' list consisting of information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach in calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

UA will collect this information in the following ways:

1. UA's contract will include a contract clause requiring prime bidders to report the names/addresses, and other pertinent administrative information of their subcontractors (see Attachments 8 and 9).
2. Firms responding to formal solicitations will complete a UA DBE Utilization Plan with the required information (see Attachment 8).

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

UA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT 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 DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to UA 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 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

This language will appear in financial assistance agreements with subcontractors.

Contract Assurance: 26.13(b)

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

UA will continue its DBE program during each federal fiscal year in which it receives operating assistance or the minimum threshold amounts of planning capital from the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) or Federal Aviation Administration (FAA). During years UA anticipates a grant of \$250,000 or more in FTA planning capital, and/or operating expenses, it will submit annual goals to the FTA. UA will provide FTA with updates regarding significant changes in the program.

Section 26.25 DBE Liaison Officer (DBELO)

UA has designated the following individual as our DBE Liaison Officer:

Mr. Dan Rodgers, Director of Contract Administration
The University of Alabama
1205 14th Street/Box 870186
Tuscaloosa, Alabama 35487
(205) 348- 2076
drodgers@fa.ua.edu

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that UA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Office of the Vice President for Financial Affairs 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 duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid advertisements are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes UA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-construction meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in the State of Alabama, refers firms to the Alabama Department of Transportation (ALDOT) for certification.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains UA's DBE Program and website for public access.

Section 26.27 DBE Financial Institutions

It is the policy of UA to encourage prime contractors on DOT-assisted contracts to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, and to make reasonable efforts to use these institutions. We have included a clause in the contract encouraging prime contractors to investigate and use DBE financial institutions whenever possible.

The following such institutions have been identified. UA will provide the referenced minority institutions with copies of our DBE Program and encourage them to make services available to our DBE participants and Prime Contactors.

Citizens Trust Bank	205-214-3020
Commonwealth National Bank	251-476-5938
First Tuskegee Bank	334-262-0800
Alamerica Bank	205-558-4600

Section 26.29 Prompt Payment Mechanisms

UA will include the following clause in each DOT/FTA-assisted prime contract.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from UA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of the payment from the above referenced time frame may occur only for good cause following written approval of UA. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

The Alabama Unified Certification Program (ALUCP) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is available on the [ALDOT website](#) under ALUCP DBE List.

Supportive Service Areas through the Alabama Department of Transportation include:

Alabama State University
Stillman College
Alabama A&M University
Tuskegee University
The University of Alabama at Birmingham
The University of Alabama (Tuscaloosa)

Section 26.33 Over-concentration

UA has not identified that over-concentration exists in the types of work that DBEs perform. UA will periodically investigate over-concentration and if UA determines that over-concentration has occurred UA will devise appropriate measures to address the over-concentration.

Section 26.35 Business Development Programs

Reserved

Section 26.37 Monitoring and Enforcement Mechanisms

UA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The Certification of DBE Contractors with regard to disadvantaged status, business size and control will be monitored and enforced through the ALUCP DBE Program. The application and other forms to be submitted are available through the ALUCP (see Attachment 6).

2. The solicitation of certified DBEs, and the good faith efforts to do so, including replacement of DBEs is the responsibility of the prime contractor and these requirements along with remedies, and enforcement provisions will become a part of the solicitations and performance contract (see Attachment 10).
3. UA will bring to the attention of the ALUCP any false, fraudulent, or dishonest conduct in connection with the program, so that the ALUCP can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
4. UA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. UA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award through a payment voucher. This will be accomplished by prime contractors providing monthly reports of payments made to DBEs as well as a summary of all payments made to DBEs at the conclusion of the contract. (See Attachment 11).

Section 26.39 Fostering Small Business Participation

1. Definition of Small Business: For purposes of this section, UA defines a small business as a business that meets the standards set forth for certification by the Small Business Administration size standards under 13 CFR Part 121. A small business for purposes of this section shall also meet the requirements of 49 CFR Part 26.5 other than those definitions pertaining to social disadvantage status.
2. Methods for Achieving SBE Utilization:
 - a. Set Asides. On most projects, UA will set aside a percentage of the contract to be performed by Small Businesses. The type of work to be done will be at the discretion of the general contractor. UA will only insist upon the stated percentage being met. UA believes this approach will allow general contractors greater flexibility and open opportunities for a wider variety of small businesses.
 - b. Unbundling: When appropriate, UA will unbundle or “break out” portions of large contracts to be bid exclusively by small businesses. The decision on whether to unbundle will be made on a project-by-project basis. UA anticipates unbundling will most commonly occur on projects which have a separate and/or distinct component(s).
3. Implementation of Program Elements: In order to actively implement its Small Business Utilization Program, UA engages in community outreach to small businesses. This includes periodic meetings to discuss upcoming construction projects, invitations to educational seminars on best business practices in the construction industry such as LEAN processing, and speaking at the city’s Tuscaloosa Builds program to encourage involvement. At these meetings, small businesses are presented with a summary of upcoming projects (both DOT and non-DOT funded) for which they might bid. Separate sessions are held for construction and vending.

In addition, for all construction projects with an estimated budget in excess of \$50,000, bidders are provided a directory of local minority and women-owned businesses available for

subcontracting opportunities. For projects less than \$50,000, UA has, with few exceptions, solicited direct bids from small businesses.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated in accordance with the FTA's tri-annual schedule.

In accordance with Section 26.45(f) UA will submit its overall goals to FTA as required. Before establishing the overall goal, UA will consult with program officials as outlined in Attachment 4 to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and UA's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, UA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that UA and FTA will accept comments on the goals for 45 days from the date of the notice. The proposed goal will also be posted on UA's construction administration website for this period. UA's overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

After submitting its goal on August 1, UA will begin using the overall goal on October 1, unless we have received other instructions from FTA. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

Not applicable.

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

UA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. UA, through the Alabama Department of Transportation DBE Program, uses the following race-neutral means to increase DBE participation.

1. Participate in a Support Services Program composed of ALDOT and state universities including Stillman College, Alabama State University, The University of Alabama at Birmingham, Alabama A&M University, Tuskegee University and the University of Alabama (Tuscaloosa) will provide a support Services Program to:

- a. Develop and improve immediate and long term business management record keeping.
- b. Improve financial and accounting capabilities for DBEs and other small businesses.
- c. To assist DBEs in their relationship with Prime Contractors

2. UA will adjust the estimated break-out of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following:
 - a. DBE participation through a prime contract under customary competitive procedures.
 - b. DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
 - c. DBE participation on a prime contract exceeding a contract goal.
 - d. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Section 26.51(d-g) Contract Goals

In those instances UA does not project meeting the goal by using race-neutral means, it will use contract goals. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

UA will establish contract goals on DOT-assisted contracts that have subcontracting possibilities. UA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

UA will express our contract goals as a percentage of the federal share of the DOT-assisted contracts. The goals will include consultants and professional services.

Section 26.53 Good Faith Efforts Procedures

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

In those contracts where UA has set a DBE participation goal, bidders must meet the goal or make a good faith effort to do so. If the bidder/offeror does not meet the goal, it must document its good faith effort. (See Attachments 8, 9, 10 and 14).

UA treats this requirement as a matter of responsiveness. The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as *responsive*.

Mr. Dan Rodgers, Director of Contract Administration
Mrs. Jessica Morris, Contract Administrator

UA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

UA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information (see Attachments 5, 5A, 8 and 9):

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 work days of being informed by UA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following Reconsideration Official:

Dr. Lynda Gilbert, Vice President for Financial Affairs and Treasurer
The University of Alabama
271 Rose Administration Building/Box 870142
Tuscaloosa, AL 35487
(205) 348-4530
lgilbert@fa.ua.edu

The Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

UA will require the Prime Contractor to make a good faith effort to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

If the contractor fails or refuses to comply in the time specified, UA may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, UA will take additional action, up to and including termination of the contract.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

UA is a non-certifying member of the Alabama Unified Certification Program (ALUCP). DBEs within the ALUCP are certified through one of the UCP's certifying agencies. To be certified as a DBE, a firm must meet all certification eligibility standards of Subpart D of 49 U.S.C. Part 26. Information and an application for certification through the ALUCP can be found in Attachment 6 to this program. The certifying agency will make all certification decisions.

For information about the certification process or to apply for certification, firms should visit the ALUCP website which provides information on the certification process and lists contact information for all certifying agencies.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The University is a non-certifying member of the ALUCP. The ALUCP was approved by U.S. Department of Transportation on August 10, 2010. The ALUCP is available for review at the [ALDOT website](#).

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The certifying members of the ALUCP are responsible for recertifying DBE firms. The certifying agency will review the eligibility of previously-certified DBEs as outlined under former 49 USC Part 23, to ensure all DBEs will meet the standards of Part 26, Subpart E. The certifying agency may perform on-site reviews to the offices of the firms and interview the principle officers of the firm and review their resumes and/or work history. The certifying agency will also perform on-site reviews, when applicable, at the time of eligibility investigation.

For firms certified or reviewed and found eligible under Part 26, the ALUCP will again review their eligibility at intervals to be determined by the ALUCP. These reviews may include the following components:

1. DBEs complete an application form through the ALUCP
2. Obtain a capability statement from the DBE outlining the type of work and history update.
3. Provide a financial statement update outlining the current financial capacity of the firm and any changed corporation or ownership of stock position.
4. Determine on a case-by-case basis whether to conduct an on-site review.

"No Change" Affidavits and Notices of Change (26.83(j))

The ALUCP requires all DBEs to inform it of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with its application for certification.

The ALUCP also requires all owners of all DBEs it has certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j), along with of the firm’s size and gross receipts.

Section 26.85 Denials of Initial Requests for Certification

If the ALUCP denies a firm’s application or decertifies it, it may not reapply until twelve (12) months have passed from the denial or decertification.

Section 26.87 Removal of a DBE’s Eligibility

Reserved.

Section 26.89 Certification Appeals

Reserved.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

UA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, State, and local law.

Monitoring Payments to DBEs

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

UA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory (UA/ ALUCP)
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculation
- Attachment 5 Form 1 for Demonstration of Good Faith Effort
- Attachment 5A Form 2 for Demonstration of Good Faith Effort
- Attachment 6 Certification Application Forms
- Attachment 7 Reserved
- Attachment 8 UA – DBE Utilization Plan
- Attachment 9 UA – Bidders List of Quoters
- Attachment 10 UA DBE Contract Provisions
- Attachment 11 UA DBE Payment Voucher Form
- Attachment 12 Reserved.
- Attachment 13 49 CFR Part 26 Regulations