

Disclaimer:

From time to time Augusta, Georgia projects and contracts include federal funds provided by the U.S. Department of Transportation (DOT) and/or other federal agencies. Federally funded projects are subject to the requirements of 49 CFR Part 26. These requirements are mandatory and non-negotiable. Augusta enforces Disadvantage Business Enterprise (DBE) requirements and/or DBE goals set by Federal and/or State Agencies in accordance with State and Federal laws. Please be advised that the U.S. District Court for the Southern District of Georgia has entered an Order enjoining the Race-Based portion of Augusta, Georgia's DBE Program. Thus, Augusta, Georgia does not have or operate a DBE, MBE or WBE Program for projects (or portions of projects) having Augusta, Georgia as the source of funding.

**ARTICLE 13
DISADVANTAGED BUSINESS ENTERPRISES PROGRAM
FOR DEPARTMENT OF TRANSPORTATION, FEDERAL
TRANSPORTATION ADMINISTRATION, FEDERAL
AVIATION ADMINISTRATION AND OTHER FEDERALLY
ASSISTED CONTRACTS**

Sec. 1-10-109. Purpose.

The purpose of this Disadvantaged Business Enterprises program is to comply with U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), Federal Aviation Administration (FAA) and other federal and state mandated DBE requirements for certain DOT, FTA, FAA, and other federal and state assisted contracts as required by 49 C.F.R. Part 26, *et. seq.* and/or 49 C.F.R. Part 23, *et. seq.*

Sec. 1-10-110. Definitions.

- (a) *Generally.* Those definitions set forth in Chapter 10 of the Code of Ordinances shall also apply to this Article, except as provided in this section.
- (b) *Specifically.*
 - (1) Airport Concessionaire Disadvantaged Business Enterprises (ACDBEs) means a concession that is a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - (2) Department of Transportation (DOT) means the U.S. Department of Transportation, including the Office of the Secretary, the Federal

Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

- (3) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (4) DOT assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letter of credit or loan guarantees, except a contract solely for the purchase of land.
- (5) Good faith efforts means efforts to achieve a DBE goal or other requirement which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Sec. 1-10-111 Limitations.

This DBE program is only for DOT, FTA and FAA assisted contracts and other federal or state funded contracts having mandatory DBE requirements.

Sec. 1-10-112. Policy statement.

Augusta, Georgia is committed to ensuring that all DBE requirements of federal and state funded contracts will be implemented by Augusta, Georgia. The Director of minority and small business opportunities shall serve as the DBE Liaison Officer and is responsible for accomplishing the objectives of this program. The objectives of this DBE program are:

- (a) To ensure nondiscrimination in the award and administration of DOT, FTA, FAA and other contracts covered by this program, including highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT, FTA, FAA and other contracts covered by this program;

- (c) To ensure that the this DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT, FTA, FAA and other contracts covered by this program;
- (f) To assist in the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Sec. 1-10-113. DBE liaison officer.

The Chief Executive Officer concerning DBE Program matters for Augusta, Georgia shall be the Mayor of Augusta, Georgia. Augusta shall have a DBE Liaison Officer who shall have direct, independent access to the Mayor concerning DBE Program matters. The DBE Liaison Officer shall have the following duties and responsibilities:

- (a) Gathering and reporting statistical data and other information as required by DOT, FTA, FAA and other contracts covered by this program.
- (a) Reviewing third party contracts and purchase requisitions for compliance with this program.
- (b) Working with all departments to set overall annual goals or as required by federal law.
- (c) Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
- (d) Identifying contracts and procurements so that DBE goals are included in solicitations covered by this DBE Program.
- (e) Analyzing Augusta, Georgia's progress toward attainment and identifying

ways to improve progress.

- (f) Participating in pre-bid meetings.
- (g) Advising the Commission on DBE matters and achievement.
- (h) Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- (i) Planning and participating in DBE training seminars.
- (j) Certifying DBEs according to the criteria set by DOT and FTA and acting as liaison to the Uniform Certification Process in Georgia.
- (k) Providing outreach to DBEs and community organizations to advise them of opportunities.
- (l) Maintaining the DBE bidder's list for DOT, FTA and other contracts covered by this program as provided in § 1-10-117.
- (m) Ensuring that all aspects of this DBE Program are complied with by participants and using agencies.

Sec. 1-10-114. DBE financial institutions.

For projects containing federal or state mandated DBE requirements, Augusta, Georgia must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in Augusta, Georgia and must make reasonable efforts to use these institutions and encourage prime contractors to use these institutions.

Sec. 1-10-115. Prompt payment mechanisms.

- (a) For projects containing federal or state mandated DBE requirements, Augusta, Georgia will include a contract clause requiring prime contractors to pay subcontractors for satisfactory performance for their contracts no later than thirty (30) days from receipt of each payment made by Augusta, Georgia to the prime contractor.

- (b) Augusta, Georgia will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed by using one or more of the following methods:
- (1) Declining to hold retainage from prime contractors and prohibiting prime contractors from holding retainage from subcontractors.
 - (2) Declining to hold retainage from prime contractors and requiring a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.
 - (3) Holding retainage from prime contractors and providing 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 thirty (30) days after Augusta, Georgia's payment to the prime contractor.
 - (4) Requiring a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
 - (5) Requiring 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.
- (c) Augusta, Georgia shall have the power and authority to enforce all of the provisions of this subsection and may implement suspension and debarment for non-compliance as provided in Article 8.

Sec. 1-10-116. Wage requirements for federally funded projects.

Wage requirements. When a project has federal funds, the prevailing wages paid shall correspond as nearly as practicable to those prescribed in the Federal Davis Bacon Act when required. The wage scale shall be posted by the contractor in a

prominent and easily accessible place at the site of work in accordance with Federal Government requirements.

Sec. 1-10-117. DBE bidder's list for federally assisted contracts.

- (a) The DBE Liaison Officer will maintain a bidder's list, consisting of information about all DBE and non-DBE firms that bid or quote on federally assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder's list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms and the types of work each firm has been certified to perform as a DBE. The DBE Liaison Officer shall revise the bidder's list at least annually and make updated information available to contractors and the public.
- (b) The DBE Liaison Officer may collect this information in the following ways:
 - (1) Including a contract clause in all DOT and FTA assisted contracts requiring prime bidders to report the name, address, DBE/non-DBE status and gross receipts of all firms who quote to them on subcontracts.
 - (2) Submitting surveys of a statistically sound sample of firms in the Augusta, Georgia regional area.
 - (3) Including a notice in solicitations and on the Augusta, Georgia website requesting that firms quoting on subcontracts submit their name, address, DBE/non-DBE status and gross receipts directly to the DBE Liaison Officer.

Sec. 1-10-118. Overconcentration of DBE firms in certain types of work.

- (a) The DBE Liaison Officer shall annually review the availability of DBE and non-DBE firms in the different types of work which Augusta, Georgia utilizes and make a preliminary determination as to whether DBE firms may be so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in one or more types of work. Any preliminary determination by the DBE Liaison Officer shall be submitted to the concerned DOT or FTA operating administration for a final determination of overconcentration.

- (b) Subject to approval required in subsection (c) below, when an overconcentration of DBE firms in a certain type of work is determined to exist, the DBE Liaison Officer may provide: technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which there is an overconcentration of DBE firms.
- (c) Before implementing any of the measures provided in subsection (b) above, the DBE Liaison Officer shall obtain the approval of the concerned DOT or FTA operating administration.

Sec. 1-10-119. Compliance with DBE Program requirements.

- (a) All prime contractors and subcontractors choosing to participate in a project subject to this DBE Program must comply with all parts of this program as well as all federal, state and local law applicable to such projects.
- (b) The DBE Liaison Officer shall, for every project subject to this DBE Program, keep and maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In reports of DBE participation to the Department, the DBE Liaison Officer shall display both commitments and attainments.
- (c) Augusta, Georgia shall not 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 solicitation, bid or contract on the basis of race, color, sex, or national origin.
- (d) The DBE Liaison Officer is responsible for submitting DOT form 4630 to the FTA and FHWA on a quarterly basis and to the FAA as required by 49 C.F.R. Part 26 or 49 C.F.R. Part 23.

Sec. 1-10-120. DBE Program overall goals.

- (a) The DBE Liaison Officer shall establish an annual overall goal for this program in accordance with 49 C.F.R. Part 26 and shall annually submit such goal to FHWA, FTA or FAA as appropriate. Neither quotas nor set-

asides for DBEs are permitted in this program. Augusta, Georgia may only use the means authorized by 49 C.F.R. Part 26.51 to meet overall goals.

- (b) For ACDBE projects the DBE Liaison Officer shall establish goals in compliance with 49 C.F.R. Part 23.21, *et. seq.*

Sec. 1-10-121. Severability.

Should any section, paragraph, subdivision, clause, phrase, or provision of this chapter be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of this chapter as a whole or any part or provisions thereof, other than the part so decided to be invalid or unconstitutional.