

**Commonwealth of Puerto Rico  
Municipality of Fajardo**



**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**February 2025**

## **POLICY STATEMENT**

### **Section 26.1            Objectives/Policy Statement**

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

It is the policy of the Municipality of Fajardo to ensure that DBEs defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts
2. To create a level playing field on which DBEs can compete fairly for DOT-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 DOT 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; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

*Mr. Jose Moreira, Director of Federal Program, has been delegated as the DBE Liaison Officer. In that capacity, Mrs. Irizarry 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 incurred by the Municipality of Fajardo in its financial assistance agreements with the Department of Transportation.*

The Municipality of Fajardo has disseminated this policy statement to the Municipal Legislature and all of the components of our organization. We will distribute this statement to DBE and non-DBE business communities that will perform work for us on

DOT-assisted contracts. This statement and its program will be posted on the municipality's web page (if available) and Municipal social media pages.



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**HON. JOSE A. MELENDEZ MENDEZ**  
MAYOR

3/13/2025  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on page 1 of this program.

### **Section 26.3 Applicability**

The Municipality is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, [Public Law 105-178](#). Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), [Public Law 109-59](#), 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), [Public Law 112-141](#), 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) [Public Law 114-94](#); and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) ([Pub. L. 117-58](#)), [Public Law 117-58](#).

### **Section 26.5 Definitions**

The Municipality will adopt the definitions contained in Section 26.5 for this program.

### **Section 26.7 Non-discrimination Requirements**

The Municipality 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 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Municipality 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)***

We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

#### ***Bidders List: 26.11(c)***

The Municipality will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include:

- Name, address, and contact information for each firm
- DBE or non-DBE status for each firm
- Age of each firm
- Annual gross receipts for each firm
- North American Industry Classification System (NAICS) code for each scope of work

We will collect this information in the following ways:

- The Contract Compliance Specialist shall be provided with the names and addresses of all firms (including subcontractors) bidding or quoting on applicable federally assisted contracts that will be awarded contracts. This will be obtained by a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote them on subcontracts.
- The Municipality will request information regarding the age/size of the firm and annual gross receipts.
- All firms quoting on subcontractors will be required to report information directly to the Municipality.

### **Section 26.13            Federal Financial Assistance Agreement**

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

#### ***Assurance: 26.13(a)***

The Municipality of Fajardo 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 26. The recipient shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated by reference in this agreement. The implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Municipality of Fajardo 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.*).

This language will appear in financial assistance agreements with sub-recipients.

***Contract Assurance: 26.13(b)***

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

*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 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, 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.*

[Note: This language is to be used verbatim, as it is stated in 26.13(b)]

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

Since the Municipality has received grants in FTA planning capital, and or operating assistance we must maintain a DBE program until all funds from DOT financial assistance have been expended. FTA has established a two-tiered system for DBE program development. Tier I recipients are those recipients that will award prime contracts exceeding a cumulative total value of \$670,000 in FTA funds in a federal fiscal year, excluding transit vehicle purchases and Tier II recipients are those recipients that will award prime contracts with a cumulative total value of \$670,000 or less in FTA funds in a federal fiscal year, excluding transit vehicle purchases. Under this system the Municipality is considered a Tier I recipient and as a result must maintain a full DBE program. We will provide DOT updates representing significant changes in the program.

**Section 26.23 Policy Statement**

The Policy Statement is elaborated on page 1 of this program.

## **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

José F. Moreira Díaz  
Municipal Office of Federal Affairs Director  
PO Box 1049  
Fajardo, PR 000738  
Tel: 787.863.4115 Ext. 6217  
jmoreira@fajardopr.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Municipality of Fajardo complies with all provision of 49 CFR 26. The DBELO has direct, independent access to the Mayor 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 has a staff of 3 to assist in the administration of the program. 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 notices and requests for proposals 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 the Municipality'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-bid meetings.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

Within the Municipality, the Directors of the major organizational units (e.g., Procurement Office, Finance Department, Planning Office, Urban Development Office and Public Works), or their designated representatives are responsible to notify the Contract Compliance Specialist of any forthcoming awards or contracts which may involve federal financing of any nature and thereby ascertain through conference with the Contract Compliance Specialist proper documentation necessary for each appropriate contract activity. Upon bid opening, these same representatives are responsible for providing the Contract Compliance Specialist with all submitted DBE documents for review and accuracy.

The Puerto Rico Highway and Transportation Authority (PRHTA) is the only entity that certifies DBEs in Puerto Rico. The PRHTA also plans training seminars and maintains an updated directory on certified DBEs. Therefore, the Municipality of Fajardo DBE Liaison Officer can't commit to the following:

1. Plans and participates in DBE training seminars.
2. Certifies DBEs according to the criteria set by DTOP and acts as liaison to the Uniform Certification Process in Puerto Rico.
3. Maintains the updated directory on certified DBEs.

For further information, it is suggested to contact the PRHTA Civil Rights Office:

Yomarie Pacheco Sánchez, Esq.  
Director  
aolivencia@act.dtop.gov.pr  
(787) 729.1562

Or

Mrs. Annie del Moral  
Deputy Director  
adelmoral@act.dtop.gov.pr  
(787) 729.1562

## ***Section 26.27 DBE Financial Institutions***

It is the policy of the Municipality of Fajardo 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 on DOT-assisted contract to make use of these institutions.

We have made the following efforts to identify and use such institutions:

- Annual revision of the DBEs Directory. The PRHTA is the only entity that certifies DBEs in Puerto Rico and maintains an updated directory on certified



DBEs. The DBE Directory can be obtained at the following link:  
<https://act.dtop.pr.gov/civil-rights/disadvantaged-business-enterprise/>

We will also re-evaluate the availability of DBE financial institutions on a yearly basis. To date, we haven't identified any institutions. Information on the availability of such institutions can be obtained from the PRHTA Civil Rights Office.

### **Section 26.29      *Prompt Payment Mechanisms***

The Municipality requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal and local laws. In accordance with 49 CFR part 26.29, the municipality has established clauses implementing this requirement and requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the municipality.

We will include the following clause in each DOT-assisted prime contract:

#### ***Prompt Payment Clause: 26.29(a)***

*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 contract receives from Municipality of Fajardo. This clause applies to both DBE and non-DBE subcontracts.*

#### ***Retainage Clause: 26.29(b)***

*The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The municipality may 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 your payment to the prime contractor.*

This clause applies to both DBE and non-DBE subcontracts.

#### ***Noncompliance: 26.29(c)***

**No retainage funds will be paid to the contractor until evidence is presented which demonstrates that the subcontractor's payment was made in full including the retainage.**

### *Mechanisms and Means for Monitoring and Oversight: 26.29(d & e)*

The municipality will use the following mechanisms for proactive monitoring and oversight of a prime contractor's compliance with subcontractor prompt payment and return of retainage requirements in this part. These may include regular reporting, dedicated compliance personnel, contract clause reviews, on-site audits, data analysis, subcontractor feedback surveys, and proactive communication with both the prime contractor and DBE subcontractors.

If a prime contractor fails to comply with DBE prompt payment requirements, potential consequences could include withholding progress payments, liquidated damages, contract termination, suspension from future bidding, debarment from future contracts, and mandatory dispute resolution processes depending on the severity of the violation.

### **Section 26.31          Directory**

The Municipality will use the most current Puerto Rico Department of Transportation's Disadvantaged Business Enterprise Directory of Certified DBE Firms, in order to maintain and fulfill its obligation under 49 CFR Part 26. The Directory lists the firm's name, address, telephone number, date of expiration of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The PR Department of Transportation revises the directory annually at a minimum. The Directory may be obtained in the following webpage: <https://act.dtop.pr.gov/civil-rights/disadvantaged-business-enterprise/> by contacting:

Ana Del Moral  
DBE Coordinator, Civil Rights Office  
PR DOT and Public Works  
Highway and Transportation Authority  
P.O. Box 42007  
San Juan, PR 00940-2007  
Phone: (787) 729-1562  
Fax: (787) 721-2621  
Email: ADelMoral@act.dtop.gov.pr

The Municipality does not intend the listing of names in the Puerto Rico Department of Transportation's Disadvantaged Business Enterprise Directory of Certified DBE Firms to be constructed as an endorsement or recommendation of said firms.

### **Section 26.33                      Overconcentration**

The Municipality will identify if overconcentration exists in the types of work that DBEs perform. It will be reviewed yearly.

### **Section 26.35                      Business Development Programs**

The Municipality does work with local organizations and agencies to coordinate outreach activities to assist DBEs and small businesses in accessing Prime Contractors and to educate small and minority businesses on how to do business with the Municipality. This organization is called the Micro Business Incubator. The Municipality will communicate bid proposals to minority/small business through community newsletter, trade organizations, plan rooms, prime contractors, subcontractors and material suppliers, and known DBE firms on its bidder's list and those found in the Puerto Rico Highway and Transportation Authority PRHTA database.

### **Section 26.37                      Monitoring and Enforcement Mechanisms**

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT 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.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. 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.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of the contract award.

### **Section 26.39                      Fostering Small Business Participation**

The Municipality has incorporated the following non-discriminatory elements to its DBE program, in order to facilitate competition on federally assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

1. Removal of unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.
2. Establishing a race-neutral small business set aside for prime contracts under a stated amount (e.g., \$1,000,000).

3. Requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation.
4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
5. Ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

***Small Business Participation: 26.39(b)***

The Municipality of Fajardo and DTOP shall review the feasibility of initiating a mentor – protégé program as a race – neutral means to increase DBE participation. The Municipality of Fajardo’s mission is to break down as many barriers as possible and it will do what it can to act as a liaison between the primes, subcontractors, DBEs, and small business to develop mutually beneficial business relationships.

The Municipality of Fajardo shall make every effort towards unbundling large contracts to allow small businesses, including DBEs, to compete for smaller, more manageable contracts. For all contracts, the Municipality of Fajardo shall require contractors to identify elements of a contract, or a specific subcontract that are of the size that small businesses, including DBEs, can reasonably perform. The Municipality of Fajardo believes that disseminating contract information is critical in the effort to level the playing field and to provide DBEs and small businesses with the opportunity to competitively participate in the procurement process.

The Municipality of Fajardo will be compiling an ongoing comprehensive list of DBEs and small businesses ready, willing, and able to bid on our contracts. This will be a “living list” and there will be a constant proactive effort to add DBE’s and small businesses. Every attempt will be made to identify small businesses in the minority community, encourage and assist them in the DBE certification process to ensure as many as possible eligible DBEs are participating.

As contracting opportunities become available on a contract and subcontracting level, the Municipality of Fajardo, with the help of DTOP, will inform DBEs and small businesses and offer whatever assistance is needed. The Municipality of Fajardo will start an outreach program directed to the minority small business community through their leaders and organizations. This may include but shall not be limited to conducting periodic pre-bid conferences, seminars, workshops, and fairs to inform and encourage participation.

The Municipality of Fajardo will be readily available to address and satisfy whatever special assistance needs that arise. The following link provides a series of documents that DTOP has for the DBEs candidates, those documents show and state the standards and

criteria for determining which businesses are eligible to participate in the program.  
<https://act.dtop.pr.gov/civil-rights/disadvantaged-business-enterprise/>.

### **SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 26.43            Set-asides or Quotas**

The Municipality 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. In accordance with Section 26.45(f) the Municipality will submit its overall goal to DOT by August 1 at three-year intervals.

You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to FTA for review and approval and FTA may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

Before establishing the overall goal, the Municipality will consult in a direct, scheduled interactive exchange with minority, women, contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Municipality efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we 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 office for 30 days following the date of the notice, and informing the public that the Municipality and DOT will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year unless we have received other instructions from DOT. 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 26.47            Goal Setting and Accountability**

The Municipality will monitor overall goals through the Uniform Report of DBE Commitments/ Awards and Payments submitted on June 1 and December 1 of every year by the DBELO. If the overall goal set in Fajardo's DBE program is less than the overall applicable to that fiscal year, we shall perform a shortfall analysis where we 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
3. Submit the corrective action plan to FTA within 30 days of the end of the submitted DBE report.

## **Section 26.49            Transit Vehicle Manufacturers Goals**

The Municipality will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

(1) Only those TVMs listed on FTA's list of eligible TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid.

(2) A TVM that fails to follow the requirements of this section, and this part will be deemed as non-compliant, which will result in removal from FTA's eligible TVMs list and ineligibility to bid.

(3) An FTA recipient's failure to comply with the requirements set forth in this section may result in formal enforcement action or appropriate sanctions as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) Within 30 days of becoming contractually required to procure a transit vehicle, an FTA recipient must report to FTA:

- The name of the TVM that was the successful bidder; and
- The Federal share of the contractual commitment at that time.

Alternatively, the Municipality may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated.

## **Section 26.51 (d-g) Contract Goals**

The Municipality will use contract goals to meet any portion of the overall goal the Municipality does not project being able to meet using race-neutral means. 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.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Section 26.53 Good Faith Efforts Procedures**

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

The Municipality will have information of the PRDTOP DBE Certification process available in the Municipal Secretary Office (Procurement Division), Municipal Office of Federal Affairs, and Municipal Office of Legal Affairs. The Municipal Procurements Division will provide this information to bidders in the official municipal bidder list.

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

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 *responsible*: Municipal Procurement Board.

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

### **Information to be submitted (26.53(b))**

The Municipality treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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 contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

#### **Administrative reconsideration (26.53(d))**

Within 10 days of being informed by the Municipality that it is not responsible 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:

Municipal Office of Legal Affairs  
PO Box 865  
Fajardo, PR 000738  
Tel: 787.863.4013 Ext.6111  
[alma.vega@fajardopr.org](mailto:alma.vega@fajardopr.org)

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. 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))***



The Municipality will require a contractor to make good faith efforts to replace a DBE that has 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.

Before transmitting to the Municipality its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to the Municipality prior to consideration of the request to be terminated. The DBE will then have five (5) days to respond and advise the Municipality of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, the Municipality will require the prime contractor to make good faith efforts 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 office immediately of DBE's inability or unwillingness to perform and provide reasonable documentation.

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

If the contractor fails or refuses to comply at the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceedings.

Bid Specification:

*The requirements of 49 CFR 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Municipality of Fajardo to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. The award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.*

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a

description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

## **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**

The Municipality will use the certification services of the Puerto Rico Department of Transportation's Civil Rights Office, Unified Certification Program (UCP). These are consistent with Subpart D of Part 26 and the certification procedures of Subpart E of Part 26, in determining the eligibility of firms to participate as DBEs in applicable DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The PRDOT will make their certification decisions based on the facts as a whole.

Firms that wish to participate as DBEs in the federal-aid programs of the Municipality must be certified as eligible DBE firms by and through the Puerto Rico Department of Transportation's Disadvantaged Business Enterprise Certification process. For information about the certification process or to apply for certification, firms should contact:

Ana Del Moral  
DBE Coordinator, Civil Rights Office  
PR DOT and Public Works, Highway and Transportation Authority  
P.O. Box 42007, San Juan, PR 00940-2007  
Phone: (787) 729-1562, Fax: (787) 721-2621  
Email: ADeLMoral@act.dtop.gov.pr

In the event the PRDOT proposes to remove a DBE's certification, they will follow procedures consistent with Section 26.87.

Firms that PRDOT has certified or reviewed and found eligible will continue to be reviewed each time their annual affidavit is received. Determinations will be made on a

case-by-case basis whether a new application will be required, and an onsite review conducted, however reviews will not be conducted more than once during a three-year period.

Any firm or complainant may appeal the decision of a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil rights Programs Division  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Any U.S. DOT certification decisions affecting the eligibility of DBEs will be promptly implemented as directed by U.S. DOT.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, State and Local law. Notwithstanding any contrary provisions of state and local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Municipality or DTOP. This reporting requirement also extends to any certified DBE subcontractor.

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

Attachment 3 Monitoring and enforcement mechanisms

Attachment 4 Overall Goal Calculations (Separate and revised triennially)

Attachment 5 Breakout of Estimated Race - Neutral & Race Conscious  
Participation (Separate and revised triennially)

Attachment 6 Regulation: 49 CFR 26

**Attachment 1**

*Organizational Chart*

José A. Meléndez Méndez  
Mayor



José F. Moreira Díaz  
Municipal Office of Federal Affairs Director  
DBE Liaison Officer

**Attachment 2**

DBE Directory

[https://act.dtop.pr.gov/civil-rights/disadvantaged-business-enterprise/.](https://act.dtop.pr.gov/civil-rights/disadvantaged-business-enterprise/)

### **Attachment 3**

#### **Monitoring and Enforcement Mechanisms**

The Municipality has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract
2. Breach of contract action, pursuant to Puerto Rico (Puerto Rico Civil Code 1930)

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR 26
2. Enforcement action pursuant to 49 CFR 31
3. Prosecution pursuant to 18 USC 1001.

**Attachment 6**

Regulation: 49 CFR 26

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>