

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN

Gateway Development Commission

For
Federal Transit Administration
Office of Civil Rights

June 30, 2025
Version 4.0

Privileged & Confidential/Advisory, Consultative & Deliberative/Proprietary Commercial
and Financial Information

Revision Record

Version	Issue Date	Notes
1.0	July 28, 2023	Initial Draft
2.0	September 6, 2023	2 nd Draft
3.0	February 27, 2025	3 rd Draft
4.0	June 30, 2025	FTA Master Agreement Changes Updated Organization Chart

TABLE OF CONTENTS

1	LIST OF ACRONYMS	5
2	INTRODUCTION	6
	2.1 About the Gateway Development Commission	6
	2.2 Hudson Tunnel Project Overview	6
3	DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT	7
	3.1 Policy Statement (Parts 26.1 and 26.23)	7
4	GENERAL REQUIREMENTS (SUBPART A)	9
	4.1 Objectives (Part 26.1)	9
	4.2 Applicability (Part 26.3)	9
	4.3 Definitions (Part 26.5)	9
	4.4 Nondiscrimination Requirements (Part 26.7)	9
	4.5 Record Keeping Requirements (Part 26.11)	10
	4.6 Federal Financial Assistance Agreement (Part 26.13)	11
5	ADMINISTRATIVE REQUIREMENTS (SUBPART B)	13
	5.1 DBE Program Updates (Part 26.21)	13
	5.2 Policy Statement (Part 26.23)	13
	5.5 Payment Monitoring and Prompt Payment Mechanisms (Part 26.29) ..	15
	5.6 Directory (Part 26.31)	19
	5.7 Overconcentration (Part 26.33)	20
	5.8 Business Development Programs (Part 26.35)	20
	5.9 Monitoring and Enforcement Mechanisms (Part 26.37)	20
	5.10 Fostering Small Business Participation (Part 26.39)	21
6	GOALS, GOOD FAITH EFFORTS, AND COUNTING (SUBPART C)	22
	6.1 Set-Asides or Quotas (Part 26.43)	22
	6.2 Overall Goals (Part 26.45)	22
	6.3 Transit Vehicle Manufacturers Goals (Part 26.49)	23
	6.4 Approach to Reaching the Goal (Part 26.51) (a-c))	23
	6.5 Contract Goals (Parts 26.51(d-g))	24
7	CERTIFICATION	40
8	COMPLIANCE AND ENFORCEMENT	41

9	COMPLAINTS AND DISPUTE RESOLUTION.....	41
	ATTACHMENT 1 – Organizational Chart.....	42
	ATTACHMENT 2 – Contract Enclosures.....	44

—

1 LIST OF ACRONYMS

CFR	Code of Federal Regulations
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DBELO	Disadvantaged Business Enterprise Liaison Officer
ESB	Emergency Services Building
FTA	Federal Transit Administration
GDC	Gateway Development Commission
GDC Act	Gateway Development Commission Act
HTP	Hudson Tunnel Project
HYCC	Hudson Yards Concrete Casing
NJ	New Jersey
NY	New York
PANYNJ	Port Authority of New York and New Jersey
PSNY	Penn Station New York
SBE	Small Business Enterprise
UCP	Unified Certification Program
USDOT	United States Department of Transportation

References

Disadvantage Business Enterprise (“DBE”) Regulations 49 CFR Part 26

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

Disadvantaged Business Enterprise (“DBE”) Official Questions and Answers (“Q&As”) Per 49 CFR 26:

<https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425001part26qa.pdf>

2 INTRODUCTION

2.1 About the Gateway Development Commission

The Gateway Development Commission (“GDC”) is a public authority and government-sponsored authority created by the Gateway Development Commission Act (2019 NY Laws, ch.108) and (N.J.S.A. 32:36-1, et seq.) (referred to hereafter as the “GDC Act”) to facilitate the passenger rail transportation project (Gateway Program) between Penn Station, Newark, New Jersey, and Penn Station, New York, New York.

GDC was formed via parallel legislation in New York (“NY”) and New Jersey (“NJ”) in July 2019 to oversee and deliver the Gateway Program. GDC works closely with stakeholders, including the United States Department of Transportation (“USDOT”), Federal Transit Administration (“FTA”) Amtrak, NJ TRANSIT, and the Port Authority of New York and New Jersey (“PANYNJ”), to advance this critical Program.

The Gateway Program’s first phase includes the construction of a new tunnel under the Hudson River, the rehabilitation of the existing tunnel, the completion of a concrete casing on the West Side of Manhattan to preserve right-of-way for the future tunnel to Penn Station, and the replacement of the Portal Bridge.

The GDC Board of Commissioners consists of seven voting members with enumerated powers as specified in the GDC Act, including but not limited to overseeing the finance, design, construction, and implementation of the Gateway Program.

2.2 Hudson Tunnel Project Overview

The purpose of the Hudson Tunnel Project (“HTP”) is to preserve the current functionality of Amtrak’s Northeast Corridor (“NEC”) service and NJ TRANSIT’s commuter passenger rail service between New Jersey and Penn Station New York (“PSNY”) by repairing the deteriorating North River Tunnel; and to strengthen the NEC’s resiliency to support reliable service by providing redundant capability under the Hudson River for Amtrak and NJ TRANSIT NEC trains between New Jersey and PSNY.

The HTP includes the development, design, and construction of a new two-tube tunnel connecting New York and New Jersey and certain ancillary facilities, the construction of the final segment of the concrete casing under western Hudson Yards in Manhattan, New York, the rehabilitation of the existing North River Tunnels, and certain projects necessary to connect such projects to the contiguous Amtrak NEC facilities. At the completion of the HTP, the NEC would have four tracks (two in the new Hudson River Tunnel and two in the North River Tunnel) between New Jersey and New York under the Hudson River.

3 DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT

3.1 Policy Statement (Parts 26.1 and 26.23)

GDC has established a DBE Program in accordance with regulations of the USDOT, 49 Code of Federal Regulations (“CFR”) Part 26 referenced herein as Part 26. GDC intends to seek Federal funding assistance from the FTA in the form of a Part 5309 Capital Investment Grants New Starts grants for the HTP.¹

GDC anticipates the receipt of Federal financial assistance from USDOT, and as a condition of receiving this assistance, GDC will be signing Certifications and Assurances indicating compliance with 49 CFR Part 26.²

It is the policy of GDC 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 GDC’s 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; and
6. To assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Tracey Mitchell has been delegated the responsibility and designated as the GDC DBE Liaison Officer (“DBELO”). In that capacity, Tracey Mitchell is responsible for implementing and overseeing all aspects of the GDC DBE Program, accountable directly to the CEO (organizational chart Attachment 1). Implementation of GDC’s DBE Program

¹ GDC has been notified of its receipt of a USDOT Rebuilding American Infrastructure with Sustainability and Equity grant award. Upon completion of Version 1.0 of GDC’s DBE Program Plan, a grant award has not been executed with USDOT.

² GDC anticipates signing the FTA Certifications and Assurance upon submittal of the necessary requisites needed to be established as New Grant Recipient. GDC will continue to collaborate with FTA Region 2 to identify the timing of submittal.

³ GDC’s website is <https://www.gatewayprogram.org/>

is accorded the same priority as compliance with all other legal obligations incurred by the GDC in its financial assistance agreements with USDOT.

GDC will disseminate this Policy Statement to its Board of Directors and all the components of its organization. The Policy Statement will be posted on GDC's website³, including in its USDOT-assisted third-party contracts, and solicitations (i.e., Request for Qualifications, Request for Proposals, Invitation for Bids, etc.). GDC will distribute this Policy Statement to the DBE and non-DBE business communities that perform work for GDC on its USDOT-assisted third-party contracts. The Policy Statement will be mailed/emailed to all known DBE stakeholder organizations and associations who do or attempt to do business with GDC. A current list of recipients as well as answers to any questions pertaining to the GDC DBE Program Policy can be obtained by contacting GDC's DBELO, Tracey Mitchell at CivilRights@gatewayprogram.org. All related correspondence can be sent to GDC Office of Civil Rights at 22 Cortlandt St, New York, NY 10007-3104



Thomas Prendergast
Chief Executive Officer
Gateway Development Commission

Date: June 30, 2025

4 GENERAL REQUIREMENTS (SUBPART A)

4.1 Objectives (Part 26.1)

GDC's DBE objectives are contained in the above Policy Statement, and are incorporated herein as follows:

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; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

GDC will utilize innovative strategies and approaches to accomplish the aforementioned objectives without compromising the integrity of the DBE Program requirements as codified in 49 CFR Part 26.

4.2 Applicability (Part 26.3)

GDC is expected to be the recipient of Federal financial assistance administered by the U.S. Department of Transportation funds authorized by 49 U.S.C. 47101, et seq.

GDC is expected to be 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.

4.3 Definitions (Part 26.5)

The terms used in this Program will have the meanings as defined in 49 CFR Part 26, Part 26.5.

4.4 Nondiscrimination Requirements (Part 26.7)

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

4.5 Record Keeping Requirements (Part 26.11)

4.5.1 Reporting to USDOT (Part 26.11(a))

GDC will report DBE participation to FTA as follows:

GDC will report DBE participation on a Federal fiscal year, semi-annually on June 1 and December 1, utilizing the *Uniform Report of DBE Commitments / Awards and Payments*. This report will reflect information and data on FTA-assisted contracts during the FTA identified reporting period. The information and data contained in this report will include:

1. GDC awards made to Prime third-party Contractors,
2. DBE commitments made by Prime third-party Contractors,
3. Payments made to Prime third-party Contractors, DBEs and non-DBEs,
4. Total contracts and subcontracts, commitments and participation,
5. Total payments made by Prime third-party Contractors to DBEs on ongoing contracts, and
6. Total payments made to DBEs and Prime third-party Contractors on contracts that were completed during the reporting period, etc.
7. The names of DBE contractors that performed work and the work categories/trades performed, dollar value of contracts, number of firms that were listed at commitment (included those replaced and why replaced), and number of firms decertified during the reporting period.

To meet the objectives of this Part, GDC has implemented a compliance monitoring and reporting process that collects the necessary data and documents contract-specific progress toward goal attainment .

Bidders List (Part 26.11(c))

GDC will create and maintain a Bidders List, consisting of DBE and non-DBE firms that bid or quote on GDC let USDOT/FTA-assisted contracts. The purpose of this requirement is to allow the use of the Bidder's List when calculating GDC's Overall Goal(s). The Bidders List will include the Company's legal name, corporate structure, business address,

telephone number, website, primary contact name, and contact information, DBE versus non-DBE status, race, gender, and age of the owner, annual gross receipts of firms, North American Industry Classification System bid code(s), etc.

GDC will collect this information in the following manner:

- GDC will include in all its solicitations a form referred to as “*Enclosure 5 – Solicitation Statistics*” found under Attachment 2 of this DBE Program, for all Prime Contractors, Subcontractors and all lower tier Subcontractors and suppliers to complete and submit with each bid or proposal. GDC will extract the information from the “*Enclosure 5 – Solicitation Statistics*” and compile the information into a GDC’s Bidder’s List. Additionally, by registering on the Vendor Portal, potential vendors can express their interest in being included in future solicitations for both capital and operating procurements; and, find the contact information for all of GDC’s Prime Construction Contractors. Vendors can access the portal from the GDC homepage by clicking on the ‘Procurement Opportunities’ dropdown menu and selecting “Vendor Portal”.

The bidders list data will be entered into an online FTA system of data about companies bidding on contracts or subcontracts.

4.6 Federal Financial Assistance Agreement (Part 26.13)

As an FTA grant recipient, GDC will execute the following, required Certifications and Assurances as part of this process, applicable to all FTA-assisted contracts and their administration:

4.6.1 Assurance (Part 26.13(a))

This language will be used verbatim, as it is stated in 26.13(a): GDC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any /FTA-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. GDC shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FTA assisted contracts. The GDC'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 the GDC 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.).

4. 6.2 Contract Assurance (Part 26.13(b))

GDC will ensure that the following clause is placed in every FTA-assisted contract and subcontract verbatim, as it is stated in 26.13(b):

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.

A direct link to the Data Room is as follows: <https://www.gatewayprogram.org/data-room-access-request-form.html>

5 ADMINISTRATIVE REQUIREMENTS (SUBPART B)

5.1 DBE Program Updates (Part 26.21)

GDC anticipates receiving planning, capital, and/or operating assistance that will award Prime contracts, the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year. 49 CFR Part 26.21(a)2). GDC will continue to carry out this DBE Program until all funds from FTA financial assistance have been expended. GDC will provide FTA updates representing any significant changes to this DBE Program.

5.2 Policy Statement (Part 26.23)

The Policy Statement is set forth in [Part 3.1](#) of this DBE Program.

5.3 Disadvantaged Business Enterprise Liaison Officer (Part 26.25)

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

Tracey Mitchell
DBE Liaison Officer
Gateway Development Commission
22 Cortlandt St, 16th Floor
New York, NY 10071
/
3 Penn Plaza, 10th Floor
Newark, NJ 07105
CivilRights@gatewayprogram.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that GDC complies with all provisions of 49 CFR Part 26. The DBELO reports via a dotted line to the Chief Executive Officer (Attachment 1). The DBELO has direct and independent access to the Chief Executive Officer concerning all DBE Program matters.

The DBELO is responsible for developing, implementing, and monitoring the GDC DBE Program, in coordination with other appropriate officials. The DBELO is currently supported and supplemented by internal and consultant staff with extensive experience and background in civil rights compliance, particularly the DBE Program and regulations as defined under 49 CFR Part 26, to ensure proper and effective administration of the DBE Program. The duties and responsibilities include the following:

1. Gathers and report statistical data and other information as required by the FTA,

2. Reviews third-party contracts and purchase requisitions for compliance with this DBE Program,
3. Works with all GDC departments to review overall annual goals attainment and to set the overall triennial goals,
4. Ensures that bid notice(s) and request(s) 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 methods to improving progress),
6. Analyzes GDC's progress toward goal attainment and identifies methods to improve progress and is responsible for overseeing implementation of corrective action initiatives, as may be required, to ensure the success of the DBE Program objectives,
7. Participates in pre-bid, pre-proposal, and industry meetings,
8. Advises the CEO, and/or GDC Board on DBE matters and achievements,
9. Participates in progress meetings, as required,
10. Provides DBEs with information and coordinates assistance in preparing bids, obtaining bonding and insurance,
11. Plans and participates in DBE training seminars,
12. Participate and facilitate GDC's efforts to become a member of the New York State Unified Certification Program ("UCP"), New Jersey Unified Certification Program and the Port Authority – New York and New Jersey Certification Program,
13. Provide outreach to DBEs and community organizations to advise them of third-party contracting opportunities,
14. Review the updated UCP directories for certified DBEs and provide feedback regarding firms working on GDC USDOT-assisted projects to the UCP certifying authorities,
15. Investigates any acts that compromise the integrity of the DBE Program and notifies the appropriate authorities of perceived violations or DBE Program abuse, and
16. Ensure that current and future GDC staff are properly trained to perform their required duties for the effective implementation of the DBE Program.

5.4 DBE Financial Institutions (Part 26.27)

It is the policy of GDC 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 FTA-assisted contracts to make use of these institutions. To date, GDC's research has determined that there are no financial institutions owned and controlled by socially and economically disadvantaged individuals in the States of New York and New Jersey. GDC will make every effort to evaluate the availability of any DBE financial institutions at least once a year. . If any financial institutions owned and controlled by socially or economically disadvantaged individuals are identified, GDC will make reasonable efforts to use these institutions and encourage Prime Contractors to use such institutions.

5.5 Payment Monitoring and Prompt Payment Mechanisms (Part 26.29)

GDC will require Prime Contractors to maintain records and documents of payments to DBEs for seven (7) years following the performance of the contract unless a longer time is set forth in the contract. These records will be made available for inspection upon request by any authorized representative of GDC or USDOT. This reporting requirement also extends to any certified DBE or lower tier Subcontractor.

GDC will perform interim audits of contract payments to DBEs. The audits will review payments to DBE Subcontractors to ensure that the actual amounts paid to DBE Subcontractors equals or exceeds equal or exceed the dollar amounts stated in the DBE Enclosures 3 and 4, found under Attachment 2 of this DBE Program. GDC will monitor payments to DBEs and Non-DBE Subcontractors on a monthly basis by reviewing Prime and Subcontractor reports in the B2Gnow software platform. Compliance monitoring, CUF, and written certification reviews will be performed by GDC on an ongoing basis. CUF review forms can be found in the B2Gnow software platform. CUF reviews will be performed for every DBE that performs for credit toward the overall goal and the contract goals, including DBEs used race-neutrally. The GDC will maintain an accounting of each contractor's progress in attaining the contract goal through progressive payments to the committed DBEs and will intervene in real time if a prime contractor is falling short of a contract goal. Additionally, GDC will ensure that the dollar amount/value of payments credited to DBE participation corresponds to the DBE Program requirements and counting provisions. To note that the GDC will proactively monitor prompt payment, and not rely solely on the complaint and dispute resolution process.

GDC will require that all Subcontractors (DBEs and non-DBEs), at all tiers performing work on a federally assisted contract(s) be promptly paid for work performed pursuant to their agreements, in accordance with all relevant Federal, state, and local laws.

As per 49 CFR Part 26.29, GDC will establish a contract clause implementing this

requirement and will require Prime Contractors to pay all Subcontractors (DBEs and non-DBEs) at all tiers for satisfactory performance/completion of their work on the contract, no later than seven (7) days from the Prime Contractor's receipt of each payment from GDC. The seven (7) days flows down to all payments to all subcontractors at all tiers.

GDC will ensure prompt and full payment of retainage from the Prime Contractor to all Subcontractors (DBEs and non-DBEs) at all tiers within thirty (30) days after the Subcontractor's work is satisfactorily completed. In accordance with 49 CFR Part 26.29, GDC has selected the method described in 49 CFR Part 26.29(b)(3) to comply with the requirement of this Part for contracts that include construction components, including design-build delivery agreements. For such contracts, GDC 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 their acceptances, and require a contract clause obligating the Prime Contractors to pay all retainage owed to the Subcontractors (DBEs and non-DBEs) at all tiers for satisfactory completion of the accepted work within thirty (30) days after payment to the Prime Contractor.

GDC has selected the method described in 49 CFR Part 26.29(b)(1) to comply with the requirement of 49 CFR Part 26.29 for contracts that are exclusively related to the provision of services.

GDC will include the following clauses/provisions in each FTA-assisted Prime construction-related contract:

- i. Contractor shall comply with the requirements of 49 CFR Part 26, including 49 CFR 26.29, with respect to prompt payment of Subcontractors.
- ii. Within seven (7) days of receiving any sum from GDC attributable to the work performed by a Subcontractor, workmen or third-party, the Contractor must pay that sum to the Subcontractor, workmen or third-party, as applicable less an amount, if any, as the Contractor is authorized to retain under the subcontract.
- iii. To the extent any Subcontractor remains unpaid any undisputed amounts following the time frames in clause (iii), GDC may withhold payment and directly pay Subcontractors who perform work for or furnish materials to the Contractor in connection with this contract.
- iv. Contractor must include in its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors for work performed under this Agreement in the same manner and within the same time period set out above.
- v. Any payment made by GDC to a Subcontractor under this Part will be deemed to be a payment to the Design-Builder under this contract.
- vi. Nothing in this Part will create any obligation of any kind from GDC to any

Subcontractors, workmen or other third persons, except to the extent that GDC will engage in the activities outlined in DBE Plan Requirements when applicable to disputes related to prompt payment between Contractor and a Subcontractor, regardless of whether such Subcontractor is a DBE Subcontractor.

- vii. Contractor's approval of Subcontractor invoices shall not be unreasonably delayed, and Contractor shall approve or reject such invoices with written notice of deficiency or dispute to the payee Subcontractor within ten (10) days of the Contractor's receipt of invoice. A delay in or postponement of payment to the Subcontractor by Contractor requires good cause and prior written approval of GDC.
- viii. GDC will not pay Contractor for Services performed or Deliverables submitted unless and until Contractor certifies that the Subcontractors have been promptly paid for the Services, they have performed under all previous payment requests, as evidenced by the filing with GDC of lien waivers, canceled checks, a statement of payments to Subcontractors in an Invoice, and Contractor's sworn statement that it has complied with the prompt payment requirements.
- ix. Failure to comply with prompt payment requirements is a breach of the Contract and Contractor Default, which may lead to any remedies permitted hereunder or under law, including, but not limited to Contractor debarment.
- x. Each payment request shall be in a form reasonably acceptable to GDC and shall be accompanied by a statement of all payments made to Subcontractors in connection with the Task Order or the Services thereunder, which statement delineates between payments to DBEs and other Subcontractors.
- xi. In compliance with 49 CFR Part 26, GDC may agree to release of Retainage Amounts withheld on account of work performed by a Subcontractor that has satisfactorily completed its work and other satisfied its obligations under its subcontract, for subsequent release by the Contractor to such Subcontractor. Any release of such Retainage Amounts should not include any Retainage Amounts deemed reasonably necessary by GDC to secure any ongoing obligations of the Subcontractor or any other persons performing overlapping, dependent, or otherwise related work, and should also be reduced by any amounts that GDC has applied or, on the day of such release, that GDC determines that it may be entitled to apply, under the Contract Documents and in accordance with Applicable Law and Federal Requirements against such Retainage Amounts, including for unresolved claims by the Subcontractor, GDC's estimate of possible audit adjustments with respect to the Subcontractor's work, and GDC's reasonable assessment of the risks to GDC and to completion of the Project should such monies be released.
- xii. The Contractor, Sub-Recipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the Contractor to

carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

GDC will include the following clauses/provisions in each FTA-assisted Prime services contract:

- i. Contractor must timely pay, and must ensure that all its Subcontractors timely pay, all claims lawfully made against it by Subcontractors, workmen and third parties in connection with the Services.
- ii. Contractor shall comply with the requirements of 49 CFR Part 26, including 49 CFR 26.29, with respect to prompt payment of Subcontractors.
- iii. Contractor shall pay its Subcontractors any undisputed amounts for the satisfactory performance of their work within seven (7) days of Delivery Partner's receipt of payment from GDC for such work.
- iv. Contractor shall not withhold any amount from any Subcontractors as retainage or other security for performance by such Subcontractor.
- v. To the extent any Subcontractor remains unpaid any undisputed amounts following the time frames in clause (iii), GDC may withhold payment and directly pay Subcontractors who perform Services in connection with this contract.
- vi. Contractor must include in its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors for work performed under this contract in the same manner and within the same time period set out above.
- vii. Any payment made by GDC to a Subcontractor under this Part will be deemed to be a payment to Contractor under this contract.
- viii. Nothing in this Part will create any obligation of any kind from GDC to any Subcontractors, workmen or other third persons, except to the extent that GDC will engage in the activities outlined in DBE Plan Requirements when applicable to disputes related to prompt payment between Contractor and a Subcontractor, regardless of whether such Subcontractor is a DBE Subcontractor.
- ix. Contractor's approval of Subcontractor invoices shall not be unreasonably delayed, and Contractor shall approve or reject such invoices with written notice of deficiency or dispute to the payee Subcontractor within ten (10) days of the Contractor's receipt of invoice. A delay in or postponement of payment to the Subcontractor by Contractor requires good cause and prior written approval of GDC.
- x. GDC will not pay Contractor for Services performed or Deliverables submitted unless and until Contractor certifies that the Subcontractors have been promptly

paid for the services, they have performed under all previous payment requests, as evidenced by the filing with GDC of lien waivers, canceled checks, a statement of payments to Subcontractors in an Invoice, and Contractor's sworn statement that it has complied with the prompt payment requirements.

- xi. Failure to comply with prompt payment requirements is a breach of the Contract and Contractor Default, which may lead to any remedies permitted hereunder or under law, including, but not limited to Contractor debarment.
- xii. Each invoice shall be in a form reasonably acceptable to GDC and shall be accompanied by a statement of all payments made to Subcontractors in connection with the Task Order or the Services thereunder, which statement delineates between payments to DBEs and other Subcontractors.
- xiii. The Contractor, Sub-Recipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

The GDC prompt payment mechanism will ensure proactive monitoring and oversight of prime contractors' compliance with subcontract prompt payment and return of retainage requirements. Further, the prompt payment requirements will flow down to all lower tier subcontractors.

In order to enable proactive monitoring and reporting of Prompt Payment, timely reporting of payments in the B2Gnow software platform is required for all Primes and Subcontractors on federally-assisted contracts.

5.6 Directory (Part 26.31)

GDC utilizes the New York State UCP Directory, the New Jersey UCP Directory, and the PANYNJ Directory identifying all firms eligible to participate as DBEs. The New York State UCP, the New Jersey UCP, and PANYNJ each maintain DBE directories. For each certified DBE, the directories list 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. GDC will cooperate with the New York UCP, New Jersey UCP, and PANYNJ Directory to provide performance related information to ensure proper certification of DBEs. New York UCP, New Jersey UCP, and PANYNJ each maintain a Directory identifying all firms eligible to participate as DBEs, which contains all the elements required by 49 CFR Part 26.31. The directories website(s) will be included in GDC's bid specifications for FTA-assisted contracts. The website addresses are as follow:

New York State UCP Directory – <https://nysucp.newnycontracts.com>

New Jersey UCP Directory – <https://njucp.dbesystem.com>

PANYNJ Directory – <https://panynj.diversitysoftware.com>

5.7 Overconcentration (Part 26.33)

As an FTA grant recipient, GDC has not identified to date that overconcentration exists in the types of work that DBEs perform. GDC will make every effort to review on an ongoing basis the types of work that Contractors are subcontracting to DBEs at every tier to determine if there are any patterns of overconcentration or if there is a potential impact on non-DBEs. GDC may also review its bid/proposal evaluations to determine if additional information exists that may demonstrate a pattern of overconcentration based on the types of work packages solicited/let. GDC will make every effort to review the types of work that Contractors are subcontracting to DBEs at every tier to determine if there are any patterns of overconcentration. DBE overconcentration analysis will be completed as a component of the overall triennial DBE goal.

If GDC determines that overconcentration exists in a specific trade/work area, GDC will seek approval of this determination from FTA prior to disallowing DBE participation credit for firms providing services in an area determined to be overconcentrated with DBE participation for that type of work.

5.8 Business Development Programs (Part 26.35)

GDC will not establish a Business Development Program.

5.9 Monitoring and Enforcement Mechanisms (Part 26.37)

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

1. GDC will bring to the attention of the FTA any false, fraudulent, or dishonest conduct in connection with the DBE Program, so that FTA 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 DBE Program Fraud and Civil Penalties rules) provided in Part 26.109.
2. GDC will consider similar action under GDC's own legal authorities, including responsibility determinations in future contracts.
3. GDC will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is performed by the DBEs. GDC will review both the DBE and non-DBE concerns regardless of their tier to ensure that there is full compliance with the DBE Program regulations. On an ongoing basis, throughout the entire course of the contract, GDC will perform Commercially Useful Function ("CUF") and perform written certification to ensure that it has reviewed contracting records, monitored work sites if/when applicable and verified that work committed to DBEs are being performed by DBEs.

4. GDC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. GDC will require both the Prime Contractors and Subcontractors to complete monthly reports in the B2Gnow software platform for payments made to subcontractors to assist in the notification and identification of compliance issues.
5. GDC will review, evaluate, and make corrective action recommendations for the implementation of any approved supportive services or business development programs agreed to in the contract between GDC and the Prime and the Prime and its DBE Subcontractors and lower tier DBE Subcontractors.

5.10 Fostering Small Business Participation (Part 26.39)

GDC is committed to ensuring that small businesses are offered an equal opportunity to participate in the contracting and procurement process. The Fostering Small Business Program does not replace the DBE Program or otherwise operate as a substitute for the DBE Program. It operates as a race- and gender-neutral tool that may assist small businesses, including DBEs, to participate more fully in GDC's contracting opportunities.

This Fostering Small Business Program will not be used to discriminate against any company or groups of companies. It is designed to include all segments of the business community and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age disability or geographic location.

The Fostering Small Business Program will utilize procedures that promote opportunity, while maintaining race and gender-neutral measures. For the purposes of this Fostering Small Business Program, GDC will allow the DBEs certified with the PANYNJ/New York State UCP/New Jersey UCP to be eligible to participate in the Fostering Small Business Program as Small Business Enterprises without further certification. Additionally, all Small Business Enterprise ("SBE") certified with PANYNJ as small businesses are automatically eligible to participate in the GDC Fostering Small Business Program.

GDC may use one or more of the following mechanisms to actively foster small business participation and to facilitate competition by small business concerns and take all reasonable steps to eliminate obstacles to their participation such as:

1. **Unbundling** – GDC will evaluate the subcontracting opportunities of its Prime Contractors to facilitate/encourage unbundling of large subcontracts on a case-by-case basis.
2. **SBE Set-Aside** – GDC may, at its sole discretion, establish a race-neutral small business set-aside for certain projects/packages for Prime contracting with DBEs/SBEs certified with New York State UCP/New Jersey UCP/PANYNJ. GDC will consider the nature of the scope, contracting opportunities, historical data, and the pool of available DBEs/SBEs certified with New York State UCP/New Jersey UCP/PANYNJ, to determine if this is feasible and suitable.
3. **Multi-Year Design-Build or Mega Contracts** – GDC may, at its sole discretion, require bidders/proposers on the Prime contract to specify elements of the contract

or specific contracts that are of a size that small businesses can reasonably perform be structured for competition or award to DBEs/SBEs.

The GDC SBE Program contracts may have SBE goals. GDC will define SBEs as follows: DBE firms that are certified with New York State UCP, New Jersey UCP and PANYNJ, or SBE firms certified by PANYNJ.

GDC will monitor and track participation by SBEs on federally funded projects. Only small businesses that are also certified as DBEs will be counted, as race-neutral participation, toward the GDC's overall DBE goal. Participation by SBEs who are not certified as DBEs will be tracked but not reported to the FTA.

6 GOALS, GOOD FAITH EFFORTS, AND COUNTING (SUBPART C)

6.1 Set-Asides or Quotas (Part 26.43)

GDC does not use quotas in any way in the administration of this DBE Program.

6.2 Overall Goals (Part 26.45)

The GDC DBE Overall Goal will be submitted in TRAMS. This Part of the DBE Program as required under 49 CFR Part 26.45 will be updated on a triennial basis and evaluated annually to determine progress toward meeting the overall triennial goal requirements.

In accordance with Part 26.45(f), GDC will submit its overall goal to FTA on August 1 on three-year intervals.

Prior to submitting the goal, GDC will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale will be available for inspection during normal business hours at GDC's New York office located at 22 Cortlandt St, 16th Floor, New York, NY and GDC's New Jersey's office located at 3 Penn Plaza E., 10th Floor, Newark, NJ for 30 days following the date of the notice, and informing the public that GDC and FTA will accept comments on the goals for 30 days from the date of the notice. Such notice shall be published on GDC's website. At its sole discretion, GDC may also elect to publish the notice of the goal in newspapers, and other available stakeholder websites. Normally, GDC will do its due diligence to issue this notice by June 1, the year the Triennial DBE Goal Methodology is due. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposed Overall Goal may be reviewed.

GDC's Overall Goal submission to FTA will include a summary of information and comments received during this public participation process and its responses, if any.

GDC will begin using its overall goal on October 1 every 3 years, unless GDC is instructed otherwise by FTA. If GDC establishes a goal on a project basis in lieu of a Triennial Goal,

GDC will begin using its goal by the time of the first solicitation for a FTA- assisted contract for the project.

The Overall Goal will follow the Federal Fiscal year reporting cycle which starts October 1 and ends September 30th. The reports will be due to the FTA on a semi-annual basis (June 1 and December 1) using the *Uniform Report of DBE Commitments/Awards and Payments*.

If the awards and commitments shown on GDC's *Uniform Report of DBE Commitments/Awards and Payments* at the end of any Federal fiscal year are less than the overall goal applicable to that fiscal year, GDC will complete a Shortfall Analysis and corrective action plan as per 49 CFR Part 26.47 by December 28 of each year the DBE goal is not met. GDC will retain this analysis for at least three (3) years for review by FTA.

The Shortfall Analysis shall contain the DBE goal attainment for the applicable Federal Fiscal year, reasons why the DBE goal was not met and a corrective action plan/schedule with specific steps and milestones to correct any shortfall or deficiencies associated with the overall goal or stand-alone goal analysis so that GDC is able to meet fully the goal in the new Federal Fiscal year or before the completion of the stand-alone project specific goal.

Per 49 CFR Part 26.51 (f) GDC will ensure that its DBE program continues to be narrowly tailored.

6.3 Transit Vehicle Manufacturers Goals (Part 26.49)

GDC does not operate public transportation services and does not anticipate purchasing or participating in any USDOT-assisted transit vehicle procurements. GDC will not be responsible for the operations of trains or buses and therefore is not subject to 49 CFR Part 26.49.

In the event GDC's operations change and it becomes subject to 49 CFR Part 26.49, GDC will require each Transit Vehicle Manufacturer, to certify that it has complied with the requirements of 49 CFR Part 26.49 as a condition of authorization to bid or propose on USDOT-assisted transit vehicle procurements. All FTA approved TVMs will be collected by GDC as a condition precedent to allowing bidders/proposers to participate in the procurement process for TVMs. GDC will then submit to FTA; the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement within 30 days of making an award. for submission to the FTA.

6.4 Approach to Reaching the Goal (Part 26.51) (a-c))

The Triennial Goal Methodology for GDC's overall goal will be submitted in TRAMS every three years as required. GDC will continue to review and implement means to meet its

overall triennial goal, including but not limited to:

- Hosting networking events to connect primes and subcontractors
- Posting procurements on the GDC website
- Email “blasts” to communicate upcoming procurements
- Hosting a vendor portal on the GDC website
- Provide direct resources or a resource directory for subcontractor technical assistance, and supportive services, e.g. bonding assistance

6.5 Contract Goals (Parts 26.51(d-g))

GDC will use contract goals to meet the overall DBE goal GDC it does not project being able to meet the overall DBE goal 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 the overall goal.

GDC will establish contract goals only on FTA-assisted contracts that have subcontracting opportunities. Per DBE regulations, as defined under 49 CFR Part 26.51(e), GDC is not required to establish a contract goal on every contract. GDC will evaluate each contract individually, and based on the type of contract, subcontracting opportunities, type and location of work, availability of DBEs to perform the particular type of work, and any other information deemed necessary or relevant, GDC will decide whether a contract warrants a DBE goal. GDC will express its contract goals as a percentage of the total amount of a FTA-assisted contract.

6.6 Good Faith Efforts Procedures (Part 26.53)

6.6.1 Demonstration of Good Faith Efforts (Parts 26.53)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder who has made good faith efforts to meet the contract goal. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26 titled, Guidance Concerning Good Faith Efforts.

The DBELO will be responsible for determining whether a bidder who did not meet the contract goal has documented sufficient good faith efforts in order to be regarded as a responsive bidder.

GDC will ensure that all good faith efforts information submitted by bidders to GDC is complete and accurate and adequately documents the bidder's good faith efforts before GDC commits to the award of the contract by the bidder.

6.6.2 Information to be Submitted (Part 26.53)

GDC treats bidder's compliance with good faith effort requirements as a matter of responsiveness. On Invitation for Bids procurements, GDC will award contracts to the

lowest responsive bidder. For the Request for Proposal with the best value criteria, the contracts will be awarded by GDC to the responsive proposer or proposers who best meet the evaluation criteria, cost, and other factors as deemed applicable by GDC. When GDC has specified a DBE goal on a contract, bidders/proposers must make adequate good faith efforts to meet the DBE goal to be deemed as a responsive bidder. The bidders/proposers can meet this requirement in one of two ways:

First, the bidder/proposer can meet the DBE participation goal assigned to the contract by demonstrating and documenting their DBE utilization/commitments found under Attachment 2 – DBE Enclosures 1 or 2, as deemed applicable, of this DBE Program, for at least the total percentage of the DBE goal assigned to this contract, or a percentage that exceeds the goal for the project. GDC will only accept DBE(s) that are certified with New York State UCP, New Jersey UCP or PANYNJ under the North American Industry Classification System (“NAICS”) code(s) that coincides with the scope of work that they will perform on the contract. All DBEs must be certified prior to the bid/proposal submission, except in a “design-build” or “turnkey” contracting situation or some on-call or task order contracts where DBEs can be added throughout the course of the contract performance. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information on DBE Enclosures 1 or 2, as deemed applicable, and DBE Enclosures 3 and 4 found under Attachment 2 of this DBE Program at the time of the bid/proposal submission to GDC:

- 6.6.1 The names and addresses of DBE firms that will participate in the contract,
- 6.6.2 A description of the work that each DBE will perform,
- 6.6.3 The dollar amount of the participation of each DBE firm participating,
- 6.6.4 Written and signed documentation of commitment to use a DBE Subcontractor whose participation it submits to meet a contract goal,
- 6.6.5 Written and signed confirmation from the DBE that it is participating in the contract as provided in the Prime Contractor’s commitment, and
- 6.6.6 Current DBE certification letters issued by the New York State UCP, New Jersey UCP or PANYNJ.

Second, if the bidder/proposer does not meet the DBE goal or is able to meet only part of the DBE goal assigned to the contract, the bidder/proposer must document adequate good faith efforts. Appendix A to 49 CFR Part 26 clearly states, “this means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.” GDC will follow the good faith efforts procedures set forth under 49 CFR Part 26.53 when a bidder/proposer does not meet the DBE goal and will require a bidder/proposer to complete DBE Enclosure 6, found under Attachment 2 of this DBE Program. Additionally, bidders/proposers are expected to document and provide

documentation to support adequate/sufficient good faith efforts to meet the DBE goal. As per 49 CFR Part 26, the kinds of efforts that are considered demonstrative of “good faith” efforts include, but are not limited to, the following:

1. Whether the bidders/proposers solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidders/proposers must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidders/proposers must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Whether the bidders/proposers selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Prime Contractor might otherwise prefer to perform these work items with its own forces.
3. Whether the bidders/proposers provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. Whether the bidders/proposers negotiated in good faith with interested DBEs. It is the bidder’s responsibility to make a portion of the work available to DBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and suppliers, so as to facilitate DBE participation. The fact that a bidder/proposer may perform 100% of the work with its own workforce is not sufficient justification to fail to negotiate with DBEs or to not meet the DBE participation goal assigned to a project.
5. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
6. Whether the bidders/proposers made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
7. Whether the bidders/proposers made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Whether the bidders/proposers effectively used the services of available community organizations, Contractors’ groups and other organizations to provide assistance in the recruitment and placement of DBEs, including GDC.
9. Bidders/proposers are required to submit copies of each DBE and non-DBE Subcontractor quotes submitted to them when a non-DBE Subcontractor was

selected over a DBE for work on the contract—so that GDC can review whether DBE prices were substantially higher—and contact the DBEs listed on a Contractor’s solicitation to inquire as to whether they were contacted by the Prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts. A bidder/proposer will not be deemed to demonstrate good faith if it rejects a DBE simply because it is not the low bidder or if it is unable to find a replacement DBE at the original price. It is important to note that a complete good faith efforts procedure is described under 49 Code of Federal Regulations (“CFR”) §26.53 for further guidance and review.

To award a contract to a bidder/proposer that has failed to meet the DBE goal, GDC will decide whether the Contractor made good faith efforts to actively, effectively, and aggressively seek DBEs to meet those goals prior to bid/proposal submission. Contractors are also responsible for collecting good faith efforts documentation of all major non-DBE Subcontractors/suppliers as part of their responsibility to implement the DBE Program. If, after reviewing the good faith efforts documentation submitted by the bidder/proposer, GDC determines that good faith efforts were met, the contract will be recommended for award to the responsive bidder/proposer.

If GDC determines that the apparent successful bidder/proposer has failed to meet the DBE goal or make adequate/sufficient good faith efforts, before awarding the contract, GDC will provide the bidder/proposer an opportunity for administrative reconsideration. An administrative reconsideration process is detailed under Part 26.53(d) of this DBE Program.

Multi-Year Design-Build, Turnkey, or other alternative method DBE (CMGC, CM at risk, etc.) Project Requirements (26.53e)

Primes responding to a Request for Proposal on a design-build procurement must submit an open-ended DBE Performance Plan (OEPP) with the proposal. The OEPPs must detail the types of work the prime will solicit DBEs to perform and a projected timeframe in which actual subcontracts will come to fruition. The GDC will monitor the prime’s adherence to the plan throughout the life of the contract to evaluate good faith efforts, and parties may agree to make written OEPP revisions throughout the life of the project.

In a design-build or other alternative method procurement, the bidder/proposer must make good faith efforts to meet or exceed the specified project DBE goal at the time of bid or proposal submission. To be considered a responsive bidder/proposer, when a DBE goal is specified for design-build and or other multi-year or other alternative method procurement projects, a bidder/proposer must indicate their DBE utilization/commitment on the DBE Enclosures 1 or 2, as deemed applicable, found under Attachment 2 of this DBE Program. GDC may require a submittal of all DBEs that will participate on the contract (design and construction phases) and list them on Enclosure 3 – Schedule of DBE Participation, which can be found under Attachment 2 of this DBE Program. Alternatively, GDC may require a submittal of certified DBE firms that will be performing services or providing supplies in the first year (unless a greater timeframe is specified/required) in the

design-build or other alternative method contract or provide documentation of adequate good faith efforts to attain the goal as per 49 CFR Part 26. All documentation evidencing good faith efforts shall be submitted with the bid/proposal. If awarded the contract, the Contractor/Consultant will be required to make good faith efforts to fulfill their commitment to DBE participation/utilization throughout the entire contract duration.

The successful Contractor/Consultant is expected to make good faith efforts to engage and utilize DBEs on an ongoing basis throughout the duration of the contract, and they will be expected to revise and submit updated DBE Enclosures 3 and 4, found under Attachment 1 of this DBE Program, on an as needed basis. It should be noted that each time a Contractor adds a DBE to the contract, GDC must review the DBE's certification with New York State UCP/New Jersey UCP/PANYNJ to ensure that the NAICS code/s coincide/s with the scope of work that the DBE is expected to perform on the project. The DBE utilization/good faith efforts will be reviewed to determine if the Contractors are in compliance with 49 CFR Part 26 as well as the terms of the DBE Contract Requirements of this DBE Program. Additionally, the successful Contractor/Consultant is required to make good faith efforts to fulfill their initial commitment to DBE/s participation/utilization throughout the entire contract duration as committed on the DBE Enclosure 1 or 2, as deemed applicable, found under Attachment 2 of this DBE Program.

Task Order or on-call DBE Contract Requirements

In a task order or on-call procurements, to be considered a responsive bidder/proposer, when a DBE goal is specified on the project, a bidder/proposer is required to make good faith efforts to meet the DBE goal identified in the bid solicitation by indicating their DBE utilization/commitment on the DBE Enclosures 1 and 2, as deemed applicable, found under Attachment 2 of this DBE Program, and listing some of the certified DBE firms the Contractor expects to perform work on the contract, on DBE Enclosure 3, found under Attachment 2 of this DBE Program. If the Contractor did not meet the DBE goal for the contract, it must make and submit adequate good faith efforts to attain the DBE goal. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Please note that all documentation evidencing good faith efforts shall be submitted with the bid/proposal.

The bidder/proposer should only specify the scope of work that the DBE/s will perform in the contract if GDC has determined and confirmed those specific initial tasks will be awarded. Otherwise, if GDC cannot confirm that a particular task will be awarded, then the bidder/proposer should indicate to be determined ("TBD") under the scope of work that the DBE(s) will perform. The bidder/proposer should never specify dollar values or make commitments to utilize DBEs for a specific contractual amount on a task order or on-call projects, as it is not known at the time of the bid/proposal by GDC which tasks will be awarded and what values will be associated with those tasks. Therefore, the bidder/proposer should indicate TBD under the agreed price to be paid to the DBE(s).

The successful Contractor/Consultant is expected to make good faith efforts to engage and utilize DBEs if any of the tasks are exercised/awarded. They will also be expected to revise and submit updated DBE Enclosures 3 and 4 found under Attachment 2 of this DBE Program if DBEs are added to the contract or if additional scopes of work are assigned to the original DBEs on the contract. It should be noted that each time a

Contractor/Consultant adds a DBE to the contract, GDC must review the DBE's certification with New York State UCP/New Jersey UCP/PANYNJ to ensure that the NAICS code(s) coincide(s) with the scope of work that the DBE is expected to perform on the contract. All good faith efforts documentation for each task order must be submitted to GDC and will be reviewed to determine if the Contractor/Consultant's efforts are in compliance with 49 CFR Part 26. Additionally, the Contractor/Consultant is required to make good faith efforts to fulfill their initial commitment to DBE(s) participation/utilization throughout the entire contract duration.

The GDC good faith efforts documentation, as described above under 49 CFR Part 26.53 will be included in GDC solicitations.

Administrative Reconsideration (Part 26.53(d))

Within five (5) days of being informed by GDC that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the Reconsideration Official/Designee that will be assigned as requested.

The Reconsideration Official, or their designee, will not have played any role in the original determination that the bidder did not document sufficient good faith efforts per 49 CFR Part 26.

As part of this reconsideration, the bidder 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 per 49 CFR Part 26. The bidder will have the opportunity to meet in person with its Reconsideration Official or its designee to discuss the issue of whether it met the goal or made adequate good faith efforts to do. GDC will send the bidder a written decision, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so as defined in the DBE regulations per 49 CFR Part 26. The result of the reconsideration process is not administratively appealable to the USDOT.

6.6.6 Detailed Process for Administrative Reconsideration (Part 26.53(d))

If GDC determines that the apparent successful bidder has failed to meet the DBE goal or make adequate/sufficient good faith efforts as defined in the DBE regulations per 49 CFR Part 26, before awarding the contract, GDC will provide the bidder an opportunity for administrative reconsideration.

1. The bidder will be informed in writing that their submittal was deemed non-responsive and will not be considered for contract award. The bidder may appeal this decision to the GDC Reconsideration Official/Designee. If the bidder wishes to appeal, they must do so in writing, within five (5) business days of being informed that their submission was non-compliant. As part of this reconsideration, the bidder must have the opportunity to provide written documentation or argument concerning the issue of whether it met the DBE goal or made adequate good faith

efforts to do so.

2. If the appeal is submitted in writing to GDC within the five (5) business day submission window, the Reconsideration Official/Designee will read the appeal letter and only review the original documentation initially submitted by the bidder to determine whether the DBE requirements have been satisfied through good faith efforts. The Reconsideration Official/Designee will be a member of GDC staff who did not take part in the initial good faith effort decision.
3. If the written appeal request is received by GDC after the five (5) business day submission window, it will be disallowed and the original GDC's determination that the submission was non-compliant will stand.
4. The bidder will have the opportunity to meet in person with GDC's Reconsideration Official/Designee to discuss the issue of whether it met the DBE goal or made adequate good faith efforts to do so as defined in the DBE regulations per 49 CFR Part 26.
5. If the Reconsideration Official/Designee determines that good faith efforts were met, the contract will be recommended for award to the bidder. If the Reconsideration Official/Designee determines that the bidder has failed to meet the good faith effort requirements, the bidder will be informed in writing. GDC will send the bidders 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.
6. The result of the reconsideration process is not administratively appealable to the USDOT.
7. The Reconsideration Official/Designee will only review the original documentation initially submitted, and no other information to decide whether the DBE requirements have been satisfied through good faith efforts as defined in the DBE regulations per 49 CFR Part 26.

6.6.7 Good Faith Efforts when a DBE is Replaced, Substituted, Terminated or Removed on a Contract (Part 26.53(f))

GDC will require a 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. GDC will require the Prime Contractor to notify the GDC immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

A Contractor must have good cause to remove/terminate/substitute/replace a DBE Subcontractor, and such removal/termination/substitution requires the consent and approval of GDC. This Part also includes reductions to the DBE's scope of services and/or commitment values. No DBE Subcontract Agreement may contain a "termination for

convenience" clause/provision because any termination for convenience provision/clause is contrary to the objectives of this part and the objectives of 49 CFR Part 26. To initiate the termination, substitution, removal or replacement process with a DBE Subcontractor/supplier (regardless of the tier), the Contractor or lower tier Contractor/Subcontractor must do the following:

1. Before transmitting to GDC its request to terminate and/or substitute a DBE Subcontractor, the Contractor must give notice in writing to the DBE Subcontractor and GDC. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to GDC at the time the original letter is sent to the DBE Subcontractor.
2. The Contractor must give the DBE Subcontractor five (5) business days to respond to the notice and provide the GDC with reasons, if any, why it objects to the proposed termination of its DBE contract and why the GDC should not consent the Contractor's action.
3. GDC will then open a formal investigation inclusive of review of all documentation, conduct interviews and site visits, if necessary. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution.
4. If GDC determines the Contractor has good cause to terminate the DBE firm, GDC will provide written consent of DBE removal and the requirements to substitute work to another DBE firm. If GDC finds that good cause does not exist to terminate the DBE firm, GDC will provide a written denial of the request to terminate/replace the DBE Subcontractor and will immediately request a corrective action plan from the Contractor. If a Contractor elects to terminate, substitute and or reduce the scope of work initially committed to a DBE without the approval or consent of GDC, this constitutes a material breach of a contract as set forth under 49 CFR Part 26.13.
5. For purposes of good cause to remove, terminate, or replace a DBE, the following circumstances should exist: (1) failure or refusal by the DBE Subcontractor to execute a written contract without good cause, (2) failure or refusal by the DBE Subcontractor to perform the work of its subcontract in a way consistent with normal industry practice and the Contractor has not acted in bad faith, (3) failure by the DBE Subcontractor to meet the Contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness by the DBE Subcontractor that creates a risk for the contract, (5) ineligibility by the DBE Subcontractor to work on public works project because of suspension or debarment proceedings, (6) a determination by GDC that the DBE is not a responsible Contractor, (7) voluntary withdrawal from the project by written notification that has been verified, (8) ineligibility to receive DBE participation credit for the type of work to be performed, (9) other documented good cause that compels the replacement of the DBE.

6. When a DBE Subcontractor is terminated with the approval of GDC or fails to complete its work on the contract for any reason, Prime Contractors are required to make good faith efforts to find another DBE Subcontractor to substitute for the original DBE.
7. Prime Contractors must show that it took all necessary and reasonable steps to find 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 contract goal GDC has established for this project. 49 CFR Part 26.53 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Additionally, Contractors are required to solicit the support and assistance of GDC DBE staff if they are unable to meet the DBE participation goal assigned to this contract.
8. The good faith efforts shall be documented by the Contractor. If GDC requests documentation under this provision, the Contractor shall submit the documentation to GDC within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor. GDC shall provide a written determination to the Contractor stating whether good faith efforts have been demonstrated.

Prime Contractors are required to comply with good faith efforts procedures as defined under 49 CFR Part 26.53 . Prime Contractors are required to comply with this Part of the DBE requirements as well as the DBE Program requirements as detailed in the DBE contract requirement document as well as the DBE regulations set forth under 49 CFR Part 26.

The Contractor shall ensure that tiered Subcontractors comply with good faith efforts requirements when a DBE is replaced, substituted, terminated or removed on a contract as defined under 49 CFR Part 26.53(f) and insert these provisions into all lower tiered Subcontractor Agreements, regardless of their certification status.

Failure by the Contractor to comply with or implement these requirements is a material breach of GDC's contract, which may result in the termination of the contract or such other remedy as GDC deems necessary. These legal remedies may include but is not limited to:

1. Withhold payments to the Contractor until the Contractor and/or higher-tier Subcontractor(s) pay the full amount determined to be owed to the Subcontractor;
2. Disqualify the Contractor from future bidding on GDC contracts as non-responsible;
3. Work with the Subcontractor to enforce any pertinent payment bond;
4. Pay the Subcontractor directly and deduct the amount from any retainage or monies owed by GDC to the Contractor;
5. Provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part; and/or

6. Issue a stop-work order until the Subcontractor is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages for delay against the Contractor.

If the Contractor fails or refuses to comply in the time specified, GDC's Procurement Department 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 GDC Procurement Department may issue a termination for default proceed or whatever other measures or penalties GDC deems necessary.

In addition, the Federal government has available several enforcement mechanisms (per 2 CFR Part 180, 2 CFR Part 1200) that it may apply to firms participating in the DBE Program, including, but not limited to, the following:

1. Suspension or debarment proceedings
2. Enforcement action
3. Prosecution

The GDC good faith efforts documentation, as described above under Part 26.53(f) of this DBE Program, and GDC contract requirements

Counting DBE Participation (Part 26.55)

GDC will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55. COUNTING DBE PARTICIPATION

Part 26.55 Counting DBE Participation

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

The DBE goal applies to the total value of all work performed under the contract which includes the value of all change orders, amendments, and modifications. Any partial waiver determination will be made at or near the conclusion of the contract when the totality of the circumstances can be taken into consideration and Contractor's efforts can be objectively evaluated. To count DBE participation toward the DBE goal established for this contract, the proposed DBE(s) must be certified as a DBE(s) with the New York State UCP, New Jersey UCP or PANYNJ under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Additionally, the DBE firm must be certified as a DBE and perform a CUF as defined in this DBE Contract Requirements. DBE certification does not, however, constitute a representation or warranty by GDC as to the qualification of any listed firm. In accordance with 49 CFR Part 26, GDC will require the total DBE participation commitment to be achieved in accordance with the following:

(a) When a DBE participates in a contract, you count only the value of the work performed by the DBE toward DBE goals.

(1) GDC will count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. That includes the cost of supplies and materials obtained by the DBE for the work of the contract, any supplies purchased, or equipment leased by the DBE (except supplies and equipment the DBE Subcontractor purchases or leases from the Prime Contractor or its affiliate);

(2) GDC will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of this contract, toward DBE goals, if GDC determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) GDC will count DBE work performed by DBE Prime Contractors for self- performance toward meeting the DBE goal, only for the scope of work that they are certified in as a DBE and at a percentage level they will be actually performing themselves with their own forces;

(4) Work performed by DBEs is deemed to include the cost of materials and supplies purchased and equipment leased by the DBE from non-DBE sources. Work subcontracted can only count if the Subcontractor is another eligible DBE;

(5) When a DBE performs as a participant in a joint venture, GDC will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals;

(6) GDC will count expenditures to a DBE Contractor toward DBE goals only if the DBE is performing a CUF on that contract;

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

(8) Each DBE must perform a CUF to be counted toward the DBE goal and at least thirty (30) percent of the work must be performed by a DBE of the total cost of its contract for the DBE to be presumed to be performing a CUF;

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

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

(b) Use the following factors in determining whether a DBE trucking company is performing a CUF:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one (1) fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may also lease trucks from non-DBE firms. GDC uses the option that permits limited DBE credit to be obtained for the use of trucks leased from non-DBE sources. This option permits counting of credit for the use of non-DBE trucks not to exceed the value of transportation services on the contract provided by DBE trucks. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE-owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

(5) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

(6) A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(c) GDC will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, GDC will count one hundred (100) percent of the cost of the materials or supplies toward DBE goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) If the materials or supplies are purchased from a DBE regular dealer, GDC will count sixty (60) percent of the cost of the materials or supplies toward DBE goals. For purposes of this Part, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(3) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease Agreement and not on an ad hoc or contract-by-contract basis.

(4) Manufacturers' representatives, brokers, packagers or other persons who arrange or expedite transactions are not regular dealers and shall be counted in the same manner as brokers; and

(5) In utilizing the DBE participation of a Broker, only the bona fide fees and or commissions earned by them for their performance of a CUF will count toward meeting the project goals. The bidder/proposer/Contractor must separate the bona fide brokerage fees and or commissions from the actual cost of the supplies or materials provided to determine the actual dollar amount of participation that can be counted towards meeting the goal.

(d) GDC will not count DBE participation towards the GDC's overall triennial goal for any dollar value of work performed under a contract with a DBE firm after it loses its DBE certification with the New York State UCP, New Jersey UCP or PANYNJ.

(e) GDC will not count the participation of a DBE Subcontractor 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.

JOINT VENTURES

i. For purposes of this document, a Joint Venture is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

ii. GDC will count toward its DBE goal a portion of the total dollar value of a contract with a joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE goal(s) and such services/supplies/NAICS codes are approved for DBE participation credit. The joint venture Agreement MUST specify the services, dollar value, reporting structure and details of the DBEs' performance requirements associated with the percentage of the joint venture ownership.

2. FLOW-DOWN PROVISIONS

While no Subcontractor will be considered a third-party beneficiary to the Contract between GDC and the Prime Contractor, GDC considers all Subcontractors of every tier to be agents of the Contractor. Therefore, every Contractor of every tier will be held to all the requirements of the Contract. With that understanding, the Contractor is well advised to conform all subcontracts to the terms and conditions found in GDC Contract. Also, it would be wise to make GDC Contract available to all Subcontractors wanting to review it. At the very least, the Contractor must include the following provisions in their subcontract Agreements with their DBE Subcontractors as well as ensure that all tiered Subcontractors comply with and insert the provisions of Part A - the nondiscrimination clause, 5., Prompt Payment provisions; 6., Joint Check Utilization; 7., DBE Removal/Termination/Substitution/Reduction of Scope provisions, and 8., Changes.

The Contractor will be required to submit to GDC all DBE subcontracts/purchase orders after the Contractor executes the subcontracts with DBEs or issue a purchase order. Throughout any contract or after the award of any GDC contract, including this contract, if the Contractor makes good faith efforts and engages or subcontracts with additional DBEs, the Contractor must get approval from GDC if the Contractor intends to count DBE participation from those additional DBEs. To count DBE participation toward the goal established for this contract or commitments made by the Contractor for DBE utilization, GDC must ensure that those additional DBEs are properly certified as a DBE(s) with New York State UCP/New Jersey UCP/PANYNJ under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Notwithstanding, GDC shall also request any appropriate documents it deems necessary including subcontract Agreements for review. The Contractor shall ensure that this information flows down to all tier Contractors that intends to subcontract or subcontracts with DBEs.

7 CERTIFICATION (SUBPARTS D AND E)

7.1 Certification Process (Parts 26.61 – 26.91)

GDC will use the New York State UCP, the New Jersey UCP and the PANYNJ DBE certification determinations and the associated DBE directories pursuant to the requirements of 49 CFR Part 26. GDC is not a DBE certifying entity.

For information about the certification process or to apply for certification, please refer to the following websites for more information: firms should contact:

New York State UCP Directory – <https://nysucp.newnycontracts.com>
New Jersey UCP Directory – <https://njucp.dbesystem.com>
PANYNJ Directory – <https://panynj.diversitysoftware.com>

7.2 Unified Certification Programs

GDC will become a member of the New York State UCP and the New Jersey UCP and will meet all the requirements of this Part. However, it should be noted that GDC is not a certifying agency. It is GDC's understanding that both New York State UCP and New Jersey UCP have been approved by USDOT and meet all the requirements of Part 26.81. Both New York State UCP and New Jersey UCP will be responsible for all certification and recertification determinations for the DBE Program.

8 COMPLIANCE AND ENFORCEMENT (SUBPART F)

8.1 Information, Confidentiality, and Cooperation (Part 26.107, 26.109)

GDC will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any provision of state or local law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information.

All participants of the GDC DBE Program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants, and appellants as well as Contractors using DBE firms to meet the goals) are required to cooperate in FTA fully and promptly and GDC's compliance reviews, investigations, and other requests for information. Failure to do so, will be grounds for appropriate action against the party involved (e.g., with respect to recipient: a finding of non-compliance; with respect to DBE firms: certification or removal of eligibility and/or debarment or suspension; with respect to a complainant or appellant: dismissal of the complaint or appeal; with respect to a Contractor: findings of non-responsibility for future contracts and/or debarment or suspension).

GDC and its Contractors, as well as any participants of GDC's DBE Program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any way in an investigation, proceeding, or hearing under this part. GDC is aware and understands that it is in non-compliance with 49 CFR Part 26 if it violates this prohibition.

9 COMPLAINTS AND DISPUTE RESOLUTION

Subcontractors are encouraged to try to resolve any issues pertaining to prompt payment or release of retainage directly with the Contractor (and any involved higher-tier Subcontractor(s)). If such resolution is not possible, GDC designated DBE staff/may utilize the following approach when receiving a complaint from a Subcontractor regarding issues pertaining to prompt payment or release of retainage:

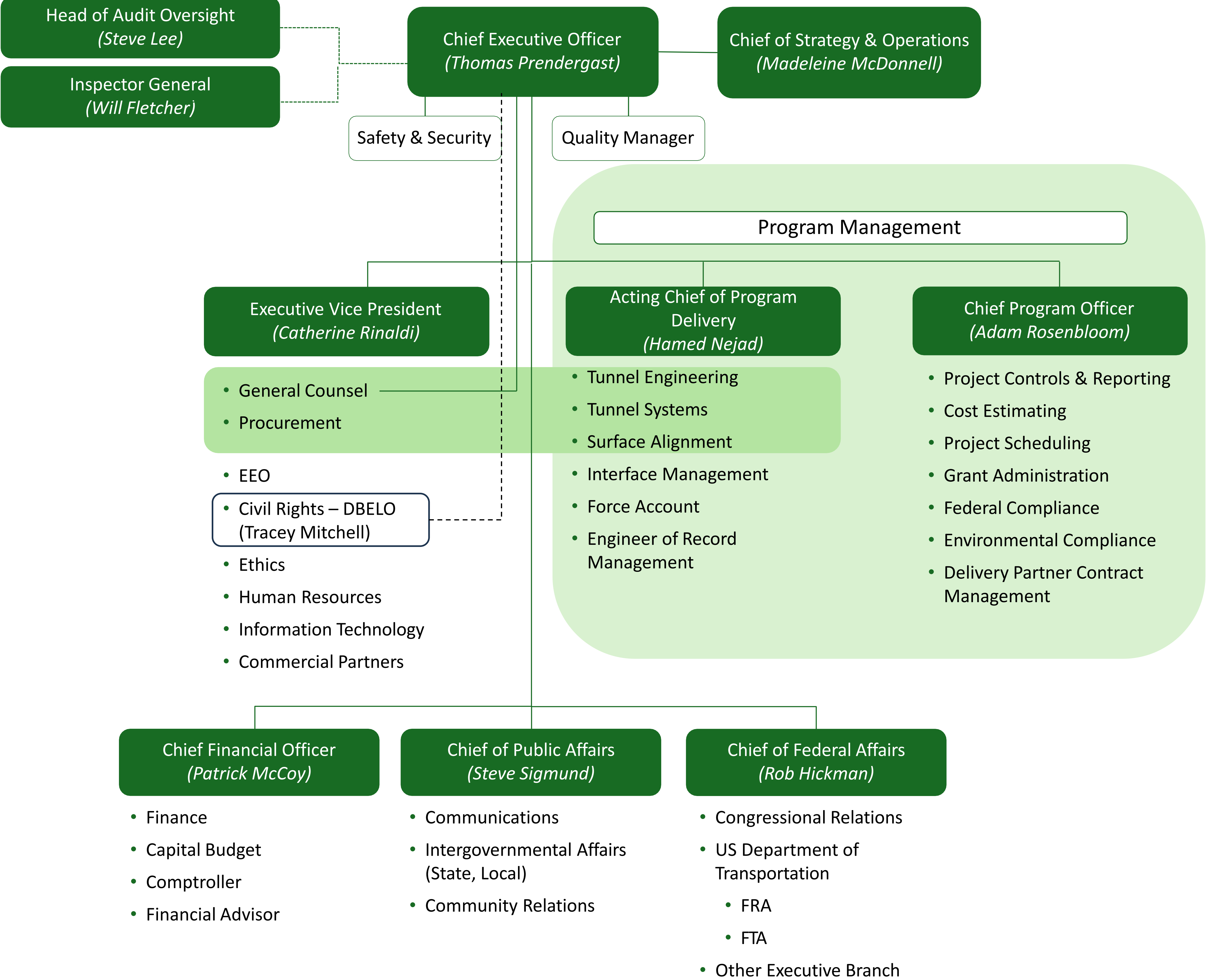
- i) Contact the Subcontractor directly to understand, validate, and collect all the applicable data associated with the complaint, which may include outstanding invoices, how long the invoices have been outstanding, understanding the steps taken by the Subcontractor thus far to resolve the issues and/or obtain payment before reaching out to GDC designated DBE staff, and any other relevant information. If such communication takes place, GDC designated DBE staff should inform the Subcontractor of its rights to file a claim against the Contractor's payment bond (if applicable) or to file a written statement of claim with GDC and the process required to pursue the claim should there be no resolution of the complaint under these procedures.
- ii) Contact the GDC Project Manager and the Contractor (and any involved higher-tier Subcontractor(s)) to discuss the complaint and request all information deemed

necessary to understand the nature of the complaint and to determine steps that may be taken to address the concern. GDC designated DBE staff should remind the Contractor of potential enforcement actions for non-compliance with the prompt payment or release of retainage provisions per the Contract with GDC.

- iii) Contact the Subcontractor again to discuss the complaint considering the information gathered from the GDC Project Manager and/or the Contractor (and any involved higher-tier Subcontractor(s)).
- iv) If deemed necessary, contact the pertinent GDC procurement staff member and/or an assigned GDC attorney and present all of the facts and issues relevant to the complaint.
- v) Request separate meetings with the Subcontractor and the Contractor (and any involved higher-tier Subcontractor(s)) with or without the pertinent GDC procurement staff member and/or the GDC attorney.
- vi) Host an internal meeting with all the appropriate GDC stakeholders to discuss the matter.
- vii) Conduct a settlement mediation with both the Subcontractor and Contractor (and any involved higher-tier Subcontractor(s)) present, with the pertinent GDC procurement staff member and/or GDC attorney.
- viii) Based on the review of all the pertinent and associated documents received and reviewed by GDC as well as the interviews and the totality of the circumstances, if it is found by the DBELO that payments to the Subcontractor/release of retainage should occur, GDC will instruct the Contractor to pay the Subcontractor. DBELO may find that the Contractor has not complied with the Contract's prompt payment or release of retainage requirements and determine that the Contractor owes payment to the Subcontractor. Such a determination will be in writing, issued by the DBELO.
- ix) DBELO of Civil Rights may seek internal consensus amongst GDC designated project Manager, pertinent GDC procurement staff member, Legal and other internal staff as deemed appropriate and necessary to take the following actions:
 - a. Withhold payments to the Contractor until the Contractor and/or higher-tier Subcontractor(s) pay the full amount determined to be owed to the Subcontractor;
 - b. Disqualify the Contractor from future bidding on GDC contracts as non-responsible;
 - c. Work with the Subcontractor to enforce any pertinent payment bond;
 - d. Pay the Subcontractor directly and deduct the amount from any retainage or monies owed by GDC to the Contractor;
 - e. Provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part; and/or
 - f. issue a stop-work order until the Subcontractor is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages for delay against the Contractor.

- x) Should GDC comes to consensus, and the DBEO determines that it cannot make findings by clear and convincing evidence, or that GDC has a conflict of interest in the determination of the issues presented, GDC shall rule that the Contractor, any higher-tier Subcontractors, and the Subcontractor should resolve the matter through other mechanisms, including legal proceedings, independent of GDC.
- xi) GDC's final decision cannot be appealed to GDC. However, either party may file an action in State Court seeking a writ of mandamus to overrule GDC's findings.

ATTACHMENT 1 ORGANIZATIONAL CHART



ATTACHMENT 2
Gateway Development Corporation (“GDC”)
Disadvantaged Business Enterprise (“DBE”) Enclosure
Checklist

Attachment 2

DRAFT Gateway Development Commission (“GDC”) Disadvantaged Business Enterprise (“DBE”) Enclosure Checklist

This DBE Enclosure checklist will help GDC verify that all the required DBE Enclosures are complete and submitted as required. Submit this DBE Enclosure checklist as the front page of your DBE Contract Requirements Enclosures. DBE Enclosures are to be submitted with the bid/proposal. Failure to submit all completed DBE Enclosures within the DBE Contract Requirements may result in your bid/proposal being deemed Non-Responsive. Modification of any DBE Enclosures prior to the official award of the contract will result in your bid/proposal being deemed Non-Responsive. Inconsistencies within the following DBE Enclosures: 1, 2, 3 and 4 may also result in your proposal being deemed Non-Responsive. All DBE Enclosures must be submitted with the bid/proposal. If you have any questions concerning the completion of any of the DBE Enclosures, please contact the GDC DBE Liaison Officer (“DBELO”) at [insert contact info], unless otherwise specified in the bid/proposal that all questions must be submitted through GDC designated Procurement Officer.

The following DBE Enclosures (DBE Enclosure 1 through DBE Enclosure 6) must be submitted with your bid or proposal as a matter of responsiveness.

[] DBE Enclosure 1: DBE Affidavit

This form must be completed, signed and notarized by all Prime Contractors, whether DBE or not, to acknowledge the percentage of DBE utilization and DBE goal commitment in this project.

[] DBE Enclosure 2: DBE Prime Affidavit

This form must be completed, notarized and signed only if the bidder/proposer is a DBE submitting a proposal/bid as a Prime Contractor. This form, if applicable, must be submitted with a current DBE certification letter(s) from the New York State Unified Certification Program (“UCP”), New Jersey UCP or Port Authority of New York and New Jersey (“PANYNJ”) to affirm DBE status.

[] DBE Enclosure 3: Schedule of DBE Participation

This form must be submitted by all bidders/proposers including DBE Prime Contractors. This form must include a list of DBEs that the bidder/proposer intends to do business with if awarded this contract. It must contain the following information: names and addresses of certified DBE firms, the scope of work they are to perform in this contract, the applicable North American Industry Classification System (“NAICS”) codes (found in their DBE certification with New York State UCP/ New Jersey UCP/PANYNJ) that coincides with the scope of work they will be performing in this contract, their projected start and finish date for work in this project as well as the dollar value of each proposed certified DBE contract. Subsequent to the award of the contract, the Prime Contractor will be responsible for revising the initial Schedule of DBE Participation any time a new DBE is added to the project. The Prime Contractor must also submit a copy of the DBE certification letter to GDC with any new DBE(s) added to the project. GDC will only accept and approve new DBE(s) that are currently certified with the New York State UCP/New Jersey

UCP/PANYNJ under the NAICS code/s that coincides with the scope of work that they will execute in this contract. The DBE firms listed on this Schedule of DBE Participation cannot be terminated, substituted nor does GDC allow reduction of work without the final approval of GDC. This form must be signed by the proposer/bidder. Subsequent to the award of this contract, the Prime Contractor must submit this form with each additional new DBEs added to this contract.

[] DBE Enclosure 4: Letter of Intent to Perform as a DBE Subcontractor

This form must be submitted by all bidders/proposers. It must contain the following information: names and addresses of each individual certified DBE firm listed on the Schedule of DBE Participation, the scope of work the DBE is expected to perform in this contract, the applicable NAICS codes found in their DBE certification with New York State UCP/New Jersey UCP/ PANYNJ that coincides with the scope of work the DBE will be performing in this contract, the DBE's projected start and finish date for work in this project and the dollar value for the proposed certified DBE Contractor. This form must be signed by both the proposer/bidder and the DBE Subcontractor. Subsequent to the award of this contract, the Prime Contractor must submit this form with each additional new DBEs added to this contract.

[] DBE Enclosure 5: Solicitation Statistics

This form is for statistical purposes as well as to assist GDC with Bidder's List. All bidders/proposers along with all their proposed Subcontractors, DBEs and non-DBEs must complete this form.

[] DBE Enclosure 6: Unavailability Certification

The bidders/proposers that did not meet the specified DBE goal identified in this bid/proposal or were only able to meet part of the DBE goal in this bid/proposal are required to complete this form. In addition to this form, bidders/proposers are required to document and submit adequate and sufficient good faith efforts as required under 49 CFR Part 26.53. If the DBE goal is met or exceed by the bidder/proposer, please indicate N/A on this form.

**DISADVANTAGED BUSINESS ENTERPRISE ("DBE") ENCLOSURES
DRAFT DBE ENCLOSURE 1 - DBE AFFIDAVIT**

THIS PAGE MUST BE COMPLETED BY ALL PRIME PROPOSERS/BIDDERS TO INDICATE THEIR PERCENTAGE OF DBE PARTICIPATION UTILIZATION/COMMITMENT.

GDC has specified a _____% DBE Participation goal on this project.

THIS BIDDER/PROPOSER IS COMMITTED TO MEETING _____% - DBE (Disadvantaged Business Enterprise) PARTICIPATION IN THIS CONTRACT.

Per 49 CFR Part 26 bidders/proposers must make adequate good faith efforts to meet this goal in order to be deemed as a responsive bidder. Award of the contract will be conditioned on meeting the requirements of this Part.

The undersigned Contractor hereby agrees and understands that they must comply with their DBE commitments in this project in conformity with the Requirements, Terms, and Conditions of this DBE Contract Requirements.

Business Name: _____

Contact Name: _____

Address: _____

City, State, ZIP: _____

Phone: _____ Fax: _____

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF _____ TO MAKE THIS AFFIDAVIT.

(Name of Business Entity)

(Date)

(Affiant Print Name)

(Title)

(Affiant's Signature)

State of _____:

City and County of _____:

On this _____ day of _____, _____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(Notary Public) (SEAL)

**DISADVANTAGED BUSINESS ENTERPRISE ("DBE") ENCLOSURES
DRAFT DBE ENCLOSURE 2 - DBE AFFIDAVIT**

THIS PAGE MUST BE COMPLETED BY THE DBE PRIME CONTRACTOR (PROPOSER/BIDDER)

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title)

And duly authorized representative of (the firm of) _____
(Name of Corporation or Joint Venture)

whose address is _____

(Telephone No.)

I hereby declare and affirm that I am a DBE and am certified with New York State Unified Certification Program ("UCP")/ the New Jersey UCP/the Port Authority – New York and New Jersey ("PANYNJ") as of the date that the GDC receives this bid/proposal for

_____ and that I will provide information and/or the
(Contract number and name)

DBE certification to document this fact with this DBE Enclosure.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Date) (Affiant Print Name) (Title)

(Affiant's Signature)

State of _____:

City and County of _____:

On this _____ day of _____, _____, before me, the

Undersigned officer personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(Notary Public) (SEAL)

**DISADVANTAGED BUSINESS ENTERPRISE ("DBE") ENCLOSURES
DRAFT DBE ENCLOSURE 3 – SCHEDULE OF DBE PARTICIPATION**

NAME OF CONTRACTOR:

GDC Contract No.

Total Proposed Contract Cost: US \$ _____

DBE FIRM NAME	ADDRESS	TYPE OF WORK (ELECTRICAL, PAVING, ETC.) AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED	NAICS code(s)	PROJECTED START & COMPLETION DATES FOR DBE	AGREED PRICE TO BE PAID TO DBE /ANTICIPATED

1. Please list all DBEs involved on the contract including the Prime Contractor if it is a DBE. All DBEs listed on this DBE Enclosure must be properly certified under the North American Industry Classification System ("NAICS") code(s) that coincides with the scope of work they will execute in this project. Work performed by DBEs for which they are not certified to perform will not count towards the DBE participation and/commitments. A current DBE certification for each listed DBE recorded on this schedule from the New York State UCP/New Jersey UCP/PANYNJ must accompany this DBE Enclosure. Failure to provide proof of current DBE certification for any or all listed DBEs will eliminate such listed DBE's participation, and work performed by such DBE will not count towards satisfaction of the DBE participation and/commitments. If additional pages are required to list all contracted DBEs, photocopy this DBE Enclosure as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE goal as follows:

- (i) Materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE goal;
- (ii) Materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE goal; and
- (iii) Materials or supplies obtained from a DBE broker firm only fees/commission will be counted toward the DBE goal.

Contractor must submit copies of all DBE subcontracts, purchase orders or change orders within thirty (30) days of execution of the notice to proceed. There may be exceptions to Task Order contracts, Design Build contracts, multi-year contracts and other alternative method contracts as DBEs are added throughout the course of the contracts and in some instances at different phases of the contract. DBE subs should not commence any work on this project without an executed subcontract Agreement or purchase order. Failure to submit a copy of the subcontract Agreement with a DBE Subcontractor to GDC may result in GDC not counting DBE participation towards the DBE goal.

NAME OF CONTRACTOR

SIGNATURE OF CONTRACTOR & DATE

Gateway Development Corporation

49

June 2025
Version 4.0

DISADVANTAGED BUSINESS ENTERPRISE ("DBE") ENCLOSURES
DRAFT DBE ENCLOSURE 4 – LETTER OF INTENT TO PERFORM AS A DBE SUBCONTRACTOR

Contract No. _____

The undersigned **Contractor** intends to engage the undersigned **DBE** to perform work in connection with the Project pursuant to a contract (the **DBE Contract**) between the Contractor and the DBE as [check one]:

_____an individual

_____a corporation

_____a partnership

_____a joint venture

The DBE status of the undersigned DBE is confirmed on the attached DBE Enclosure 3 - Schedule of DBE Participation and represents a company that is certified as of the date on which the DBE contract is executed.

TYPE OF WORK AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED	NAICS Codes	Projected Commencement Date	Projected Completion Date	Agreed Price to be Paid to DBE

_____ % of the Dollar value of the DBE Contract will be sublet and/or awarded to non-DBE Contractors and/or non-DBE suppliers. The undersigned proposer and the undersigned DBE will enter into the DBE contract for the above work conditioned upon the proposer's execution of the contract with GDC.

NAME OF CONTRACTOR

NAME OF DBE FIRM

OWNER/REPRESENTATIVE

OWNER/REPRESENTATIVE

ADDRESS

ADDRESS

EMAIL ADDRESS

EMAIL ADDRESS

SIGNATURE

SIGNATURE

TITLE

DATE

TITLE

DATE

**DISADVANTAGED BUSINESS ENTERPRISE ("DBE") ENCLOSURES
DRAFT DBE ENCLOSURE 5 – SOLICITATION STATISTICS**

GDC is required to create and maintain bidder's statistics for all firms bidding as Prime Contractors and bidding or quoting subcontracts on USDOT-assisted contracts per 49 CFR Part 26.11. The primary bidder/proposer is required to make copies of this form for all their intended Subcontractors whether DBEs or non-DBEs. The primary bidder/proposer is required to complete this form for their firm and send copies to each Subcontractor (whether DBEs or non-DBEs) and require each Subcontractor to complete and submit the completed forms with its subcontract bid documents to the primary bidder/proposer. The primary bidder/proposer must submit all completed forms with their bid/proposal to GDC.

Firm Name: _____

Firm Address (Office Reporting): _____

Status as a DBE or Non-DBE (check one. If Other, please specify):

DBE _____ Non-DBE/Other _____

Annual Gross Receipts of the Firm: (check one):

U.S. \$0 to U.S. \$500,000 _____ U.S. \$500,001 to U.S. \$1Million _____

U.S. \$1Million to U.S. \$5Million _____ U.S. \$5Million to U.S. \$10Million _____

U.S. \$10Million to U.S. \$20Million _____ U.S. \$20Million to U.S. \$30.40Million _____

Above \$30.40Million _____

Age of the Firm: _____

**NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM ("NAICS") BID
CODE INFORMATION**

Enter the applicable NAICS codes in the designated area below for products and/or services you desire to provide to GDC. Please refer to the NAICS bid code master list at <https://www.census.gov/naics/>.

Enter all applicable NAICS Bid Codes for your business: _____

Contact Name and Title: _____

Signature: _____

Date: _____

**DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) ENCLOSURES
DRAFT DBE ENCLOSURE 6 – DBE UNAVAILABILITY CERTIFICATION**

I, _____, _____,
Name Title

of _____, certify that *[the Contractor]*, made the following efforts to meet the DBE goals on GDC’s Contract No. for the Project:

- *[Please attach any additional efforts and any/all additional pertinent documents you deem appropriate and necessary for documenting the good faith efforts you made to comply with 49 CFR Part 26.53 as part of this procurement that do not fit on this form]*
- A Contractor representative attended the pre-bid meeting. Yes _____ No _____
- Newspaper Advertisement Log: (attach copies of ads)

Newspaper/Publication	Type of Publication General/Trade	Dates of Advertisement

- Selected portions of the work to be performed by DBEs

Work Categories	Type of Bid (Subcontractor or Supplier)	Contractor's Estimated Budget	Additional Comments

- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.
- *[List any specific offers made by Contractor]*

- Solicited the following DBEs

Date Contacted	Name of DBE Firm	Contact Person	Phone #	Work Category/NAICS codes

- Followed up with initial contacts

Date	Name of DBE	Phone #	Bidding (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of DBE including GDC:

Date	Organization	Phone #

As shown by the documentation provided to GDC, the Contractor feels that it has made adequate good faith efforts as defined under 49 CFR Part 26.53 to attain the DBE goal on this contract.

Signature: _____

Date: _____