

1 19A NCAC 02D .1101 is readopted as published in 33:12 NCR 1331-1332 with changes:

2
3 **19A NCAC 02D .1101 PURPOSE AND SCOPE**

4 (a) ~~The North Carolina Department of Transportation~~ shall ensure that Disadvantaged Business Enterprises ~~(DBE)~~
5 ~~(DBE)~~, have the opportunity to participate in the performance of contracts financed in whole or in part with Federal
6 funds.

7 (b) ~~The North Carolina Department of Transportation~~ shall ensure that Disadvantaged Minority-owned Minority
8 Business Enterprises (MBE) and Women Disadvantaged Women-owned Business Enterprises (WBE) may have the
9 opportunity to participate in the performance of contracts financed ~~[in whole or in part]~~ with non-Federal funds.

10 ~~(e) Contracts financed [in whole or in part] with federal funds shall comply with 49[C.F.R. §§ 23 and 26.] CFR 23~~
11 ~~and 26. Contracts financed with non federal funds shall comply with G.S. 136-28.4 and 49 [C.F.R. §§ 23 and 26.]~~
12 ~~CFR 23 and 26.~~

13 ~~(d) 49[C.F.R. §§ 23 and 26.] CFR 23 and 26~~ (c) 49 C.F.R. Part 23, Participation of Disadvantaged Business Enterprise
14 in Airport Concession, and Part 26, Participation by Disadvantaged Business Enterprises in Department of
15 Transportation Financial Assistance Programs. are incorporated by reference, including all subsequent amendments
16 and editions. 49 C.F.R. §§ 23 and 26 are [is] available at no cost by accessing <https://www.govinfo.gov/>.

17 ~~(e)(d) [Written appeals shall be sent to the following address: U.S. Department of Transportation, Departmental Office~~
18 ~~of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.]~~ The DBE/UCP Program Manager may
19 be contacted by phone at 919-[508-1852.] 707-2800.

20 ~~[(f) The DBE/UCP Program Manager is the Department contact for the Unified Certification Program. Mail addressed~~
21 ~~to the DBE/UCP Program Manager may be sent to 1511 Mail Service Center, Raleigh, NC 27699-1511. The~~
22 ~~DBE/UCP Program Manager may be contacted by phone at 919-508-1852.]~~ (c) The Department DBE, MBE, and
23 WBE directory may be accessed, at no cost to the public, by visiting
24 <https://www.ebs.nc.gov/VendorDirectory/default.html>.

25 ~~[(g) The Department DBE, MBE, and WBE directory may be accessed at no cost at~~
26 ~~<https://www.ebs.nc.gov/VendorDirectory/default.html>.]~~

27 ~~[(h)]~~ (f) Unified Certification Applications may be obtained at no cost by accessing <https://www.ncdot.gov>, or from
28 the DBE/UCP Program Manager, 919-[508-1852.] 707-2800. The substantive requirements of the Unified
29 Certification Application are detailed at 19A NCAC 02D .1103. ~~Information referenced in this Section may be viewed~~
30 ~~or obtained from the following sources:~~

31 (1) ~~49 CFR 23 and 26 is available at website <http://www.gpoaccess.gov/cfr/index.html> or may be~~
32 ~~purchased at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office,~~
33 ~~Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9238, telephone number~~
34 ~~202-512-1800.~~

35 (2) ~~DBE written appeals: U.S. Department of Transportation, Office of Civil Rights, 400 7th Street,~~
36 ~~SW, Room 5414, Washington, DC 20590.~~

1 ~~(3) The Department's State Contractor Utilization Engineer, 1509 Mail Service Center, Raleigh, NC~~
2 ~~27699-1509, telephone number 919-733-7174.~~

3 ~~(4) Disadvantaged/Minority/Women Business Enterprise Directory:~~
4 ~~<http://apps.dot.state.nc.us/vendor/directory/>.~~

5 ~~(5) Unified Certification Application: <http://www.ncdot.org> or may be obtained at no cost from the~~
6 ~~State Contractor Management Engineer, Telephone number, (919) 733-7174.~~

7
8 *History Note: Authority G.S. 136-28.4; 143B-348;*
9 *Eff. April 30, 1997;*
10 *Amended Eff. February 1, 2008;*
11 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1102 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1102 DEFINITIONS**

4 For Purposes [the purposes] of the rules [in addition to the terms defined in G.S. 136-28.4, [Rules]in this Section, the
5 following terms shall [apply.]apply: apply for purposes of this Section:

6 (1) Disadvantaged Business Enterprise shall have the same meaning as ~~shown~~ provided in 49 C.F.R. §
7 26.5(2). 49 CFR 26 Subpart A.

8 ~~(2) Minority shall be defined in accordance with G.S. 136-28.4.~~

9 ~~(3) Women shall be defined in accordance with G.S. 136-28.4.~~

10 ~~(4)(2)~~ Disadvantaged Minority-owned Business Business/Business Enterprise shall have the same
11 meaning as a Disadvantaged Business Enterprise. Enterprise as shown [provided]in[49 C.F.R. §
12 26.5(2).]49 CFR 26 Subpart A.

13 ~~(5)(3)~~ Disadvantaged Women-owned Business Business/Business Enterprise shall have the same meaning
14 as a Disadvantaged Business Enterprise. Enterprise as shown [provided]in[49 C.F.R. § 26.5(2).]
15 49 CFR 26 Subpart A.

16 ~~(4)~~ Minority Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise.

17 ~~(5)~~ Women Business Enterprise shall have the same meaning as Disadvantaged Business Enterprise.

18 (6) The Department's Unified Certification Program (UCP) is responsible for certification of
19 Disadvantaged Business Enterprises in accordance with ~~shall have the same meaning as shown~~
20 ~~[provided]in 49 C.F.R. Part 26.[49 C.F.R. §§ 26.81 through 26.91.] 49 CFR 26 Subpart E.~~

21
22 *History Note:* Authority G.S. 136-28.4; 143B-348;

23 *Eff. April 30, 1997;*

24 *Amended Eff. February 1, 2008;*

25 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1103 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1103 CERTIFICATION OF FIRMS**

4 (a) In order to be certified by the Department as a Disadvantaged Business Enterprise, disadvantaged Minority-owned
5 Business Enterprise, or disadvantaged Women-owned Business Enterprise, the business enterprise shall submit a
6 Unified Certification Application and supporting documentation to the Department. Information on Unified
7 Certification Applications and its requirements may be found at 49 C.F.R. Appendix F to Part 26 or by accessing
8 https://connect.ncdot.gov/business/SmallBusiness/Disadvantaged%20Businesses%20Documents/DBE_1b.pdf.

9 Please send applications to NCDOT DBE Certification, 1511 MAIL SERVICE CENTER, RALEIGH, NC 27699-
10 1511. The Department's Unified Certification Program shall be responsible for the certification of all Disadvantaged
11 Business Enterprise, Minority Business Enterprise, and Women Business Enterprise program participants.

12 (b) Upon Receipt of the application, the Department shall review the application in accordance with the applicable
13 certification standards and procedures as set forth in 49 C.F.R. 23.31 and 49 C.F.R. 26.61 through 26.91. Any
14 Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms wishing to
15 participate in the goals programs of the Department shall be certified by the Department.

16 (c) The Department shall conduct a certification review after it receives a completed Unified Certification Application
17 and required supporting documentation. The certification review shall be conducted in accordance with the [49 C.F.R.
18 §§ 23 and 26.] 49 CFR 23 and 26.

19 (d) Eligibility shall be in accordance with the [49 C.F.R. §§ 26.61 through 26.91.] 49 CFR 26 Subparts D and E.

20
21 *History Note: Authority G.S. 136-28.4; 143B-348;*

22 *Eff. April 30, 1997;*

23 *Amended Eff. February 1, 2008;*

24 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1104 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1104 RENEWAL OF CERTIFICATION**

4 (a) Each firm certified as a Disadvantaged Business Enterprise, Minority-disadvantaged Minority-owned Business
5 Enterprise, or Women-disadvantaged Women-owned Business Enterprise shall satisfy the annual affidavit
6 requirements of 49 C.F.R. 26.83(i).review its certification annually. The annual review shall be conducted in
7 accordance with the[49 C.F.R. §§ 23 and 26.] 49 CFR 26.

8 ~~(b) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business~~
9 ~~Enterprise shall be recertified every three years in accordance with the[49 C.F.R. §§ 23 and 26.] 49 CFR 26.~~

10
11 *History Note: Authority G.S. 143B-348;*

12 *Eff. April 30, 1997;*

13 *Amended Eff. February 1, 2008;*

14 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1105 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL**

4 ~~Any~~ Pursuant to, and in accordance with, 49 C.F.R. 26.83(i), any time a firm certified with the Department has a
5 change of ownership, control, business size, type of work, or other factors that affect the firm's eligibility [eligibility,
6 as set out in [49 C.F.R. §§ 23 and 26.61 through 26.91,] 49 CFR 26 Subparts D and E as a Disadvantaged Business
7 Enterprise, ~~Minority-disadvantaged Minority-owned~~ Business Enterprise, or ~~Women-disadvantaged Women-owned~~
8 Business Enterprise, the firm shall inform the Department in writing within 30 days of the change.

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10 *History Note: Authority G.S. 143B-348;*

11 *Eff. April 30, 1997;*

12 *Amended Eff. February 1, 2008;*

13 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1106 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1106 DECERTIFICATION**

4 If the Department finds a firm in non-compliance with the standards of eligibility, eligibility requirements of 49 C.F.R.
5 23 or 26, then that firm shall be suspended or decertified in accordance with 49 C.F.R. 23.31 through 23.39, if the
6 firm is a Disadvantaged Business Enterprise for Airport Concessions, or 49 C.F.R. 26.87 and 26.88 for all other firms.
7 49 C.F.R. §§ 23 and 26. ~~49 CFR 23 and 26.~~

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9 *History Note: Authority G.S. 143B-348;*

10 *Eff. April 30, 1997;*

11 *Amended Eff. February 1, 2008;*

12 *Readopted Eff. April 1, 2019.*

19A NCAC 02D .1107 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION

(a) Any Minority Business Enterprise firm or Women Business Enterprise firm denied certification or decertified may file an appeal of that action to the Department's DBE/UCP Program Manager. ~~State Contractor Management Engineer~~ as follows:

- (1) The appeal shall be received by the Department within 30 calendar days of the notice of denial. denial or decertification. Upon receipt of the appeal, the ~~State Contractor Management Engineer~~ DBE/UCP Program Manager shall schedule a hearing for the firm with the Department's Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise Appeals Committee.
- (2) If the denial of certification or decertification is upheld by the Department's appeals committee, the Minority Business Enterprise firm or Women Business Enterprise firm may file a written appeal to the Secretary of Transportation within 30 days of the committee's decision.
- (3) If the denial of certification is upheld by the Secretary of Transportation, the decision shall be final.

(b) Any Disadvantaged Business Enterprise firm denied certification or decertified may file an appeal of that action as follows:

- (1) The Disadvantaged Business Enterprise firm may file an appeal to the Department's DBE/UCP Program Manager. ~~State Contractor Management Engineer~~. The appeal shall be received by the Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the ~~State Contractor Management Engineer~~ DBE/UCP Program Manager shall schedule a hearing for the firm with the Department's appeals committee.
- (2) The Disadvantaged Business Enterprise firm may file a written appeal within 90 days of notice of appeal directly to the U.S. Department of Transportation, Office of Civil Rights in accordance with Parts 23 and 26 of Title 49 of the Code of Federal Regulations. ~~the 49 CFR 26~~.
- (3) The appeals may be filed simultaneously.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1108 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1108 GOALS**

4 (a) The Department shall perform an analysis to determine the availability of eligibility of ready, willing and able
5 Disadvantaged Business Enterprise, Minority-Minority-owned Business Enterprise, and Women-Women-owned
6 Business Enterprise firms relative to all businesses ready, willing and able available to participate in Department
7 projects, projects in accordance with 49 C.F.R. Part 26. Goals for ~~disadvantaged business enterprises, minority~~
8 ~~business enterprises, and women business enterprises~~ Disadvantaged Business Enterprise, [Minority] Minority-owned
9 Business Enterprise, and [Women-] Women-owned Business Enterprise firms shall be established in accordance with
10 [49 C.F.R. §§ 23 and 26] 49 C.F.R. 26.41 through 26.55, 49 CFR 26 and G.S. 136-28.4(b1). The goal or goals shall
11 be prescribed in the project proposal as a percent of the bidder's construction bid price.

12 (b) ~~The Contractor~~ A contractor shall ensure that eligible firms participate in at least the percentage of the contract as
13 required by the project proposal. For purposes of these Rules, "a contractor" is any party who participate in a State
14 funded or US Department of Transportation-assisted highway, transit, or airport project through a contract or
15 subcontract at any tier. shall exercise all necessary and reasonable steps to ensure that eligible firms participate in at
16 least the percentage of the contract as required by the project proposal.

17
18 *History Note: Authority G.S. 136-28.4; 143B-348;*

19 *Eff. April 30, 1997;*

20 *Amended Eff. February 1, 2008;*

21 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1109 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

2
3 **19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL**

4 Participation of Disadvantaged Business Enterprise, ~~Minority-disadvantaged~~ **Minority-owned** Business Enterprise,
5 and ~~Women~~ **Women-owned** Business Enterprise firms for federally funded and non-federally funded projects shall be
6 counted in accordance with ~~49 CFR 26 Subpart C~~ **[49 C.F.R. §§ 23 and 26.41 through 26.55]** ~~49 C.F.R. 26.41 through~~
7 ~~26.55 and G.S. 136-28.4.~~

8
9 *History Note: Authority G.S. 136-28.4; 143B-348;*

10 *Eff. April 30, 1997;*

11 *Amended Eff. February 1, 2008;*

12 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1110 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1110 ~~NON-ATTAINMENT OF~~ GOOD FAITH REQUIREMENTS FOR**
4 **ESTABLISHED GOALS**

5 A contractor who does not meet the goals established in the project shall be considered in non-attainment and shall
6 comply with the good faith requirements as set forth in ~~49 CFR 26 Subpart C~~ 49 C.F.R. §§ 23 and 26.41 through
7 26.55] 49 C.F.R. Appendix A Part 26 and G.S. 136-28.4.

8
9 *History Note:* *Authority G.S. 136-28.4; 143B-348;*
10 *Eff. April 30, 1997;*
11 *Amended Eff. February 1, 2008;*
12 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1111 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

2
3 **19A NCAC 02D .1111 ~~PERFORMANCE RELATED~~ REPLACEMENT OF ~~ELIGIBLE— CERTIFIED~~**
4 **FIRMS**

5 ~~(a) Certified firms who are~~ If a certified firm, utilized to meet the ~~goal(s) goal~~ established pursuant to 49 C.F.R. Part
6 26, is replaced, then the replacement shall comply with 49 CFR. 26.53, ~~and who are not performing their contractual~~
7 ~~obligation may be replaced.~~

8 ~~(b) Performance related replacement of eligible firms for federally funded projects and non federally funded projects~~
9 ~~shall meet the requirements of 49 C.F.R. §§ 26.41 through 26.55.] 49 CFR 26 Subpart C.~~

10
11 *History Note: Authority G.S. 136-28.4; 143B-348;*

12 *Eff. April 30, 1997;*

13 *Amended Eff. February 1, 2008;*

14 *Readopted Eff. April 1, 2019.*

1 19A NCAC 02D .1112 is readopted as published in 33:12 NCR 1331-1332 with changes as follows:

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3 **19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION**

4 (a) ~~Certified firms who are~~ If a certified firm, utilized to meet the goals(s)-goal established pursuant to 49 C.F.R. Part
5 26, and is become decertified decertified, and is may be replaced. The replacement shall comply with 49 C.F.R. 26.53.

6 ~~(b) Replacement of a firm removed by decertification for federally funded projects and non federally funded projects~~
7 ~~shall meet the requirements of [49 C.F.R. §§ 23 and 26.81 through 26.91.] 49 CFR 26 Subpart E.~~

8
9 *History Note: Authority G.S. 136-28.4; 143B-348;*

10 *Eff. April 30, 1997;*

11 *Amended Eff. February 1, 2008;*

12 *Readopted Eff. April 1, 2019.*