

2020-2022

City of Austin DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Cochran, Jolene
CITY OF AUSTIN



**CITY OF AUSTIN
DBE PROGRAM – 49 CFR PART 26
Fiscal Years 2020 - 2022**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The *City of Austin (City)* owner of the Austin-Bergstrom International Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The *City* has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the *City* has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the *City* to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Edward Campos has been delegated as the DBE Liaison Officer. *Jolene Cochran* will serve as DBELO Program Designee. In that capacity, the DBELO/DBELO Program Designee are responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City Manager, Austin City Council, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting the Program on City of Austin websites.

Spencer Cronk, City Manager

Date



CITY OF AUSTIN
DBE PROGRAM - 49CFR PART 26
Fiscal Years 2018 - 2020

POLICY STATEMENT

Section 26.1, 2623 Objectives/Policy Statement

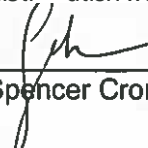
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7. To assist the development affirms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Veronica Briseno has been delegated as the DBE Liaison Officer. *Jolene Cochran* will serve as Program Designee. In that capacity, *Mrs. Cochran* is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The *City* has disseminated this policy statement to the City Manager, Austin City Council, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting the Program on City of Austin websites.



Spencer Cronk, City Manager

2018-01-11
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Austin is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2016 reports due December 1, 2016.

Bidders List: 26.11(c)

The City will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The City of Austin’s Capital Contracting Office (“contracting office”) maintains records of all

bidders which includes names, addresses, DBE and non-DBE status. The City of Austin's Small & Minority Business Resources Department and the Department of Aviation maintains records of all DBE firms which includes annual gross receipts.

What records do recipients keep and report: 26.11 (d) & (e)

As a certifying agency, City of Austin will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. We understand that these records must be retained in accordance with applicable record retention requirements of our financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for our financial assistance agreement, whichever is longer.

The City of Austin as a member of the Texas UCP established pursuant to § 26.81 of this part will report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of Texas certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Federal Financial Assistance Agreement

The *City of Austin* has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement the *City* signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The *City of Austin* shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The *City* shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The *City's* DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the *City* of its failure to carry out its approved program, the Department may impose sanctions 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.*).

Contract Assurance: 26.13b – *The City of Austin* will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the *City of Austin* deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The *City of Austin* is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

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

Edward Campos
Director, Small & Minority Resources Department
4201 Ed Bluestein Blvd, Austin, Texas 78721
Phone: 512-974-2156
Fax: 512-974-9163
Edward.Campos@austintexas.gov

Jolene Cochran
Program Compliance Coordinator, DBELO Program Designee
4201 Ed Bluestein Blvd, Austin, Texas 78721
Phone: 512-974-7673
Fax: 512-974-9163
Jolene.Cochran@austintexas.gov

In that capacity, the DBELO/DBELO Program Designee is responsible for implementing all aspects of the DBE program and ensuring that the City of Austin complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the *City Manager* concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO/DBELO Program Designee is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of thirty-one (31) full time employees, one (1) DBELO Program Designee to assist with daily responsibilities and one legal representative, to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid/proposal/response meetings.
8. Advises the City Executives, Austin City Council and affected departments on DBE matters and achievement.
9. Serves as DBE liaison for the City of Austin's Small and Minority Program's Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The City has not identified financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. However, the City will on an annual investigate the availability of such financial institutions.

Section 26.29 Prompt Payment Mechanisms

The *City* has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 business days after the subcontractor's work is satisfactorily completed. We will use one of the following methods to comply with this requirement:

- (1) Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

The City will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the *City of Austin*. When the *City* has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The City will provide appropriate means to enforce the requirements of this section. These means are detailed in Appendix D.

The City of Austin will include the following clause or similar in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the prime contractor receives from *City*. The prime contractor agrees further to return retainage payments to each subcontractor within *ten (10) days* after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Austin. This clause applies to both DBE and non-DBE subcontractors.

The City has included the prompt payment and retainage provision; in addition to the partial payment and its enforcements as part of the general conditions of the contract agreement.

Monitoring Payments to DBEs

The City addresses this section in Article 8 Procedure for Payment of the contract agreement. Monitoring payments to DBEs is the responsibility of the DBELO/DBELO Designees. The City will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the *City of Austin* or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

Reporting Prompt Payment Complaints is the responsibility of the DBELO/DBELO Designees. Payment claims reported to the City will be recorded and tracked by the contracting office. Reporting will be submitted by the DBELO.

Section 26.31 Directory

The *City of Austin* uses the State of Texas DBE directory, also known as the Diversity Management System maintained by the State.

The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. Attachment 4

The Texas UCP revises the Directory daily. The Directory may be found at <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?XID=7322&TN=txdot>

Section 26.33 Over-concentration

The City of Austin has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Austin has established a Small Business Program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The mission of the Small Business Program (SBP) is to foster job creation and support the growth of new and existing businesses by providing capacity building information, tools, and resources. The SBP provides counseling and assistance to small businesses with a focus to develop and empower small businesses in order to strengthen their business capability and survivability. SBP's main objective is to provide assistance and business solutions to emerging small businesses. To achieve this goal, SBP makes its own resources available to small business owner's, as well as provide points of contact to outside resources beyond the scope of what is provided by the SBP. Information regarding SBP can be found on their website at <http://www.austintexas.gov/department/small-business-development-program>.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. The City's monitoring and enforcement mechanisms are included in Attachment 7.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Section 26.39 Fostering small business participation.

The *City* has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The *City’s* small business element is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Austin does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The *City of Austin* will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City of Austin will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2018 (2018/2019/2020)	August 1, 2020 (2020/2021/2022)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the *City* does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use Census Bureau Data and Texas Unified Certification Program data as a method to determine our base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

Methodology will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan

holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the City of Austin will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the *[Recipient's]* goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the City of Austin will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site at www.austintexas.gov/snbr and may be posted in any other sources (e.g., department websites and trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office located at 4201 Ed Bluestein Boulevard, Austin, Texas 78721 and that the City of Austin and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed.

The names of the media used and the category of the media will be listed specifically in the goal calculation attachment, Attachment 5

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section

pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The *City* understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals.

The *City* will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the *City* awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

The City of Austin will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other

small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

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

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

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/proposer is to make good faith efforts. The bidder/proposer 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 Part 26.

The DBELO/Program Designee is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as *responsive*.

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

Information to be submitted (26.53(b))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or proposers will be required to submit the following information ("DBE Compliance Plan") in Attachment 6 to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE and non-DBE firms that will participate in the contract; including contract information and name and address of the prime contractor;
 - (ii) A description of the work that each DBE and non-DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS and commodity code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE and non-DBE firm participating;
 - (iv) Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

- (v) Written confirmation (“Letter of Intent (LOI)” from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’s commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) We will require that the bidder/proposer present the information required by paragraph (b)(2) of this section: *[Select either responsiveness or responsible option]*

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/proposer may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by City of Austin that it is not *responsive* because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing to the following reconsideration official:

James Scarboro, Purchasing Officer
124 West 8th Street, Suite 300
Austin, Texas 78701
512-974-2050
James.Scarboro@austintexas.gov

The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

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

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by proposers in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, our contracting office may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting office may issue a termination for default proceeding. Additional administrative remedies are detailed in Attachment 7.

The City of Austin 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. These good faith efforts shall be directed at finding 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 that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the *City of Austin* to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/proposers, including those who qualify as a DBE. A DBE contract goal of 15.77 percent as determined in the goal calculation in Attachment 5 has been established for this contract. The bidder/proposer shall make good faith efforts, as defined in Appendix

A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/proposer will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract 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.

If the firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Austin will use the certification standards and procedures of Subpart D & E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Small & Minority Business Resource Certification Division
4201 Ed Bluestein Blvd
Austin, Texas 78721
512-974-7645
Smbrcertification@austintexas.gov

Our certification application forms and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Texas Unified Certification Programs

City of Austin is the member of the Texas Unified Certification Program (TUCP) administered by the Texas Department of Transportation (TXDOT). The TUCP will meet all of the requirements of this section. The signed TUCP agreement (MOA) can be found in Attachment 9.

Section 26.83 Procedures for Certification Decisions

We will ensure the TUCP reviews the eligibility of DBEs that we certify under this section participate as DBEs in our program. We will take the required steps outlined in 26.83(c) in determining whether a DBE firm meets the standards of subpart D of this part.

The firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility annually. These reviews will include the following components: an application, verification of small business size, and on on-site visit. Other documents may be requested on a case-by-case basis to determine continued eligibility.

Once we have certified a DBE, it shall remain certified until and unless we have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.

We will not require DBEs to reapply for certification or undergo a recertification process. However, we may conduct a certification review of a certified DBE firm, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to our attention that leads us to question the firm's eligibility, we may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

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

The TUCP requires all DBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with [Recipient's] application for certification.

The TUCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the City of Austin under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The TUCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts (e.g., submission of federal tax returns).

The TUCP will notify all currently certified DBE firms of these obligations [program should state how and when]. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including

personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of our decision to the Department pursuant to § 26.89 does not extend this period.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail.

To ensure separation of functions in a de-certification, the TUCP have determined that each certifying partner will appoint an independent hearing officer to serve as the decision-maker in de-certification proceedings. The TUCP have established an administrative "firewall" to ensure that an independent hearing officer will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

The City of Austin has established a DBE Committee comprised of individuals who have not participated in any way in the decertification proceeding against the firm. Appeals to the DBE Committee should be directed to:

DBE Committee c/o Nona Adam
124 West 8th Street, Suite 308
Austin, Texas 78701
512-974-2079
nona.adam@austintexas.gov

Section 26.88 Summary Suspension of Certification

The City of Austin shall follow the procedures consistent with 26.88 of this Part regarding suspending a DBEs certification.

We shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

We will immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE

fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

When a firm is suspended pursuant to 26.88 (a) or (b), the City of Austin will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the City of Austin information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, we will either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If we commence a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under paragraph 26.88 (a) or (b) is not appealable to the U.S. DOT.

The failure the City of Austin to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. DOT under § 26.89 of this part, as a constructive decertification.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to U.S. DOT. A firm that wants to file an appeal, must send a letter to the U.S. DOT 90 days of the date of the *City's* final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and

does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The TUCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The City of Austin is subject to the Texas Public Information Act, Texas Government Code, Title 5, Chapter 552.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The *City of Austin*, contractor, or any other participant in the 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 manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link (26.53)
- Attachment 2 Organizational Chart (26.25)
- Attachment 3 Bidder's List Collection Form (26.11)
- Attachment 4 DBE Directory or link to DBE Directory (26.31)
- Attachment 5 Overall Goal Calculations (26.45- 26.51) **Separate Submission**
- Attachment 6 Demonstration of DBE Participation & Good Faith Efforts
DBE Compliance Plan Appendix A-C (26.53)
- Attachment 7 DBE Monitoring and Enforcement Mechanisms (26.29; 26.37; 26.53(d))
- Attachment 8 DBE Certification Application Form (26.61-26.73)
- Attachment 9 Texas UCP Agreement (MOA) (26.81)
- Attachment 10 Small Business Element Program (26.39)
- Appendix A Good Faith Effort Process/Checklist (26.53)
- Appendix B Uniform Report of DBE Awards (26.11)
- Appendix C Small Business Development Program Affidavit (26.35)
- Appendix D Prompt Payment Section (26.29)

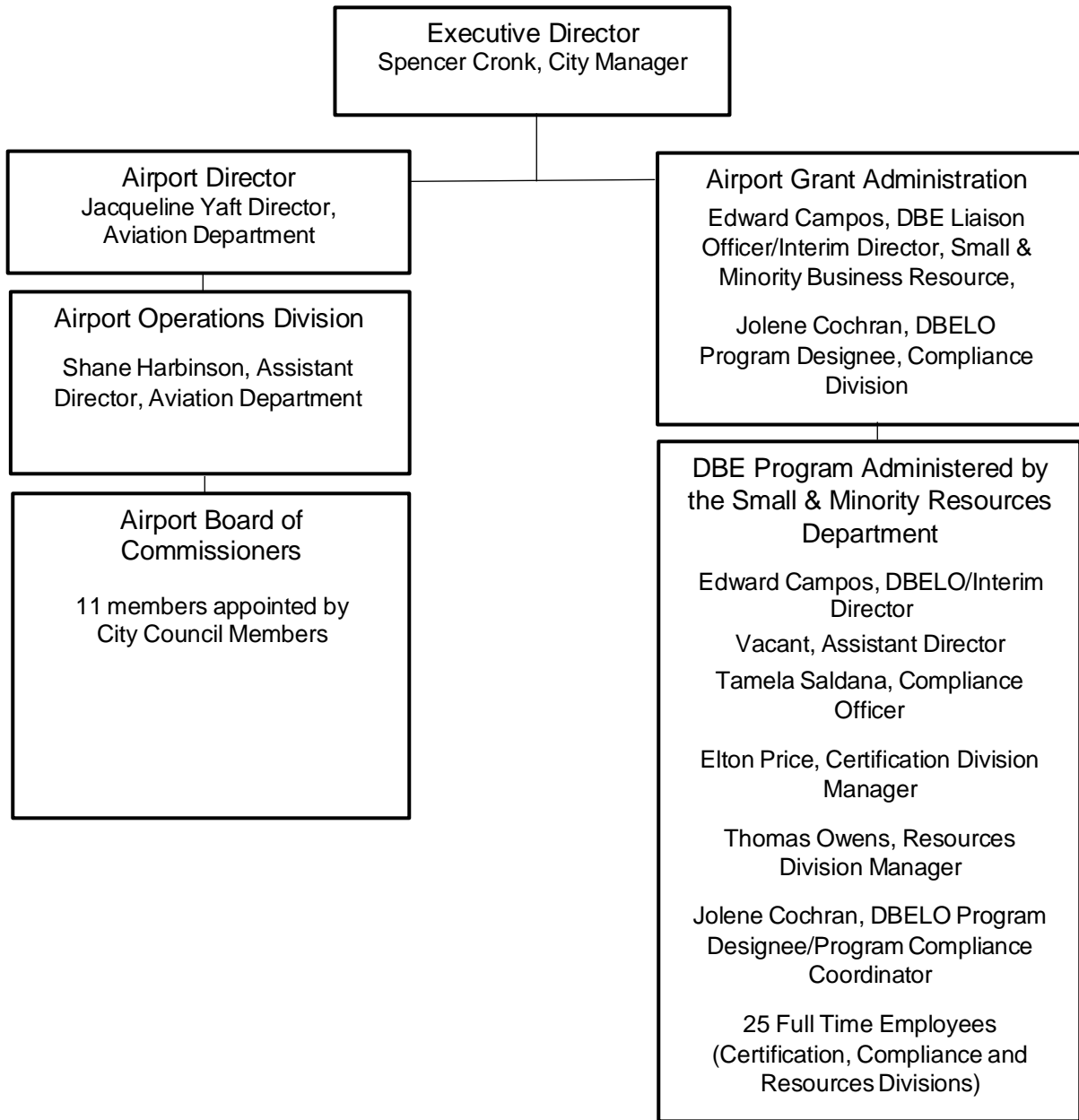
ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website
(See Electronic Code of Federal Regulations attached)

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7cb3aa4d674ea473df201dbd44120a9e&mc=true&node=pt49.1.26&rgn=div5>

The screenshot shows the eCFR website interface. At the top, there is a navigation bar with links for 'Browse', 'Search', 'Recent Changes', 'Corrections', 'Reader Aids', and 'My eCFR'. A search bar is also present. Below the navigation bar, the 'Code of Federal Regulations' logo is displayed, along with the text 'A point in time eCFR system'. The main content area features a blue header for 'Title 49'. Below this, there are two informational boxes: one stating 'Displaying title 49, up to date as of 10/08/2021. Title 49 was last amended 10/07/2021. view historical versions' and another stating 'There have been changes in the last two weeks to Title 49. view changes'. A 'Go to CFR Reference' search bar is visible, with the example text 'ex: 1 CFR 1.1'. The bottom of the page shows a breadcrumb trail for 'Title 49 Transportation' and a 'Site Feedback' button.

ATTACHMENT 2
Organizational Chart

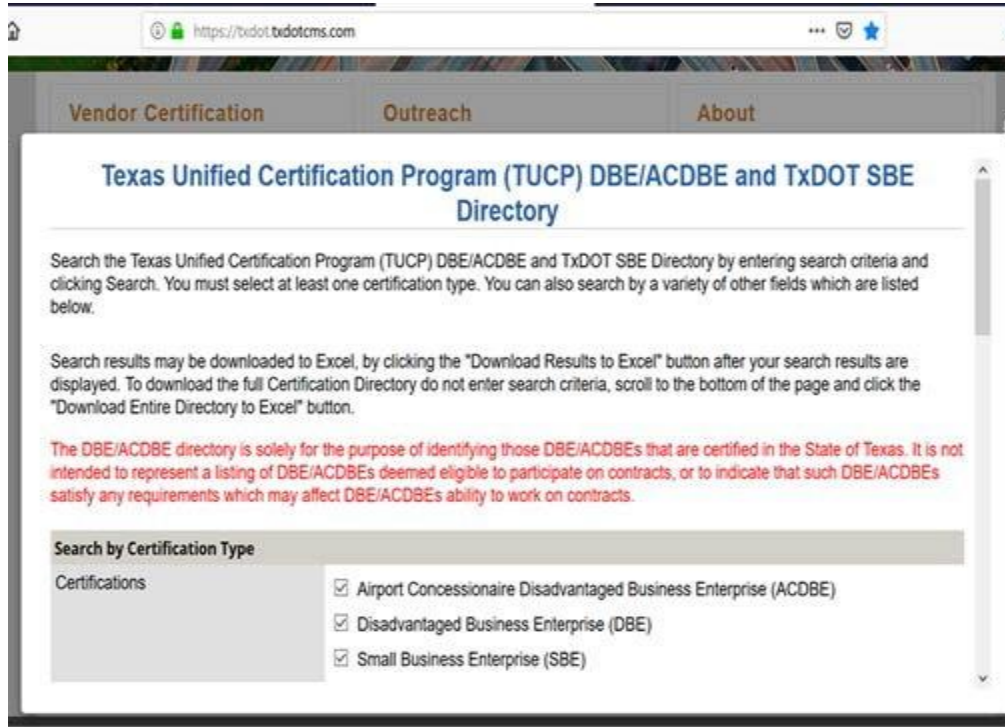


ATTACHMENT 3
Bidder's List Collection Form

Theof Austin's Capital Contracting Office maintains records of all bidders which include names, addresses, DBE and non-DBE status. The City of Austin's Small & Minority Resources Department maintains records of all DBE firm's project selection detail, original contract values and participation records.

ATTACHMENT 4

Texas Department of Transportation's UCP DBE Directory web link to DBE directory is located at <https://txdot.txdotcms.com/>



Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.

26.51(b) (1-9)

The City will meet the maximum feasible portion of its overall goal by using RC means of facilitating DBE participation and continue to operate in a Race and Gender Conscious environment. This determination is based on prior awards or prime contracts during the evaluation period (FY2016-FY2018). The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation and track and report RN and RC participation separately. RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

The City will continue its practice of using RN means of facilitating DBE participation, including but not limited to:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE’s and other small businesses;
6. Providing services to help DBE’s and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBE’s and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

The recipient estimates that in meeting its overall goal 11.81% through RC measures.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

The City of Austin will submit its overall DBE three-year goal to DOT as required by the set schedule.

Before establishing the overall goal, the City of Austin will consult with all affected stakeholders, Minority Service Providers, Chambers of Commerce, without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Austin efforts to establish a level playing field for the participation of DBEs. In addition, a Public Comments Hearing to discuss the proposed DBE goals will be held on Wednesday, November 14, 2018 at 3:00 p.m. at One Texas Center, Room 325. More information on the DBE Public Comments Hearing can be obtained online at www.austintexas.gov/smbr or by calling 512/974-7677.

In addition, we have a public notice posted on the City of Austin's Small & Minority Business Resource website, of the proposed overall goal, information the public that the proposed goal and its rationale are available for inspection during normal business hours at the Small & Minority Business Resources Department, 4201 Ed Bluestein Blvd, Austin, Texas 78721, for 30 days following the date of the notice, and informing the public that the City of Austin and DOT will accept comments on the goals during this time period.

PUBLIC NOTICE

Join the City of Austin's Small & Minority Business Resources Department (SMBR) to learn more about the

***Proposed Disadvantaged
Business Enterprise (DBE) Goal Presentation***

**One Texas Center
505 Barton Springs Road, Room 325
Wednesday, November 14, 2018
3:00 p.m. - 5:00 p.m.**

View the plan: [DBE Program Goal Proposal](#) or visit our website
www.austintexas.gov/smbr

[Click here](#) or sign up on Eventbrite
https://cityofaustin_proposeddbepian.eventbrite.com



Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Small & Minority Resources Department
Jolene Cochran, DBELO Program Designee
4201 Ed Bluestein Blvd
Austin, Texas 78721
Phone: 512-974-7673
E-mail address:
Jolene.Cochran@austintexas.gov

Federal Aviation Administration
Office of Civil Rights –AWP-9
Dolores P. Leyva, Compliance Specialist
P.O. Box 92007,
Los Angeles, Ca 90009-2007
Phone: 512-310-725-3939
E-Mail address: Dolores.Leyva@faa.gov

Contract Goals

The *City of Austin* will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the recipient's overall goal that is not projected to be met through the use of RN means.

The *City of Austin* will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBE's to perform the particular type of work).

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

ATTACHMENT 6
Demonstration of DBE Participation & Good Faith Efforts
DBE Compliance Plan Appendix A-C

Appendix A

IFB – DBE COMPLIANCE PLAN

*All sections (I-VIII) must be completed and submitted
prior to the due date in the solicitation documents*

Section I — Project Identification and Goals

Project Name	
Solicitation Number	

Project Goals	
DBE	

Section II — Prime Company Information

Name of Company	
Address	

IFB – DBE COMPLIANCE PLAN

All sections (I-VIII) must be completed and submitted prior to the due date in the solicitation documents

Section I — Project Identification and Goals

Project Name	
Solicitation Number	

Project Goals	
DBE	

Section II — Prime Company Information

Name of Company	
Address	
City, State Zip	
Phone	
Fax	
Name of Contact Person	
Is prime company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> DBE <input type="checkbox"/> DBE/Joint Venture <input type="checkbox"/>

I certify that the information included in this Compliance Plan is true and complete to the best of my knowledge and belief. I further understand and agree that this Compliance Plan shall become a part of my contract with the City of Austin.

Name and Title of Authorized Representative

Signature

Date

For SMBR Use Only:

I have reviewed this compliance plan and found that the Bidder **HAS** or **HAS NOT** complied as per 49 CFR Part 26 & City Code Chapter 2-9A.

Reviewing Counselor _____

Date _____

Director/Assistant Director _____

Date _____

Section III — Compliance Plan Summary

Note:

- Fill in all the blanks.
- For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- Compliance plans not complying with these requirements shall be rejected as non-responsive.

Total Base Bid (*if applicable*): \$ _____

Goals: Proposed Participation	
DBE's	%
Non-Certified	

Bidder's own participation in base bid (less any amount subcontracted):

Amount: \$ _____ Percentage: _____%

Is the stated DBE goal of the solicitation met? (*If no, attach documentation of Good Faith Efforts*)

Yes No

For SMBR Use Only:

Verified Goals:

DBE _____%

Section IV — Disclosure of DBE Participation

Duplicate As Needed

Note:

- Fill in all the blanks.
- For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- Compliance plans not complying with these requirements shall be rejected as non-responsive.

Name of DBE Certified Firm			
City of Austin Certified	DBE		Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Subcontract	\$		%
Commodity codes/describe services			

Name of DBE Certified Firm			
City of Austin Certified	DBE		Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Subcontract	\$		%
Commodity codes/describe services			

Name of DBE Certified Firm			
City of Austin Certified	DBE		Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Subcontract	\$		%
Commodity codes/describe services			

Name of DBE Certified Firm			
City of Austin Certified	DBE		Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Subcontract	\$		%
Commodity codes/describe services			

Section V — Disclosure of Non-Certified Subcontractors
Duplicate As Needed

Note:

- Fill in all the blanks.
- For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- Compliance plans not complying with these requirements shall be rejected as non-responsive.

Will non-certified subcontractors/suppliers be used? Yes No

Subcontractor		
Vendor Code		
Address/ City / State / Zip		
Contact Person	Phone #:	
Amount of Subcontract	\$	%
Commodity codes/describe services		
Reason DBE not used		

Subcontractor		
Vendor Code		
Address/ City / State / Zip		
Contact Person	Phone #:	
Amount of Subcontract	\$	%
Commodity codes/describe services		
Reason DBE not used		

Subcontractor		
Vendor Code		
Address/ City / State / Zip		
Contact Person	Phone #:	
Amount of Subcontract	\$	%
Commodity codes/describe services		
Reason DBE not used		

Subcontractor		
Vendor Code		
Address/ City / State / Zip		
Contact Person	Phone #:	
Amount of Subcontract	\$	%
Commodity codes/describe services		
Reason DBE not used		

Section VI Disclosure of Second-Level Subcontractors

Duplicate as Needed

Note:

- Fill in all the blanks.
- For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- Compliance plans not complying with these requirements shall be rejected as non-responsive.

Second-Level Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Second-Level Subcontract	\$		%
Commodity codes/describe services			
First-Level Subcontractor			

Second-Level Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Second-Level Subcontract	\$		%
Commodity codes/describe services			
First-Level Subcontractor			

Second-Level Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Second-Level Subcontract	\$		%
Commodity codes/describe services			
First-Level Subcontractor			

Second-Level Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person	Phone #:		
Amount of Second-Level Subcontract	\$		%
Commodity codes/describe services			
First-Level Subcontractor			

Section VII Disclosure of Primary and Alternate Trucking Subcontractors

Duplicate as Needed

Note:

- Fill in all the blanks.
- For project participation numbers use an EXACT number. DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.
- *Compliance Plans* not complying with these requirements shall be rejected as non-responsive

Primary Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:
Amount of Subcontract	\$		%
Commodity codes/describe services			

Alternate Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:

Alternate Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:

Alternate Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:

Alternate Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:

Alternate Trucking Subcontractor			
City of Austin Certified?	DBE	NON	Ethnic/Gender Code:
Vendor Code			
Address/ City / State / Zip			
Contact Person			Phone #:

SECTION VIII — DBE *COMPLIANCE PLAN* CHECK LIST

The DBE *Compliance Plan* must be completed and submitted by the time specified in the solicitation documents. If the goals were not achieved, Good Faith Efforts documentation must be submitted with the DBE *Compliance Plan*. All questions in Section VIII MUST be completed and submitted with the *Compliance Plan* if goals are not met.

1. Were written notices sent to all DBEs from the availability list at least five (5) business days prior to the submission of this *Compliance Plan*?

Yes No

2. Is documentation of those written notices attached?

Yes No

3. Is written documentation of efforts to reach agreements with the DBEs who responded affirmatively to the Bidder's written notice attached?

Yes No

4. Is documentation of other efforts to meet the goals attached?

Yes No

5. Were additional elements of work identified to achieve the goals?

Yes No

If yes, please explain: _____

6. Was SMBR or any other Minority or Women organization contacted for assistance?

Yes No

If yes, complete following:

Organization: _____

Contact Person: _____

Date of Contact: _____

LETTER TO POTENTIAL SUBCONTRACTORS

_____ is soliciting Disadvantaged Business Enterprise participation for the following City of Austin project. Plans are available at the Austin area plan rooms, our office, and the locations listed in the Invitation for Bids.

Name of Project: _____ Project/Solicitation

Number: _____ Location

of Pre-bid Conference (if any): _____

Bid Date and Time: _____

This Project Includes the Following Scopes of Service:

- Asbestos Abatement
- Carpentry
- Carpeting
- Concrete
- Demolition Services
- Doors and Frames
- Drilling
- Drywall
- Electrical
- Excavation Services
- Fabricated Steel
- Flooring
- Glazing Services
- Hardware
- Heavy Construction Equipment
- Other _____
- HVAC
- Insulation
- Lab and Field Testing Services
- Landscaping
- Masonry
- Millwork
- Painting
- Paving and Resurfacing
- Plumbing
- Roofing
- Stone
- Tile
- Weather and Waterproofing
- Welding
- Windows
- Other _____

Contact our office for detailed information on the scopes of work being subcontracted and the relevant terms and conditions of the contract.

Please contact: _____ at _____ or _____
(Name) (Telephone) (Fax)

All bids MUST be received by: _____

LETTER OF INTENT

Name of Prime Contractor: _____

Address: _____
Street City State Zip Code

Telephone: (____) _____ Fax: (____) _____ Proposed Contract Amount: \$ _____

Project/Solicitation Number: _____

Project Name: _____

Type of Agreement (check one): Lump Sum Unit Price Commodity

Period of Performance: _____

Level of Subcontracting (check one): 1st 2nd 3rd

Name of Subcontractor: _____

Address: _____
Street City State Zip Code

Telephone: (____) _____ Fax: (____) _____ Proposed Subcontract Amount: \$ _____

Commodity Code and description of work to be performed by Subcontractor Firm:

The Prime Contractor and the Subcontractor listed above agree that the Prime Contractor has provided the Subcontractor with a copy of the City's prevailing wage requirements.

Prime Contractor:

Name of Firm

Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 20____.

Subcontractor:

Name of Firm

Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 20____.

Notary Public

Notary Public

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to applicable Texas law.
3. The Code of the City of Austin, Texas and other applicable state and federal laws

Additional information on the DBE Monitoring and Enforcement processes can be found in Attachment 6, City of Austin DBE Program Packet. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

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

ATTACHMENT 8

DBE Certification Application Form or web link

http://www.austintexas.gov/sites/default/files/files/Small_Minority_Business/Certification/2016/DBE_application_11.03.2014.pdf



www.austintexas.gov/sites/default/files/files/Small_Minority_Business/Certification/2016/DBE_applica

ment contains forms. The filling of form fields is not supported. Open With

1 of 14 Automatic Zoom



Appendix F

UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?
You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?
First-time applicants for DBE certification must complete and submit this certification application and related

ATTACHMENT 9
State's UCP Agreement

TEXAS

MEMORANDUM OF AGREEMENT

for a

**DISADVANTAGED BUSINESS
UNIFIED CERTIFICATION PROGRAM**

TEXAS

MEMORANDUM OF AGREEMENT

for a

*DISADVANTAGED BUSINESS
UNIFIED CERTIFICATION PROGRAM*

U.S. DEPARTMENT OF TRANSPORTATION PARTNERS

*Texas Department of Transportation
City of Houston
City of Austin
Corpus Christi Regional Transportation Agency
North Central Texas Regional Certification Agency
South Central Texas Regional Certification Agency*

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STATE OF TEXAS
MEMORANDUM OF AGREEMENT

UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of Texas in accordance with Title 49 Parts 26 and 23 of the Code of Federal Regulations (49 CFR Parts 26 and 23). The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA). Each Certifying Partner in Texas is required to administer a DBE Certification Program in accordance with 49 CFR Part 26 and Part 26.81. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

A. Definitions

1. TUCP Certifying Partner

A State of Texas recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients and can issue or revoke DBE certifications.

2. Non-certifying TUCP Partner

A State of Texas recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency or via a TxDOT Letter of Agreement an entity that agrees to utilize the DBEs listed in TUCP Directory for purposes of their program for certification and or compliance purposes. A Non-Certifying Partner can neither issue nor revoke DBE certification.

3. Recipient

Any public entity which receives direct USDOT financial assistance.

4. Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

5. Grantee

Any public entity that has received USDOT assistance.

B. Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive committee will also be responsible for resolving any conflicts between certification actions between its members. The Standard Operating Procedures of the TUCP Section III-Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact person for the TUCP is the Texas Department of Transportation, DBE/HUB/SBE Section.

A Certifying TUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying TUCP Partner upon a six month notice to all TUCP Partners.

C. Purpose

The objectives of the Texas UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23.
- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
- Directives and guidance on DBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the U.S. DOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Certifying Partners.

- To provide a single DBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print. TxDOT shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

II TUCP PROGRAM DESCRIPTION

A. Partners' Roles, Responsibilities & Obligations

All TUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must comply with 49 CFR Parts 26 and 23.
- The TUCP Certifying Partners who are recipients or sub-recipients of federal funds must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.
- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures.
- If a TUCP certifying partner is no longer able or willing to uphold procedures outlined in this MOA and in the TUCP SOP, then that partner shall notify each partner in writing, and submit to TxDOT all certification files within 30 days to maintain proper certification coordination.
- TUCP certifying partners agree to assist and comply with FHWA in conducting partner reviews outlined in the TUCP SOP.

- Any request received by a TUCP Partner by organizations and entities to become certifying members of the TUCP will be forwarded to each TUCP Partner for review. The TUCP Certifying partners will make a recommendation and forward the request to USDOT for review and a recommendation.

B. DBE Directory Management:

TxDOT has agreed to manage the TUCP Directory and shall designate a Database Manager as agreed by signature of this MOA. Upon approval of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number/SSN;
- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);
- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;
- Original Certification Date;
- Name of TUCP Certifying Partner;
- Annual Review Date;

The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the electronic DBE database current;
- Make the electronic DBE database available to all TUCP Partners and other interested parties;
- Maintain the TUCP Website.

C. DBE Directory & Internet Access

The DBE Directory will be located on the TUCP website. In accordance with 49 CFR Part 26.31 and 23.31 (b), the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (3) digit NAICS code and description.

The TUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Annual Review Date
- Gender and Ethnicity

Each TUCP Partner by signature of this agreement agrees to submit the above information.

III TUCP PROGRAM COSTS AND FUNDING

The cost of creating and establishing the TUCP website and the electronic DBE Directory will be the responsibility of the Texas Department of Transportation. Each TUCP Partner has agreed to coordinate responding to information request or open records request for certification list or copies of the data base as appropriate.

A. Training and Resources

The TUCP Partners will conduct ongoing in-service training. The TUCP Partners will agree to rotate the duties of hosting, planning and conducting training sessions amongst the TUCP Partners.

IV CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. A Standard Operating Procedure (SOP) has been developed and will be utilized by all Certifying TUCP Partners. The SOP may be modified as needed and agreed upon by majority consensus of the Certifying TUCP Partners. If consensus can not be reached, the issue will be forwarded to FHWA – Texas Division for further guidance.

- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate "one-stop shopping" for applicants.

A. Geographic & Industry Considerations

The TUCP Certifying Partners have agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location and by industry. If a DBE applicant/firm works only in the highway construction industry, TxDOT agrees to process the application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner. If a firm is an applicant interested in airport DBE certification, the TUCP certifying partner agrees to forward the application to the appropriate TUCP agency based on geographical location or process within three to five business days.

City of Austin: Geographical: Bastrop, Caldwell, Hays, Travis and Williamson

City of Houston: Geographical: Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

Corpus Christi Regional Transportation Authority: Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

North Central Texas Regional Certification Agency: Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

South Central Texas Regional Certification Agency: Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, and Wilson.

Texas Department of Transportation: Geographical: All other remaining counties in Texas. All heavy highway construction categories indicating TxDOT only.

B. Quality Assurance (New Certifications)

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying TUCP Partners. Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

C. Annual Review Process

By signature of this agreement, DBEs certification updates will be conducted annually using the TUCP Annual Update "No Change" Affidavit as required in the SOP and following procedures outlined in 49 CFR Part 26.87. The TUCP Partner has agreed to conduct annual reviews of certified DBEs, conduct a DBE on-site review *every* three years in conjunction with the DBE firm's submittal of the Annual Update Affidavit per 49 CFR Part 26.83(h) or *every* five (5) years for corporations and partnerships and ten (10) years for sole proprietorships.

D. Decertification Procedures

The TUCP Partner agrees to process decertifications in compliance to 49 CFR Part 26.87. Provisions exist in the TUCP Standard Operating Procedure for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm. The TUCP SOP outlines how those complaints will be coordinated by the receiving partner.

E. Appeals Process and Procedures

An appeals procedure has been established as part of the TUCP SOP for appeals of denial of original certification, and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

- Denials of Original Certifications and Decertification: The DBE applicant has the opportunity to appeal to USDOT in accordance with 49 CFR Part 26.89. Firms that are decertified will have due process in accordance with 49 CFR Part 26.87.

F. Staff Training

Each TUCP Partner agrees to:

- Participate in annual staff training; assist with the development and coordination of training modules that support the SOP.
- Recruit instructors and determine locations for training workshops.
- Schedule joint training sessions.
- Conduct staff training to assure that all staff are knowledgeable of certification regulations and procedures as updates and changes are made to the regulations.

G. Unified DBE Directory

By signature of this MOA the TUCP Partners agrees to:

- Develop and complete parameters for Unified DBE Directory.
- Compare UCP Certifying Partners databases.
- Remove duplicate DBE firms.
- Develop common databases however nothing in this agreement excludes the certifying partners from creating and maintaining separate databases for other programmatic needs.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on TXDOT Website).

V. CHANGES TO THE MOA

This MOA can be amended by approval of the majority of the TUCP Partners. Changes to this MOA shall require a majority agreement by the TUCP Certifying Partners. In cases where there is not a majority agreement, the issue will be forwarded to USDOT for resolution and the partners agree to execute the decision of USDOT by signature of this MOA.

VI. **SUMMARY**

As a result of the requirements set forth in 49 CFR Parts 26 and 23, we the undersigned, agree to participate in the STATE OF TEXAS'S Unified Certification Program in accordance with the provisions of this MOA and agree to abide by its contents

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

City of Austin Antonio Garcia for Veronica Bressini Lara February 17, 2012
Name ELTON Price Title Certification
Agency City of Austin Division Manager

City of Houston Carleen D. Wright February 17,
Name Carleen D. Wright Title Director, DBELO
Agency City of Houston - Mayor's Office of Business Opportunity

Corpus Christi Regional Transportation Authority Abumada February 17, 2012
Name Jose G. Cruz Acda Title MANAGING DIRECTOR OF
Agency ADMINISTRATION

North Central Texas Regional Certification Agency Sheena Moran February 17, 2012
Name Sheena MORAN Title Agency Dirca
Agency

South Central Texas Regional Certification Agency Blaine R. Mitchell February 17, 2012
Name Blaine R. Mitchell Title Executive ^{III}
Agency

Texas Department of Transportation DL February 17, 2012
Name DL Title DBE/ MUD/BE. Program
Agency Director

ATTACHMENT 10
Small Business Element

Objective/Strategies

It is important to provide equal opportunities to all businesses interested in doing business with the City of Austin. The City shall review, develop and use measures to facilitate the participation of small businesses in City contracting opportunities with respect to USDOT funded projects.

The Small & Minority Business Resources Department (SMBR) and the Capital Contracting Office (CCO) have established the Small Business Construction Program (SBDP). This program is designed for construction projects with an estimated budget of less than \$50,000 as outlined in Texas Gov't Code 2254.003(a)(1)). These projects will be reserved for initial solicitation for certified SBEs. The SBCP is race and gender-neutral; projects facilitated through SBDP will not have goals and seek to:

To expand contract opportunities to small businesses, this program maintains a competitive environment while ensuring that contracts will be awarded to small businesses.

To enhance the City's minority programs, the SBCP program expands opportunities for small business enterprises (SBE) and complements the federal and local program. It addresses the Disparity Study recommendation for a race and gender neutral initiative.

Procurements within the SBCP are competitively bid by small businesses certified as a Small Business Enterprise (SBE).

An SBE is defined as a business whose gross receipts are less than \$14 million based upon a rolling three-year average.

SBEs are solicited for construction projects below \$50,000 (projects are re-solicited if no qualified small business bids are received.)

SBCP Eligibility

In order to qualify for inclusion in the SBCP, a firm and its affiliates must meet the Small Business Size Standards as reflected in the U.S. Small Business Administration's Subsector 238-Specialty Trade Contractors of \$15 million in average gross receipts for the past three years and be certified as a Small Business Enterprise (SBE) by the City of Austin.

The size standard is consistent with 49 CFR 26.5 and is no larger than the Small Business Administration's size standards. Personal Net Worth standards are be consistent with 49 CFR Part 26 thresholds.

Application process for Small Business Enterprise Certification requires on-line registration with Vendor Connection at the Purchasing Office's website and submission of only one of the SBE verification affidavits below:

SBCP Certified Public Accountant (CPA) Small Business Enterprise Affidavit and the Owner's current resume or;

SBCP Small Business Enterprise Affidavit and the Owner's current resume and three years business tax returns

Monitoring/Record Keeping

The City will implement the following to assist in fostering small business participation
Reviewing the USDOT funded projects to determine whether it is appropriate to utilize the Design-Build or Construction Manager-at-Risk alternative delivery methods which are conducive to unbundling contacts and providing greater subcontracting opportunities on a small scale, thus providing more opportunities for small businesses.

The City will promote the use of joint ventures on federal projects by educating vendors on the benefits of forming partnerships with smaller businesses.

The City will develop and deliver trainings to small businesses interested in working on airport related projects on topics such as: airport requirements including project certifications and qualifications, security clearances, and resources available to assist with future procurement interests. This will assist small businesses with the necessary tools and the confidence to compete against larger firms on airport related procurements.

The City will engage a third party construction company, seek volunteers, or utilize Department of Aviation staff in training small businesses interested in providing general construction trade services. The purpose of these trainings will be to broaden small businesses' skill sets to compete for more projects.

Implementation Timeline

The City of Austin's SBDP was approved by FAA in 2012.

Assurance

The City will make the following assurances:

1. assurance that the program is authorized under state law;
2. assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
5. assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
6. assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).

Appendix A
Good Faith Effort Process/Checklist
The Good Faith Effort process and checklist is part of the
DBE Compliance Plan Appendix A

Appendix A

SECTION VIII—DBE COMPLIANCE PLAN CHECK LIST

The DBE *Compliance Plan* must be completed and submitted by the time specified in the solicitation documents. If the goals were not achieved, Good Faith Efforts documentation must be submitted with the DBE *Compliance Plan*. All questions in Section VIII MUST be completed and submitted with the *Compliance Plan* if goals are not met.

1. Were written notices sent to all DBEs from the availability list at least five (5) business days prior to the submission of this *Compliance Plan*?

Yes No

2. Is documentation of those written notices attached?

Yes No

Appendix B

Uniform Report of DBE Awards

General Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS			
<small>**Please refer to the instructions sheet for directions on filling out this form**</small>			
1. Submitted to (check only one):	<input type="checkbox"/> FHWA	<input type="checkbox"/> FTA	<input type="checkbox"/> 1765 Subpart 12 Recipient
2. AIF Number (FAA Recipients): Grant Number (FTA Recipients):			
3. Fiscal year to which reporting period pertains:			
4. Date This Report Submitted:			
5. Reporting Period:	<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)	<input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)	<input type="checkbox"/> FAA annual report due Dec. 1
6. Name and address of Recipient:			
7. Intent: DBE Goal(s):	Race Conscious Provision	Race Neutral Provision	OVERALL Goal

Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts contracted during this reporting period)		Total to DBEs (dollars)		Total to DBEs (number)		Total to DBEs/Race Conscious (number)		Percentage of total dollars to DBEs	
	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)		
8	Prime contracts awarded this period									
9	Subcontracts awarded/committed this period									
10	TOTAL									

B	BREAKDOWN BY ETHNICITY & GENDER					
	Contracts Awarded to DBEs this Period					
	Total to DBE (dollar amount)			Total to DBE (number)		
	Women	Men	Total	Women	Men	Total
11	Black American					
12	Hispanic American					
13	Native American					
14	Asian-Pacific American					
15	Subcontinent Asian Americans					
16	Non-Minority					
17	TOTAL					

Payments Made this Period						
C	PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)		Total Number of Contracts with DBEs		Percent to DBEs	
	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
18	Prime and sub contracts currently in progress					
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD		DDBE Participation Needed to Meet Goal (Dollars)		Percent to DBEs	
	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DDBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs	
19	Race Conscious					
20	Race Neutral					
21	Totals					
22	Submitted By:		24. Signature:		25. Phone Number:	

49 CFR Part 26 Appendix B: Version 6(a)

General Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS									
Please refer to the Instructions sheet for directions on filling out this form									
1 Submitted to (check only one): <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA-Recipient ID Number									
2 AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):									
3 Federal fiscal year in which reporting period falls:					4. Date This Report Submitted:				
5 Reporting Period		<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)			<input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)			<input type="checkbox"/> FAA annual report due Dec. 1	
6 Name and address of Recipient:									
7 Annual DBE Goal(s):		Race Conscious Projection			Race Neutral Projection			OVERALL Goal	

Awards/Commitments this Reporting Period

A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period									
9	Subcontracts awarded/committed this period									
10	TOTAL									

B	BREAKDOWN BY ETHNICITY & GENDER	Contracts Awarded to DBEs this Period					
		A			B		
		Total to DBE (dollar amount)	Total to DBE (number)		Total to DBE (dollar amount)		Total to DBE (number)
	Women	Men	Total	Women	Men	Total	
11	Black American						
12	Hispanic American						
13	Native American						
14	Asian-Pacific American						
15	Subcontinent Asian Americans						
16	Non-Minority						
17	TOTAL						

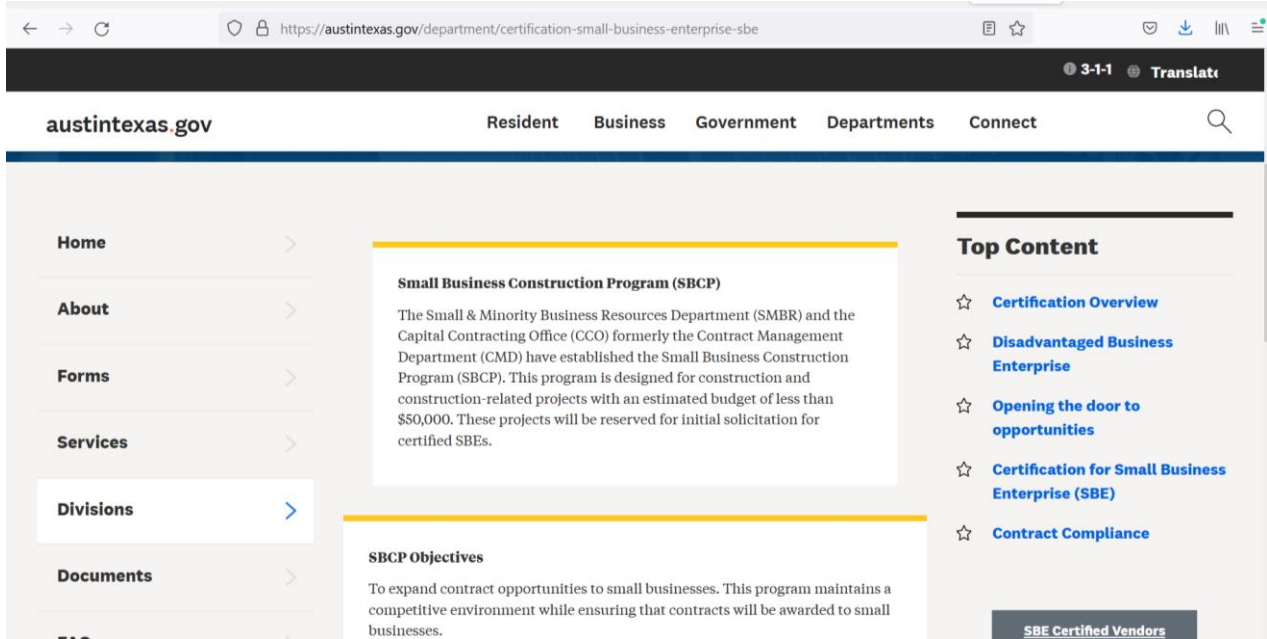
Payments Made this Period

C	PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	A	B	C	D	E	F		
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs		
18	Prime and sub contracts currently in progress								
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D	
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs			
19	Race Conscious								
20	Race Neutral								
21	Totals								
22 Submitted By:			24. Signature:			25. Phone Number:			

Appendix C

Small Business Development Program Affidavit

<http://www.austintexas.gov/department/certification-small-business-enterprise-sbe>



Addendix D
City of Austin DBE Program Prompt Payment Section
49 CFR § 26.29

49 CFR § 26.29- Prompt Payment Mechanisms

- The City of Austin (City) requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.
- In accordance with 49 CFR § 26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the City.
- The City ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, The City has selected the following method to comply with this requirement:
 - o § 26.29(b)(3) has been selected and outlined in the City's DBE Plan.

Additionally, for Federal Aviation Administration (FAA) Recipients, include the following:

- To implement this measure, the City includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract. (Reference: General Conditions Form 00700 Article 8):
 - o *The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.*

Section 26.37 Monitoring Responsibilities

- The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the City's DBE program.

Monitoring Payments to DBEs and Non-DBEs

- The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

Review of Subcontractor Expenditure Reports monthly submission with pay applications by Primes.

In addition to but limited to:

- o Posting prime contractor payments to the City's website Austin Finance Online in the Vendor Connection database accessible to subcontractors daily.
- o In the near future, use of an automated system that requires real time entry of payments to, and receipts by prime contractors and subcontractors and regularly monitoring that system called B2G Now.
- The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
- The City proactively reviews contract payments to subcontractors including DBEs (indicate how often-DOT recommends not less than quarterly to ensure *compliance*). Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor.

Prompt Payment Dispute Resolution

- The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of § 26.29.

The City will facilitate meetings between prime and sub, with contract manager representative and/or project manager presence as appropriate. The City accepts the recommendation that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including our own representative(s) with authority to take enforcement action.

- The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage (Reference: General Conditions Form 00700 Article 16)

(!) Alternative dispute resolution (ADR)

- If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. OWNER reserves the right to include the EIA as a party.

Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the CONTRACTOR'S organization or any other reason, the CONTRACTOR shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:
 - failure of CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment;

(3) Other mechanisms

- Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.

Prompt Payment Complaints

- Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. Subcontractors are encouraged to follow the payment bond process through our contracting office to protect right's for filling future claims. Claims are report and tracked by the contracting office. The DBELO/DBELO liasion are notified, record the claims for FAA reporting, if issue is unresolved.
- If affected subcontractor is not satisfied with resolution by the prime directly regarding payment or unable to resolve payment discrepancies, the subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, the subcontractor may contact the responsible FAA contact.

Enforcement Actions for Noncompliance of Participants

- The City will provide appropriate means to enforce the requirements of § 26.29. (General Conditions Form 00700 Article 15

These means include:

Advise subcontractors of the availability of the payment and performance bond

- o *to assure payment for labor and materials in the execution of the work provided for in the contract*
- o *Pay subcontractors directly and deduct this amount from the retainage owed to the prime*

- o *Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met*
- o *Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).*

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim therefor as provided in Articles 11 and 12.

- The City will actively implement the enforcement actions detailed above.