



**City of Austin
Disadvantaged Business Enterprise Program
49 CFR, Part 26**

**For Fiscal Years 2014-2016
October 1, 2014 to September 30, 2016**



Austin-Bergstrom
International Airport



June 2013



**CITY OF AUSTIN
DBE PROGRAM – 49 CFR PART 26
JUNE 2013**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Austin (City) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. The City, through the Department of Aviation (DOA), is the owner and operator of Austin-Bergstrom International Airport (ABIA) and has received federal financial assistance from DOT 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; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Debra Dibble has been designated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO 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 (DOT).

The City will disseminate this policy statement to the City Manager, Austin City Council, and other components of our organization. We will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts by posting the Program on City of Austin websites.

Marc A. Ott, City Manager

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 is the recipient of Federal Airport Funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The City of Austin 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.

The City 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 firms’ contact information either on the FAA DBE Contractor’s Form or other similar format.

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 Contract Management Department maintains records of all bidders which includes names, addresses, DBE and non-DBE status. The City of Austin’s Small & Minority Business Resources Department maintains records of all DBE firms which includes annual gross receipts. The City of Austin does not currently capture the age and annual gross receipts of firms but will make changes to its record-keeping system to include annual gross receipts and age of all firms in bidder records.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) – Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must 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 of Austin 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 of Austin'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 Austin of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13(b)

The City 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 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.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City will receive grants for airport planning or development totaling of \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The City is 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.

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:

Debra L. Dibble
Assistant Director, SMBR
4201 Ed Bluestein Blvd, Austin TX 78721
512/974-1656
debra.dibble@austintexas.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provisions 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 is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of twenty-one (21) FTE 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 Department of Aviation and other affected 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 towards goal attainment and identifies ways to improve progress.
7. Participates in pre-bid/proposal meetings.
8. Advises the City Executives and affected departments on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Texas Unified Certification Program (TUCP).
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the City'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 consistently investigate the availability of such financial institutions.

Section 26.29 Prompt Payment Mechanism

The City has established, as part of its DBE Program, a contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than the 10th calendar day after the day on which the prime contractor received payment from the City.

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 the following method 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 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. 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 Attachment 7.

The City will include the following clauses 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) days from the receipt of each payment the prime contractor receives from the City of Austin. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractors work is satisfactorily completed and the prime contractor receives payment from the City. 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.

Section 26.31 DBE Directory

The City uses the State of Texas DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. 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.

The State of Texas revises the Directory daily. The Directory is available online and can be found at <http://www.txdot.gov/apps-cg/tucp/default.htm>.

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 Development Program. The mission of the Small Business Development Program (SBDP) is to foster job creation and support the growth of new and existing businesses by providing capacity building information, tools, and resources. The SBDP 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. SBDP's main objective is to provide assistance and business solutions to emerging small businesses. To achieve this goal, SBDP makes its own resources available to small business owners, as well as provide points of contact to outside resources beyond the scope of what is provided by SBDP. SBDP's main number is 512/974-7800.

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 program 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 PARTICIPATION

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 FAA funded prime contracts exceeding \$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 will submit its Overall Three-year DBE Goal to FAA by August 1 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, 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)

DBE goals will be established for those fiscal years we anticipate awarding DOT assisted prime contracts exceeding \$250,000 during the three-year period. 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 more than \$250,000 in DOT assisted prime contracts 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

The first step is to determine the relative availability of DBEs in the market area, “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 projects.

In establishing the overall goal each year, the City of Austin will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City’s efforts to establish a level playing field for the participation of DBEs.

The persons or groups with whom this consultation occurred will be listed specifically in the goal-calculation method.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at SMBR, 4201 Ed Bluestein Boulevard, Austin, Texas 78721 and website, www.austintexas.gov/smbr, for 30 days following the date of the notice, and informing the public that the City of Austin and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focused media and trade publications and websites. We anticipate issuing this notice by July 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (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 goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

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 of Austin 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 in compliance with this part.

If the City's 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;
- (3) City of Austin will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the FAA for approval.

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 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 of Austin will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The City of Austin 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.)

The City of Austin 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.

Debra Dibble, DBELO, 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))

City of Austin treats bidder/ proposer compliance with good faith effort requirements as a matter of responsiveness – all bidders submit DBE information at the time of bid.

Responsiveness – Each solicitation for which a contract goal has been established will require all bidders/proposers to submit the following information (“*DBE Compliance Plan*”) at the time of bid:

1. The contact information, including name and address, of the prime contractor.
2. The names and addresses of the DBE firms that will participate in the contract;
3. A description of the scopes of work that each DBE will perform;
4. The dollar amount and percentage of the participation of each DBE firm participating;
5. The dollar amount and percentage of the participation of each non-DBE firm participating;
6. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
7. Written and signed confirmation (Letter of Intent or LOI) from the DBE that it is participating in the contract as provided in the prime contractors commitment and
8. Evidence of Good Faith Efforts if the contract goal is not met. The follow may be considered as Good Faith Efforts:
 - a. Fax logs/ emails and copies of documents sent.
 - b. Copies of written correspondence to DBE firms (include names, addresses, and other identifying information)
 - c. Phone logs with responses (phone contacts, alone, are insufficient.)
 - d. Lists and copies of letters sent by mail, hand-delivered, or-emailed.
 - e. Copies of advertisements in local newspapers.
 - f. Copies of all bids received in response to Bidder contacting other Firms.
 - g. Other communications regarding contacts with trade association and Chambers of Commerce.

Further detailed information regarding the DBE Compliance Plan can be found in Attachment 6. Bidders/proposers must notify DBEs of subcontracting/subconsulting opportunities at least five business days before submission of the bid/proposal.

Administrative Reconsideration (26.53(d))

Within seven (7) business days of being informed by the 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/ proposer should make this request in writing to the following reconsideration official:

Byron Johnson, Purchasing Officer
124 W 8th Street, Suite 308
Austin, TX 78701
512/974-2500
Byron.johnson@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 When A DBE Is Replaced On A Contract (26.53(f))

The City will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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 officer may issue a termination for default proceeding.

Additional administrative remedies are detailed in Attachment 7.

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 8.35% percent 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; (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; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (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 towards a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.67 – 26.73 Certification Process

The City of Austin will use the certification standards of Subpart D 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 the City of Austin's Small & Minority Business Resources department at:

SMBR Certification Division
4201 Ed Bluestein Blvd
Austin TX 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 Unified Certification Programs

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

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will ensure the TUCP reviews the eligibility of DBEs that we certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. The City of Austin's Small & Minority Business Resources Department has completed the review of all firms certified under former Part 23 criteria. At the review, 100% of certified DBE firms met the standards of Subpart E of Part 26.

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

"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 the TUCP 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 \$22.41 million.

The TUCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The TUCP will notify all currently certified DBE firms of these obligations, in writing, 60 days prior to the anniversary date. 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 City of Austin’s Small & Minority Business Resources Department provides guidance to applicants to appeal directly to the DOT per Section M of the TUCP Standard Operating Procedures (SOP) found in Attachment 9.

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 decertification, the TUCP has determined that each certifying partner will appoint an independent hearing officer to serve as the decision-maker in decertification proceedings. The TUCP has established an administrative “firewall” to ensure the independent hearing officer will not have participated in any way in the decertification 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 Carolyn Castro
124 W 8th Street, Suite 308
Austin, TX 78701
512/974-2500
carolyn.castro@austintexas.gov

Section 26.89 Certification Appeals

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

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

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).

The procedures for administrative appeals to each TUCP Certifying Partner of a certification decision are also available in Attachment 9. Resorting to this system is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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 must, and 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.

Monitoring Payments to DBEs

We 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.

ATTACHMENTS

Attachment 1
 Regulations: 49 CFR Part 26 (website link and paper)..... p 16

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 Organizational Chart p 86

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 DBE Directory link p 88

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 DBE Certification Application Form p 162

Attachment 9
 TUCP Agreement (MOA) p 163
 TUCP Standard Operating Procedures (SOP) p 175

Attachment 10
 Small Business Element Program..... p 189

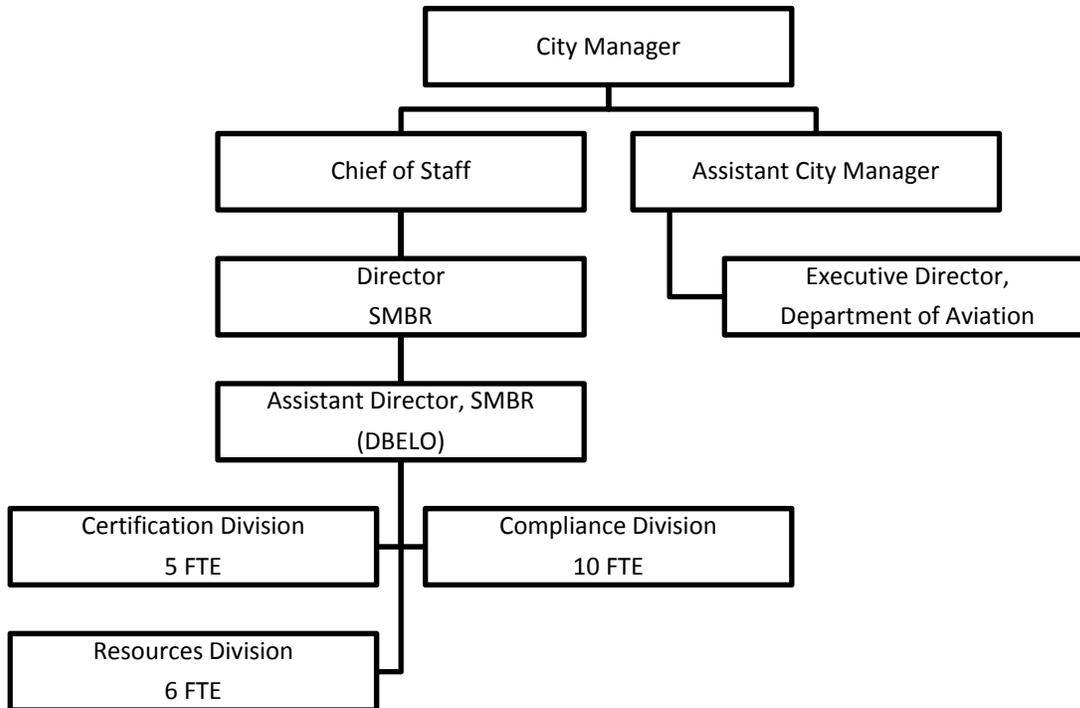
ATTACHMENT 1

Regulations: 49 CFR Part 26

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

Bidders List Collection Form

The City of Austin's Contract Management Department maintains records of all bidders which includes names, addresses, DBE and non-DBE status. The City of Austin's Small & Minority Business Resources Department maintains records of all DBE firms which includes annual gross receipts. The City of Austin does not currently capture the age and annual gross receipts of firms but will make changes to its record-keeping system to include annual gross receipts and age of all firms in bidder records.

ATTACHMENT 4

TUCP DBE Directory

<http://www.txdot.gov/apps-cg/tucp/default.htm>

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Austin, Texas

Goal Period: FY-2014-2015-2016 – October 1, 2013 through September 30, 2016

DOT-assisted contract amount:

FY-2014:	\$8,000,000.00
FY-2015:	\$9,500,000.00
<u>FY-2016:</u>	<u>\$4,000,000.00</u>
Total	\$21,500,000.00

Overall Three-Year Goal: **8.35%** to be accomplished through **3.70% RC** and **4.65% RN**

Total dollar amount to be expended on DBEs: \$1,795,250.

Below are the Number and Type of Projects that the airport anticipates awarding:

Projects Fiscal Year #1 (2014)

1. Taxiway Alpha (North) Completion – Construction - \$6,000,000
2. Taxiway Alpha (South) Completion – Design - \$1,000,000
3. East Taxiway System Shoulder Modifications – Design - \$1,000,000

Projects Fiscal Year #2 (2015)

1. Taxiway Alpha (South) Completion – Construction - \$6,000,000
2. East Taxiway System Shoulder Modifications – Construction - \$3,000,000
3. West Taxiway System MOS Modifications – Design - \$500,000

Projects Fiscal Year #3 (2016)

1. West Taxiway System MOS Modifications – Construction - \$4,000,000

Market Area: The market area is the Austin-Round Rock Metropolitan Statistical Area (MSA) which includes the counties of Bastrop, Caldwell, Hays, Travis, and Williamson.

Step 1. Analysis: Actual relative availability of DBEs

Method: The City of Austin utilized the TUCP DBE Directory via the Texas Department of Transportation Texas Unified Certification Program (TUCP) Search located online at <http://www.txdot.gov/apps-cg/tucp/temp.htm>. Firms were searched by their Work Categories (NAICS codes) and the TXDOT Work District of "AUS," resulting in a list of those firms, with the desired NAICS codes, that identified their availability to work in the market area (Austin-Round Rock MSA). This list was further filtered to reflect those firms, although "ready and willing" to work in the market area, located within the market area.

The City also utilized two datasets from the Census Bureau Data to identify businesses within the Austin-Round Rock MSA. The first part was extracted from the County Business Patterns website located at <http://www.census.gov/econ/cbp/#>; the second part was extracted from the Nonemployer Statistics page at <http://www.census.gov/econ/nonemployer/>. The County Business Patterns reflects firms by NAIC with paid employees while Nonemployer Statistics reflects the number of firms by NAICS without paid employees. The resulting lists were combined, by NAICS, to reflect the total of all firms within the Austin-Round Rock MSA.

The resulting information was combined with a cumulative list of all anticipated scopes of work for the reporting period. The actual relative availability of DBEs is demonstrated by the table below:

NAICS	Type of Work	Total DBEs	Total All Firms
237110	Underground Piping	13	144
237310	Asphalt, Concrete, Dust Control, Painting	14	134
238210	Electrical	12	1246
238910	Demolition, Excavation, Earthwork	13	3571
532412	Construction Equipment Rental	2	217
541330	Engineering Services	67	1553
541340	CADD Support	19	209
541370	Surveying	15	115
541380	Geotechnical Services	4	78
541922	Photographic Services	8	1308
561439	Printing Services	3	148
	Total	170	8723
Relative Availability of DBE Firms to All Firms		1.95%	

(All data from the TUCP and Census Bureau databases were extracted June 2013.)

Step 2. Analysis: Adjustments to Step 1 base figure.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustments (if any) were needed to the base figure in order to arrive at the overall goal. The adjustments were based upon an examination of the anticipated projects for each fiscal year, the availability of the DBE firms by trade classification, and the volume of work performed by DBE firms over previous years.

Fiscal Year #1 – For FY-2014, we anticipate the award of the following:

2014										
A	B	C	D	E	F	G	H	I	J	K
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Director	DBE (%) (= G/F)	DBE (\$) (= E x H)	% of Contract (=E/Total Project \$)	Weighted Base Figure (=JxH)
Project #1: Taxiway Alpha (North) Completion-Construction	Asphalt, Concrete, Dust Control, Painting	Highway & Street Construction	237310	\$2,500,000	134	14	10.45%	\$261,194	41.67%	4.35%
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$1,500,000	3571	13	0.36%	\$5,461	25.00%	0.09%
	Electrical	Electrical Contractors	238210	\$1,000,000	1246	12	0.96%	\$9,631	16.67%	0.16%
	Equipment Rental	Construction Equipment Rental	532412	\$120,000	217	2	0.92%	\$1,106	2.00%	0.02%
	Underground Piping	Water and sewer line and related structures	237110	\$820,000	144	13	9.03%	\$74,028	13.67%	1.23%
	Photographic Services	Photographic Services	541922	\$60,000	1308	8	0.61%	\$367	1.00%	0.01%
Total Project				\$6,000,000	6620	62	0.94%	\$56,193	Total WBF→	5.86%
Project #2: Taxiway Alpha (South) Completion - Design	Engineering Services	Engineering Services	541330	\$600,000	1553	67	4.31%	\$25,885	60.00%	2.59%
	CADD Support	Drafting Services	541340	\$50,000	209	19	9.09%	\$4,545	5.00%	0.45%
	Surveying	Drafting Services	541370	\$125,000	115	15	13.04%	\$16,304	12.50%	1.63%
	Geotechnical Service	Geotechnical Services	541380	\$200,000	78	4	5.13%	\$10,256	20.00%	1.03%
	Printing Services	Printing Services	561439	\$25,000	148	3	2.03%	\$507	2.50%	0.05%
Total Project				\$1,000,000	2103	108	5.14%	\$51,355	Total WBF→	5.75%
Project #3: East Taxiway System Shoulder Modifications – Design	Engineering Services	Engineering Services	541330	\$550,000	1553	67	4.31%	\$23,728	55.00%	2.37%
	CADD Support	Drafting Services	541340	\$50,000	209	19	9.09%	\$4,545	5.00%	0.45%
	Surveying	Drafting Services	541370	\$200,000	115	15	13.04%	\$26,087	20.00%	2.61%
	Geotechnical Service	Geotechnical Services	541380	\$175,000	78	4	5.13%	\$8,974	17.50%	0.90%
	Printing Services	Printing Services	561439	\$25,000	148	3	2.03%	\$507	2.50%	0.05%
Total Project				\$1,000,000	2103	108	5.14%	\$51,355	Total WBF→	6.38%

	00				5		
Total FY2014	\$8,000,000	Sum DBE	11.21 %	\$158,904	Sum all WBF →	18.00%	

Fiscal Year #2 – For FY-2015, we anticipate the award of the following:

2015										
A	B	C	D	E	F	G	H	I	J	K
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Director	DBE (%) (= G/F)	DBE (\$) (= E x H)	% of Contract (=E/Total Project \$)	Weighted Base Figure (=JxH)
Project #1: Taxiway Alpha (South) Completion - Construction	Asphalt, Concrete, Dust Control, Painting	Highway & Street Construction	237310	\$2,500,000	134	14	10.45%	\$261,194	41.67%	4.35%
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$1,500,000	3571	13	0.36%	\$5,461	25.00%	0.09%
	Electrical	Electrical Contractors	238210	\$1,000,000	1246	12	0.96%	\$9,631	16.67%	0.16%
	Underground Piping	Water and sewer line and related structures	237110	\$830,000	144	13	9.03%	\$74,931	13.83%	1.25%
	Photographic Services	Photographic Services	541922	\$20,000	1308	8	0.61%	\$122	0.33%	0.00%
	Equipment Rental	Construction Equipment Rental	532412	\$150,000	217	2	0.92%	\$1,382	2.50%	0.02%
Total Project				\$6,000,000	6620	62	0.94%	\$56,193	Total WBF→	5.88%
Project #2: East Taxiway System Shoulder Modifications - Construction	Asphalt, Concrete, Dust Control, Painting	Highway & Street Construction	237310	\$1,160,000	134	14	10.45%	\$121,194	38.67%	4.04%
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$750,000	3571	13	0.36%	\$2,730	25.00%	0.09%
	Electrical	Electrical Contractors	238210	\$600,000	1246	12	0.96%	\$5,778	20.00%	0.19%
	Equipment Rental	Construction Equipment Rental	532412	\$60,000	217	2	0.92%	\$553	2.00%	0.02%
	Underground Piping	Water and sewer line and related structures	237110	\$400,000	144	13	9.03%	\$36,111	13.33%	1.20%

	Photographic Services	Photographic Services	541922	\$30,000	1308	8	0.61%	\$183	1.00%	0.01%
Total Project				\$3,000,000	6620	62	0.94%	\$28,097	Total WB→	5.55%
Project #3: West Taxiway System MOS Modifications - Design	Engineering Services	Engineering Services	541330	\$250,000	1553	67	4.31%	\$10,786	50.00%	2.16%
	CADD Support	Drafting Services	541340	\$25,000	209	19	9.09%	\$2,273	5.00%	0.45%
	Geotechnical Service	Geotechnical Services	541380	\$30,000	78	4	5.13%	\$1,538	6.00%	0.31%
	Printing Services	Printing Services	561439	\$5,000	148	3	2.03%	\$101	1.00%	0.02%
	Surveying	Drafting Services	541370	\$190,000	115	15	13.04%	\$24,783	38.00%	4.96%
Total Project				\$500,000	2103	108	5.14%	\$25,678	Total WBF→	7.90%
Total FY2015				\$9,500,000		Sum DBE	7.01%	\$109,968	Sum all WBF→	19.33%

Fiscal Year #3 – For FY-2016, we anticipate the award of the following:

2016										
A	B	C	D	E	F	G	H	I	J	K
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)	% of Contract (=E/Total Project \$)	Weighted Base Figure (=JxH)
Project 1: West Taxiway System MOS Modifications - Construction	Asphalt, Concrete, Dust Control, Painting	Highway & Street Construction	237310	\$1,600,000	134	14	10.45%	\$167,164	40.00%	4.18%
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$1,000,000	3571	13	0.36%	\$3,640	25.00%	0.09%
	Electrical	Electrical Contractors	238210	\$750,000	1246	12	0.96%	\$7,223	18.75%	0.18%
	Equipment Rental	Construction Equipment Rental	532412	\$125,000	217	2	0.92%	\$1,152	3.13%	0.03%
	Underground Piping	Water and sewer line and related structures	237110	\$500,000	144	13	9.03%	\$45,139	12.50%	1.13%
	Photographic Services	Photographic Services	541922	\$25,000	1308	8	0.61%	\$153	0.63%	0.00%
Total Project				\$4,000,000	6620	62	0.94%	\$37,462	Total WBF→	5.61%
Total FY2016				\$4,000,000		Sum DBE	0.94%	\$37,462	Sum all WBF→	5.61%

For a more accurate base figure, we applied weighting to our base figure calculation. For example, the percent of work (Column J) was multiplied with the DBE availability (Column H) for each project and fiscal year. The weighted base figure (Column K) was totaled for each project within the fiscal year, with the sum of all applied to the total fiscal year row.

Past History Participation

Other data used to determine the adjustment to the base figure was the median of historical DBE accomplishments as follows:

Prior Year Participation	FY08	FY09	FY10	FY11	FY12
Goal	28.56%	28.56%	28.56%	28.56%	28.56%
Participation	4.12%	0.70%	0.28%	3.21%	2.40%
Difference	-24.44	-27.86	-28.28	-25.35	-26.16

Median Past Participation	
	0.28%
	0.70%
	2.40% ←Median
	3.21%
	4.12%

Arranging this historical data from low to high, (.28%, .70%, 2.40%, 3.21%, 4.12%) the median is 2.40%.

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 10.20% (=18.00+2.40/2)
- Fiscal Year #2 – 10.86% (=19.33%+2.40/2)
- Fiscal Year #3 - 4.00% (=5.61%+2.40/2)

Our proposed overall three year goal will be reflected as an average of the three years.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 8.35%. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during this three-year period.

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

26.51(b) (1-9)

The recipient will meet the maximum feasible portion of its overall goal by 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 DBEs and other small businesses;
6. Providing services to help DBEs 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; and
9. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The recipient estimates that in meeting its overall goal of 8.35%, it will obtain 3.70% from RN participation and 4.65% through RC measures.

This breakout is based on prior RN awards or prime contracts during the evaluation period (FY2008-2012). For example, of the 216 prime contracts awarded during this period, eight (8) were awarded to DBE firms using RN measures, which equals 3.70% RN participation. Therefore 3.70% of our 8.35% goal is being applied to race-neutral and the remaining 6.07% is applied to race-conscious participation.

The City of Austin will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, 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.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

The City of Austin will submit its overall DBE three-year goal to DOT on August 1 as required by the set schedule.

Before submitting the overall goal, the City of Austin will consult with affected stakeholders 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's efforts to establish a level playing field for the participation of DBEs. In addition, a Public Comments Hearing to discuss the proposed DBE goals is scheduled for Tuesday, July 23rd at 5:30pm at One Texas Center, 505 Barton Springs Road, Third Floor, Room 325, Austin, TX 78704. 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 and SMBR websites, of the proposed overall goal, informing 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 TX 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 for 45 days from the date of the notice.

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

PUBLIC NOTICE

The City of Austin hereby announces its fiscal year 2014-16 goal of 8.35% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at Small & Minority Business Resources Department, 4201 Ed Bluestein Blvd, Austin, TX 78701, for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

*Debra L. Dibble, Assistant Director/ DBELO
c/o Blender Hill 512-974-1656
Small & Minority Business Resources Department
Fax: 512-974-7601
4201 Ed Bluestein Blvd.
Austin, TX 78721*

or

*Dolores P. Leyva
Compliance Specialist
Office of Civil Rights – AWP-9
Federal Aviation Administration
Phone: 310-725-3939
Fax: 310-725-6819
P.O. Box 92007, Los Angeles, CA 90009-2007*

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 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.

ATTACHMENT 6

City of Austin DBE IFB Program Packet
and
City of Austin DBE Program Packet – RFQ

CITY OF AUSTIN



Austin-Bergstrom International Airport (ABIA)

Small and Minority Resources Department



Austin-Bergstrom
International Airport



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Project Name:

Project/Solicitation Number:

Date:

FOR YOUR INFORMATION

In order to maintain eligibility for Federal Aviation Administration (FAA) grant funding, the City of Austin becomes an "FAA SPONSOR". It is therefore necessary to follow the requirements of the United States Department of Transportation, as contained in 49 CFR Part 26, and the City of Austin's City Code, Chapter 2-9A, as amended.

For assistance relating to Disadvantaged Business Enterprises, please contact:

SMBR Representative

Small and Minority Business Resources Department (SMBR)
4201 Ed Bluestein
Austin, Texas 78721

Telephone: (512) 974-7600
Fax Number: (512) 974-7601

or

SMBR Division Manager

Small and Minority Business Resources Department (SMBR)
4201 Ed Bluestein
Austin, Texas 78721

Telephone: (512) 974-7600
Fax Number: (512) 974-7601

CITY OF AUSTIN
Austin-Bergstrom International Airport (ABIA)
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

GENERAL INFORMATION

It is the policy of the City of Austin and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have equal opportunities to participate in the performance of contracts on the City of Austin's Austin-Bergstrom International Airport. The DBE requirements of 49 CFR Part 26 and the applicable City of Austin City Code, Chapter 2-9A, as amended, apply to this solicitation. **All bidders must comply with 49 CFR Part 26 and the applicable City of Austin's Code and Rules to ensure that Disadvantaged Business Enterprises have equal opportunity to compete for and perform on contracts.** The City of Austin and its contractors shall not discriminate on the basis of race, color, national origin, disability or gender in the award and performance of contracts.

Contractors seeking to participate on this project agree to ensure that Disadvantaged Business Enterprises have equal opportunity to participate in the performance of contracts and subcontracts. A firm submitting a bid or proposal on this project is asked to make good faith efforts to meet or exceed the goal for DBE participation.

To maximize our race-neutral aspirations, the City of Austin has incorporated the following activities as a component of its DBE program to assist prime contractors meet their DBE goals:

1. City funded bonding, technical assistance and training programs to assist DBE firms.
2. A comprehensive DBE directory of DBE firms included in every proposal and bid package for easy accessibility of DBE companies.
3. The City encourages contractors to aspire to meet the DBE participation goal for this project. However, it is not the City's intent for contractors to have to pay higher prices in order to achieve the goal.
4. Contractors are asked to make sincere efforts to allow bidding opportunities and contract participation for DBE firms, but are not required to award any subcontracts to DBE firms where such award would increase the cost of the contracts. (See attached DBE Goal Compliance Plan Instructions.)

In order to assure equal opportunity for DBE participation, all bidders must submit the DBE Goal Compliance Plan documents by the deadline specified in the bid solicitation. The DBE Goal Compliance Plan instructions should be read and carefully followed.

The City will evaluate the bidder's good faith efforts to meet DBE goals as part of the determination of the lowest responsive bid.

The DBE goal is calculated against the allocated funding for the completed project. If a given project includes supplemental agreements and change orders which increase or decrease the dollar amount allocated by the City, the contractor must submit a revised DBE Goal Compliance Plan. These revised DBE Goal Compliance Plans will be submitted to the Department's Contract Administrator or Project Manager on or before the tenth (10th) day of the month following any execution of a Change Order/s that increases or decreases the contract value.

A. DBE PARTICIPATION GOAL

The DBE participation goal, which applies, to this solicitation is as follows: **DBE Goal -**

The DBE goal is a reflection of the total offer amount of the contract. The DBE participation shall be computed as outlined in Section C.

B. DEFINITIONS

1. Affiliates: Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties control or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 C.F.R. PART 124.106 will be used to guide the City in determining whether firms are affiliated.
2. Bidders: Any business enterprise that submits a bid as defined herein. This includes responses to Request for Qualifications, Invitation for Bids, and Request for Proposals.
3. Broker/Transaction Arranger - a business that is not a manufacturer or a regular dealer that arranges transactions for the delivery of materials and supplies.
4. Commercially Useful Function:

A DBE is considered to perform a commercially useful function when it:
 - (a) Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,
 - (b) Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.
5. Contractor: Any person or business enterprise that submits a bid or proposal to provide labor, goods or services to the City by contract for profit; any person who supplies or provides labor, goods or services to the City by contract for profit; any person who is a subcontractor under any such contract.
6. DBE or Disadvantaged Business Enterprise: DBE refers to firms meeting the social and economic disadvantage criteria as defined in 49 C.F.R. PART 26.67 or other applicable federal regulations.
7. SMBR is an acronym for the City of Austin's Small and Minority Business Resources Department.
8. Eligible DBE shall mean firms that have submitted proof to the SMBR or the Texas Unified Certification Program of their DBE Certification from another agency.
9. Good Faith Efforts: efforts to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
10. Joint venture: shall mean an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interests. All joint venture agreements with DBE partners must be submitted to SMBR for approval to be counted as DBE participation on the project

11. Letters of Intent (LOI): signed agreements between the bidder and DBE subcontractors in which each expresses their intent to enter into a contract after award of bid for the scope of work and price indicated on Section V of the DBE Goal Compliance Plan. Letters of Intent are required for all levels of subcontracting.
12. Manufacturer - is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies.
13. Minority Owned Business Enterprise (certified MBE): A business (including, without being limited to, a sole proprietorship, partnership, corporation, joint venture or any other business or professional entity): (A) Which is at least 51% owned by one or more minority persons, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more minority persons; (B) Whose management, policies, major decisions and daily business operations are independently controlled by one or more such minority persons; (C) Which performs a commercially useful function; (D) The size of which does not exceed the size limits established by rule; and (E) Operating within the City's marketplace, which is the State of Texas, for at least three months prior to the date of application for certification.
14. Regular Dealer: is a firm that owns, operates, or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and the sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.
15. Subcontractor: Any person or business enterprise providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractors obligations arising from a contract with the City. Subcontractor includes every level of subcontracting required to fulfill a contract with the City. For purposes of this chapter, the term subcontractor includes subconsultants. Subconsultants are persons or business enterprises providing professional services to a prime consultant if such professional services are procured or used in fulfillment of the prime consultant's obligations arising from a contract with the City and includes every level of subconsulting required to fulfill a contract with the City.
16. Woman Owned Business Enterprise (certified WBE): A business including, without being limited to, a sole proprietorship, corporation, partnership, joint venture, or any other business or professional entity: (A) Which is at least 51% owned by one or more women; or, in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more such women. Women who are minority persons, but who for the purposes of certification and recertification choose to be treated as only women will be certified as WBEs; (B) Whose management, policies, major decisions and daily business operations are independently controlled by one or more such women; (C) Which performs a commercially useful function; (D) The size of which does not exceed size limits established by rule; and (E) Operating in the City's marketplace, which is the State of Texas, for at least three months prior to the date of application for certification.

C. COUNTING DBE PARTICIPATION - The City will count DBE participation as follows:

TYPES OF BUSINESS STRUCTURE	PERCENTAGE OF PARTICIPATION COUNTED
Certified DBE Prime Contractor	The Percentage equal to the value of the work actually performed by the DBE with its own forces.
Joint Venture with DBE Partners	The Percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
Non-DBE Prime Contractor:	The Percentage equal to the value of the work actually performed by the non-DBE with its own forces.
DBE Manufacturer	100% of expenditures with a DBE Manufacturer
DBE Regular Dealer	60% of expenditures with a Regular Dealer
DBE Broker/Transaction Arranger	Dollar Value equivalent to the fees or commissions for providing a bona fide service.
DBE Trucking Services:	100% of Expenditure with own trucks and drivers including leases with DBE independent owner operators and DBE trucking companies. Dollar value equivalent to the fees and commissions received from Non-DBE leases.

- (A) When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted towards the goal.
- 1) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal.
 - 2) The entire amount of that portion of a construction contract that is performed by the DBEs own forces shall be counted, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - 3) The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services shall be counted.
- (B) When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals shall be counted.
- (C) Only expenditures to a DBE contractor that is performing a commercially useful function shall be counted. In determining whether an DBE contractor is performing a commercial useful function, the following considerations shall be taken into account:
- 1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and

paying for the material itself. The determination that a DBE is performing a commercially useful function will be informed by the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- 2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - 3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.
 - 4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (C)(3) of this section, the DBE may present evidence to rebut this presumption. SMBR may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (D) In determining whether a DBE trucking company is performing a commercially useful function, the following criteria shall be considered:
- 1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - 2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - 5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not count for the total value of the transportation services provided by the lessee toward the goal, since these services are not provided by a DBE.
 - 6) For purposes of this paragraph (D), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- (E) Expenditures with DBEs for materials or supplies shall be counted toward the DBE goal as follows:
- 1) If the materials or supplies are obtained from a DBE manufacturer or regular dealer, 100 percent of the cost of the materials or supplies toward DBE goals shall be counted.
 - 2) For purposes of this paragraph (E)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- 3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - 4) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - 5) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - 6) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
 - 7) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward the DBE goal if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward the DBE goal, however.
- (F) If a firm ceases to be a certified DBE during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.
- (G) In determining achievement of DBE goal, the participation of a DBE subcontractor shall not be counted until the amount being counted toward the goal has been paid to the DBE.
- (H) Where the solicitation requires the Bidder/Proposer to submit a base bid and one or more alternates, the City's decision regarding whether the Compliance Plan demonstrates the bidder's achievement of the goal or sufficient good faith efforts will be determined only on the base bid. However, the bidder is encouraged to use DBEs to complete any additional work added through alternates.

Counting Joint Ventures

A DBE joint venture must be certified by the City prior to or on bid opening. Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. A Joint Venture can include partners that do not include any DBE firms and obviously will not count toward the goal. However, a Joint Venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function.

Joint Ventures with DBE Partners

The required documentation to be submitted to SMBR for Joint Ventures with DBE partners shall include:

1. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
2. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
3. Proof of current certification status of the individual DBE venture partners.

4. A Description of the work to be performed by all the Joint Venture Partners.

D. DOCUMENTATION TO BE SUBMITTED WITH BID

The following documents shall be submitted as part of the Bid:

1. DBE Goal Compliance Plan

The bidder is to submit a *DBE Goal Compliance Plan* indicating how the Participation goal is to be achieved. If the bidder is unable to achieve the DBE goal, it must submit documented Good Faith Efforts as set forth in Section E.

All bidders including those who are City of Austin certified or recognized as DBEs or joint ventures and who plan to count themselves to fulfill the DBE requirement shall submit the *DBE Goal Compliance Plan* prior to the time specified in the solicitation documents. The *DBE Goal Compliance Plan* consists of Sections I-VI, *the Log of Contacts for Soliciting Subcontract Participation*, and all appropriate documentation to demonstrate good faith efforts.

By listing City certified DBE firms on the *Compliance Plan*, the bidder indicates that both firms agree to the price and scope of work. In the event the bidder is awarded the contract, the bidder agrees to contract with these businesses for the scope and price disclosed. Unit price subcontracts are acceptable if appropriate to the type of work being performed.

The *Compliance Plan* shall list all firms that will participate on the contract, including prime contractors, joint ventures, subcontractors of all levels, manufacturers, suppliers, and distributors. Use Section IV for certified DBE subcontractors who will be performing all work themselves. Section V for non-certified subcontractors who will be performing all work themselves. The *Compliance Plan* should be signed and dated by an authorized representative of the bidder.

If a *DBE Compliance Plan* is not submitted prior to the deadline specified in the solicitation documents, the bid will not be accepted for consideration.

SMBR may request written clarification of items listed on the *Compliance Plan*, provided that such clarification does not include an opportunity to augment listed DBE participation or good faith efforts. Changes to the *Compliance Plan* are permitted only after award of the bid and only with prior written approval of SMBR.

The *DBE Compliance Plan* is to include the names of all firms that are participating in the contract, (including prime contractors, joint ventures, subcontractors, manufactures, suppliers, distributors); the address of each firm, the work for which they will be responsible including the scope (labor only, material only, both), and the agreed price for such work. **This form should be signed and dated by the bidder.**

In addition, all bidders will be required to submit the following information with their bid proposal;

- (a) The names and addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE will perform;
- (c) The dollar amount of the participation of each DBE firm participating;
- (d) **Written documentation of the bidder commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;**
- (e) **Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.**

E. GOOD FAITH EFFORTS

In those instances where the Prime Contractor is unable to meet the DBE goal, the bidder is asked to demonstrate and provide documentation supporting “good faith efforts”. The bidder shall demonstrate to the satisfaction of SMBR, that genuine efforts have been made. In making this determination, SMBR will consider, at a minimum, the Contractor’s efforts to do the following:

1. Written notices to every DBE on the City’s certified vendor list for the Project for those specific scopes of work identified by the Bidder for subcontracting opportunities not less than five (5) business days prior to bid date. Such notices shall include information on the plans, specifications and scope of work, and bidding procedures, including the deadline for submission of quotes. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;
2. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the DBE Goal;
3. For those DBEs responding affirmatively in writing to the notice required by paragraph (1) above,
 - (a) Negotiating in good faith with interested DBEs; Reasons why agreements were not reached, including written explanations for rejection of bids;
 - (b) If additional elements of work have been identified by the bidder as available for subcontracting, the bidder shall contact the Department of Small and Minority Business Resources or the DBE Manager to ascertain the availability of DBE subcontractors in those areas.
4. Seeking the assistance of the DBE Manager and the Department of Small and Minority Business Resources in contacting DBEs.

F. EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a bidder will be evaluated by the City to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions which the City of Austin may consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a). Negotiating in good faith with interested DBEs. It is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate

DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b). A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a bidder has made good faith efforts, the City of Austin may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the City of Austin may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the City of Austin may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
10. In cases of dispute over the evaluation of Good Faith Efforts, the decision in determining whether Good Faith Efforts have been made rests with the City Manager. The City Manager may determine that the efforts of the Bidder substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City.

G. Letters of Intent (LOI)

The lowest responsive bidder is required to submit a signed and notarized Letter of Intent (LOI) from each DBE that is identified in the *DBE Compliance Plan*. The LOIs must be in the format shown on the sample and must contain all information included in the sample. LOIs are required for all levels of subcontracting. LOIs must be submitted within three (3) business days after receipt of a written request by the City.

H. POST -AWARD COMPLIANCE

1. Compliance Review

All bidders are hereby notified that the City will conduct post-award compliance reviews to ensure that the named DBEs on the original or, as a result of contract modification, *amended DBE Compliance Plan*, submitted to and accepted by the City, perform the work that was identified on the *DBE Compliance Plan*.

The City's will conduct monitoring of post-award compliance with the DBE program regarding use of certified DBE firms listed on the *DBE Compliance Plan* as set forth in Chapter 2-9A-22 of the City code, as amended, and in the Program Rules. The contractor will be required to submit post award reports detailing the utilization of all subcontractors. The reports and other information regarding post award compliance will be discussed with the successful bidder.

The Contractor cannot make changes to the DBE Goal Compliance Plan or substitute DBE subcontractors named in the Compliance Plan without the prior written approval of the Director of the Small and Minority Business Resources Department in conjunction with DBE Manager.

2. Payment Verification

- (a) Bidders are advised that the contract resulting from this solicitation includes a subcontractor payments clause. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Prime Contractor receives from the City of Austin. The prime contract agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponements of payment from the above referenced time frame may occur only for good cause following written approval from the City of Austin. This clause applies to both DBE and non-DBE subcontractors.
- (b) The Contractor and/or any subcontractor whose subcontracts are being counted toward the Contract's DBE requirement shall allow the City access to records relating to the Contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the DBEs are performing the scheduled subcontract work.
- (d) The Prime Contractor shall submit a Subcontractor/Supplier Awards and Expenditures Report to the Project Manager and/or Contract Administrator no later than the 10th calendar day of each month. The report shall be in the format required by the City and shall include all awards and payments to subcontractors/suppliers for goods and services provided under the resultant contract during the previous month. This report may be used by the City to verify utilization of and payment to DBEs.

3. Change Order Requirements

The DBE goal on this project shall also apply to "Change Orders" which require work beyond the scope of trades originally required to accomplish the project. The contractor is asked to make good faith efforts to meet the goal. Change orders, which do not alter the type of trades originally required to accomplish the project, may be undertaken using the subcontractors and suppliers already under the contract. Any change orders affecting the scope of work or value of the contract should be reflected in an amended DBE Compliance Plan, including increases and decreases.

I. NON-PERFORMANCE SANCTIONS

The contractor's DBE Compliance Plan shall be incorporated into the Contract and shall be considered as part of the Contractor's overall performance requirements. Consequently, sanctions may be imposed for failure to perform in accordance with the Compliance Plan. Refer to Section 2-9A-25 of the MBE/WBE Procurement Ordinance for additional information.

DBE PROGRAM FORMS AND ATTACHMENTS

CONTENTS INCLUDE:

- A. Sample Letter to Potential Subcontractor/Supplier from Prime Contractor
- B. Explanation of Letter of Intent and Sample Letter of Intent
- C. DBE Availability List Explanation
- D. Compliance Plan Instructions
- E. DBE Compliance Plan
- F. Good Faith Efforts Check List
- G. Log of Contacts for Soliciting Subcontract Participation

SAMPLE LETTER TO POTENTIAL SUBCONTRACTOR/SUPPLIER FROM PRIME CONTRACTOR

(For Construction Contracts)

_____ is soliciting Disadvantaged Business Enterprise participation for the following City of Austin Austin-Bergstrom International Airport (ABIA) project.

Name of Project _____

Project/Solicitation Number _____

Pre-bid Conference (if any): _____ (Location) _____

Bid Date and Time: _____

Plans are available at the Austin area plan rooms, our office, and the locations indicated in the Invitation for Bids.

The Work on This Project Includes the Following:

(Please list work areas that pertain to the subcontractor/supplier's areas of specialty.)

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

**EXPLANATION OF LETTER OF INTENT (LOI)
BETWEEN PRIME CONTRACTOR
AND DBE SUBCONTRACTOR/SUPPLIER**

**(TO BE COMPLETED BY BIDDER
AFTER NOTIFICATION OF THEIR STATUS
AS APPARENT LOW BIDDER)**

The lowest responsive bidder is required to submit a signed and notarized *Letter of Intent (LOI)* from each DBE (of all levels) that is identified on the Compliance Plan. A sample LOI is attached. The LOIs must be in this format and must contain all the specified information. LOIs must be submitted within three (3) business days after receipt of a written request by the City. LOIs must be notarized by both parties. Submit a separate LOI for each DBE subcontractor/supplier. The amount and scope of work indicated on each LOI shall be the actual amount indicated on the *DBE Compliance Plan* submitted with the bid and approved by the City.

Changes to the Compliance Plan including substitution of DBE subcontractors/suppliers are permitted only after award of the bid and only with prior written approval of SMBR. Request for changes to the compliance plan must be submitted on the *Request for Change of Compliance Plan Form* for all levels of subcontracting. LOIs must be submitted for all additions of DBEs to the *Compliance Plan* prior to the start of work.

**LETTER OF INTENT
BETWEEN PRIME CONTRACTOR
AND DBE SUBCONTRACTOR/SUPPLIER
(Page 1 of 2)**

Name of Prime Contractor: _____

Address: _____
Street City State Zip Code

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

Project/Solicitation Number: _____

Project Name _____

Type of Agreement: _____
(Lump Sum/Unit Price/Commodity)

Period of Performance: _____

Name of DBE Subcontractor/Supplier: _____

Level of Subcontracting: 1st _____ 2nd _____ 3rd _____

Address: _____
Street City State Zip Code

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

Commodity Code and description of work to be performed by DBE firm:

**LETTER OF INTENT
BETWEEN PRIME CONTRACTOR
AND DBE SUBCONTRACTOR/SUPPLIER
(Page 2 of 2)**

The Prime Contractor and the DBE listed above hereby agree that upon the execution of a contract for the above-named project between the Prime Contractor and the City of Austin, the DBE will perform the scope of work for the price as indicated above.

Prime Contractor:

Name of Firm

By: _____
Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 200_____.

Notary Public

Printed Name of Notary

DBE Subcontractor/Supplier:

Name of Firm

By: _____
Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 200_____.

Notary Public

Printed Name of Notary

**DBE AVAILABILITY LIST
EXPLANATION**

PROJECT NAME:

PROJECT/SOLICITATION NUMBER:

DATE ISSUED:

The availability list found on the following pages includes names of certified DBE businesses. It includes DBEs certified for work areas identified by the City for potential subcontracting opportunities on this project. Bidders/Proposers are encouraged to visit the Texas Unified Certification Program website to secure additional DBE subcontractors for this project in order to meet the established DBE goal. <http://www.dot.state.tx.us/business/tucp/>

Concerns about a particular DBE’s certification status may be addressed to the Small and Minority Business Resources Department (SMBR) (512) 974-7600. **Please note that subcontractors/suppliers must be certified by the City of Austin or a member of the Texas Unified Certification Program (TUCP) as a DBE on or before the bid date to achieve the DBE goal.** If you want to use a subcontractor/supplier whose name does not appear on this list, request the subcontractor/supplier to furnish proof of certification and the specific work areas for which it has been certified. This information may also be acquired from SMBR.

The availability list is not a comprehensive identification of all areas of potential subcontracting opportunities, and should not be construed as such. **If a bidder identifies one or more work areas that are appropriate subcontracting opportunities but are not included on the availability list, the bidder shall contact SMBR to request the availability of DBE firms in those areas. Requests for supplemental availability lists will be evaluated as a part of the bidder’s good faith efforts to meet the goals.**

If you believe any of the work areas on the availability list are not applicable to the project’s scope of work or if you believe that the lists are inaccurate, notify the project manager or buyer of your concern. If it is determined that there are errors in the list or that the work area(s) in question are not applicable to the project’s scope of work, all bidders will be notified in writing of the determination by addendum to the solicitation.

The City neither warrants the capacity nor guarantees the performance of any DBE/MBE/WBE firm indicated on the availability list.

Gender/Ethnicity	Code	Location	Code
Female / Asian-American	FA	Austin	AU
Male / Asian-American	MA	Local (Austin MSA)	LO
Female / African-American	FB	Texas	TX
Male / African-American	MB	Significant Local Business	
Female / Hispanic	FH	Presence (SLBP)	SL
Male / Hispanic	MH		
Female / Native American	FN		
Male / Native American	MN		
Female	FW		

USING THE DBE AVAILABILITY LIST

The attached availability list titled Subcontract Vendor List is provided for use in contacting DBE firms. This list is sorted in numerical sequence by National Institute of Governmental Purchasing (NIGP) Commodity Code. It lists all the vendors certified for the applicable commodity area. Attached to that list is a report containing the names and addresses of all the DBEs in alphabetical order. This report is in label format and is designed for making mailing labels. To make mailing labels, use the report to make copies onto label stock. The label stock must be designed for two labels across, size 4 1/4" x 2" labels, or three labels across, 30 labels per sheet, size 2 5/8" x 1" labels.

To read and interpret the list properly, begin on page 1 at the top left hand corner that shows:

Solicitation No.: (e.g. PW96300082) This tells you the solicitation number for the project that the availability list belongs to.

Selection Criteria: Indicates the type of firms and types of Commodity Codes used to generate the availability list.

Type of Firms: For City funded and federally funded projects, except DOT, the category "DBE/MBE/WBE/OBE" will be used.

NIGP/CSI Code: Identifies which type code was used to pull availability. NIGP commodity codes will be used.

Availability Information: Current information on the DBEs/MBEs/WBEs certified in the applicable commodity area. Some vendors may be listed in multiple areas.

Commodity Code: The numeric commodity code begins below the dotted line. Numbers between 005 - and 898 are for supplies only. These are in alpha and numeric sequence.

Numbers between 905 - and 998 are for services and list firms that primarily perform the services (which may include providing the appropriate supplies). These too are in alpha and numeric sequence.

NIGP/CSI Code Description: This is the description of the NIGP or CSI code.

Vendor Code and Address: The code assigned to the firm along with their address. **Phone and Fax numbers:** Numbers on file for the firm.

DBE: This vendor is certified as a Disadvantage Business Enterprise.

M/WDB: A firm with this code is certified as a Minority-owned Business Enterprise, a Woman-owned Business Enterprise **and a Disadvantaged Business Enterprise.**

W/MDB: A firm with this code is certified as a Woman-owned Business Enterprise, a Minority-owned Business Enterprise **and a Disadvantaged Business Enterprise.**

GND: The two digit gender/ethnicity code (e.g. FA, Female Asian American).

LCTN: The two digit location code for the firm (e.g. AU, Austin).

COMPLIANCE PLAN INSTRUCTIONS

All bidders, whether certified DBEs or non-certified firms, must submit a DBE Compliance Plan prior to the deadline indicated in the solicitation document or no later than 5 P.M. on bid date, if no otherwise stated. **Failure to submit a *DBE Compliance Plan* will render the bid non-responsive.**

The DBE Compliance Plan consists of Sections I-VI. All sections of the compliance plan must be submitted. If the goals have not been achieved, appropriate documentation to demonstrate good faith efforts must also be submitted. The *Log of Contacts for Soliciting Subcontract Participation or similar format* may also be submitted as part of your good faith effort documentation. Please complete all portions of the DBE Compliance Plan. Any questions regarding preparation of the compliance plan should be directed to the DBE Manager at (512) 974-7603.

How To Complete the DBE Compliance Plan:

1. Section I Project Identification and Goals
 - Includes Project Name; Project/Solicitation Number; and DBE goal. This information is preprinted-you do not need to complete this section.
2. Section II Bidder Information
 - Includes bidder's information and signature box. Complete and sign this section.
 - Reserved for City of Austin SMBR Only. You do not need to complete this section.
3. Section III Compliance Plan Summary
 - Summary of DBE participation. Calculate total percentage of participation by type goal set, using base bid.
 - **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 to the solicitation.**

4. Section IV Disclosure of DBE Participation

- Disclosure of DBE participation. List certified DBE subcontractors who will be performing all work themselves. A specific dollar amount and percentage is required.
- **DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.**
- **Fill in all the blanks.**
- **Compliance plans not complying with these requirements shall be rejected as non-responsive to the solicitation.**

5. Section V Disclosure of Other Subcontractors/Suppliers

- If you will not use any non-certified firms, check the appropriate box.
- If you will be subcontracting with non-certified firms, add the requested information for each non-certified firm (including the vendor code). A specific dollar amount and percentage is required.
- **DO NOT USE: approximate, plus or minus (+ -), up to, to be determined (TBD), < >, or any other qualifying language.**
- **Fill in all the blanks.**
- The scopes of work indicated in Section V will be considered subcontracting opportunities for DBEs. Unless shown that certified DBEs are unavailable or do not possess the requirements in the technical portion of the solicitation to perform the work involved.
- The bidder must provide an explanation why DBEs were not used as subcontractors.
- Only list the subcontractors who will perform all work themselves.

6. Section VI DBE Compliance Plan Check Sheet

- DBE Compliance Plan Check Sheet shall be completed and submitted with the bid.

Additional Information:

- All DBEs must be certified by the SMBR or the Texas Unified Certification Program or approved as eligible on the day specified in the solicitation document for receipt of bids.
- Please type or clearly print all information. Use “none” or “not applicable” (i.e. (N/A) where appropriate. Sign and date the DBE Compliance Plan.
- The DBE Compliance Plan and documentation to demonstrate Good faith efforts, if applicable, must be submitted prior to the time specified in the solicitation document. Failure to submit the DBE Compliance Plan will render the bid non-responsive.

DBE COMPLIANCE PLAN

All sections (I-VI) must be completed and submitted

Section I	Project Identification and Goals
Project Name	
Solicitation Number	

The Small and Minority Business Resources Department has determined that the goal for this project is:

Project Goal	Percent
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"/>

THE COMPLIANCE PLAN MUST BE SUBMITTED
PRIOR TO THE DATE AND TIME SPECIFIED IN THE SOLICITATION

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

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Signature

Date

Reserved For SMBR Use	
For Small and Minority Business Resources Department Use Only:	
I have reviewed this compliance plan and found that the bidder or proposer HAS <input type="checkbox"/> or HAS NOT <input type="checkbox"/> complied as per the requirements of 49 CFR Part 26 and the applicable City Code, Chapter 2-9A, as amended.	
DBE Manager _____	Date _____
Director/Assistant Director _____	Date _____

Section IV DUPLICATE AS NEEDED	Disclosure of DBE Participation
	LIST ALL KNOWN DBE CERTIFIED SUBCONTRACTORS/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.

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 to the solicitation.**

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Amount of Subcontract	\$	%
List commodity codes & description of services		

Section IV DUPLICATE AS NEEDED	Disclosure of DBE Participation
	LIST ALL KNOWN DBE CERTIFIED SUBCONTRACTORS/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.

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 to the solicitation

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Amount of Subcontract	\$ %
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Amount of Subcontract	\$ %
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Amount of Subcontract	\$ %
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Amount of Subcontract	\$ %
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Amount of Subcontract	\$ %
List commodity codes & description of services	

Section V	Disclosure of Non-Certified Subcontractors/Suppliers
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DUPLICATE AS NEEDED	Will non-certified subcontractors/suppliers be used? Yes <input type="checkbox"/> No <input type="checkbox"/>
---------------------	--

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 to the solicitation.**

If yes, list below of all known non-certified subcontractors/suppliers to be used in the performance of this contract. **If additional elements of work are identified as available for subcontracting, the bidder shall contact SMBR to request an availability list of firms in those areas.**

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ _____ %
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ _____ %
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ _____ %
List commodity code and description of service	
Reason DBE Not Used	

Section V Continued:	Disclosure of Non-Certified Subcontractors/Suppliers 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 to the solicitation.**

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ %
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ %
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONTRACTOR/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Amount of Sub-contract	\$ %
List commodity code and description of service	
Reason DBE Not Used	

Section VI	DBE Compliance Plan Check List
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The DBE Compliance Plan must be completed and submitted by the time specified in the solicitation documents. If the DBE goal was not achieved, good faith efforts documentation must be submitted with the DBE Compliance Plan. All questions in Section VI MUST be completed and submitted with the Compliance Plan if goals or sub-goals are not met.

1. Were written notices sent to DBEs on the availability list for scopes of work within at least 5 business days of bid due date?

Yes No

2. Is documentation of the written notices to potential DBE subcontractors attached, if the goal was not met?

Yes No

3. Are the Logs of Contacts and other documentation of efforts made to meet the DBE goal attached?

Yes No

4. Were additional elements of work identified to achieve the DBE goal?

Yes , explain No

5. Is there written documentation of efforts to reach agreements with the DBE who responded affirmatively to the bidder's written notice?

Yes No

6. Are all bids received in response to written notices included with the documentation?

Yes No

7. Was SMBR contacted for assistance or any other Minority or Women organization:

Yes No

If yes, complete following:

Organization: _____

Contact Person: _____

Date of Contact: _____

LOG OF CONTACTS FOR SOLICITING DBE SUBCONTRACTOR PARTICIPATION

(Documentation of contacts must be submitted with bid/proposal if the DBE goal(s) was not achieved.)
(Duplication of this form or the format of this form is acceptable for documentation of contacts.)

Please use the below form, or the format of this form, to document all conversations and contacts regarding the solicitation of prospective subcontractors/subconsultants/ suppliers, including responses to phone calls, letters, faxes and advertisements.

THE FOLLOWING FIRMS WERE NOTIFIED OF SUBCONTRACTING/SUBCONSULTING/SUPPLIER OPPORTUNITIES:

NAME OF DBE	DATE WRITTEN NOTICE WAS SENT AND METHOD (LETTER, FAX)	SCOPE OF WORK/SERVICE SOLICITED	DID DBE SUBMIT WRITTEN RESPONSE? (YES/NO)	IF DBE RESPONDED, REASON AGREEMENT WAS NOT REACHED

BIDDER/RESPONDENT:

PROJECT NAME:

PAGE _____ OF _____

CITY OF AUSTIN



Austin-Bergstrom International Airport Small & Minority Business Resources Department



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM Request for Qualification (RFQ)

Project Name:

Project/Solicitation Number:

Date:

CITY OF AUSTIN

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FOR YOUR INFORMATION

In order to maintain eligibility for Federal Aviation Administration (FAA) grant funding, the City of Austin becomes an "FAA SPONSOR". It is therefore necessary to follow the requirements of the United States Department of Transportation, as contained in 49 CFR Part 26, and the City of Austin's City Code, Chapter 2-9B, as amended.

For assistance relating to Disadvantaged Business Enterprises, please contact:

SMBR Representative

Small and Minority Business Resources Department (SMBR)
4201 Ed Bluestein
Austin, Texas 78721

Telephone: (512) 974-7600
Fax Number: (512) 974-7601

or

SMBR Division Manager

Small and Minority Business Resources Department (SMBR)
4201 Ed Bluestein
Austin, Texas 78721

Telephone: (512) 974-7600
Fax Number: (512) 974-7601

CITY OF AUSTIN
Austin-Bergstrom International Airport (ABIA)
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

GENERAL INFORMATION

It is the policy of the City of Austin and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have equal opportunities to participate in the performance of contracts on the City of Austin's Austin-Bergstrom International Airport. The DBE requirements of 49 CFR Part 26 and the City Code, Chapter 2-9B, as amended, apply to this solicitation. **All respondent's must comply with 49 CFR Part 26 and the applicable City of Austin's Code Chapter 2-9B and Rules to ensure that Disadvantaged Business Enterprises have equal opportunity to compete for and perform on contracts.** The City of Austin and its consultants shall not discriminate on the basis of race, color, national origin, disability or gender in the award and performance of contracts.

Consultants seeking to participate on this project agree to ensure that Disadvantaged Business Enterprises have equal opportunity to participate in the performance of contracts and subcontracts. A firm submitting a proposal or proposal on this project is asked to make good faith efforts to meet or exceed the goal for DBE participation.

To maximize our race-neutral aspirations, the City of Austin has incorporated the following activities as a component of its DBE program to assist prime consultants meet their DBE goals:

1. City funded bonding, technical assistance and training programs to assist DBE firms.
2. A comprehensive DBE directory of DBE firms included in every proposal and proposal package for easy accessibility of DBE companies.
3. The City encourages consultants to aspire to meet the DBE participation goal for this project. However, it is not the City's intent for consultants to have to pay higher prices in order to achieve the goal.
4. Consultants are asked to make sincere efforts to allow subconsulting opportunities and contract participation for DBE firms, but are not required to award any subcontracts to DBE firms where such award would increase the cost of the contracts. (See attached DBE Goal Compliance Plan Instructions.)

In order to assure equal opportunity for DBE participation, all respondents must submit the DBE Goal Compliance Plan documents by the deadline specified in the proposal solicitation. The DBE Goal Compliance Plan instructions should be read and carefully followed.

The City will evaluate the respondent's good faith efforts to meet DBE goals as part of the determination of the lowest responsive proposal.

The DBE goal is calculated against the allocated funding for the completed project. If a given project includes supplemental agreements and change orders which increase or decrease the dollar amount allocated by the City, the consultant must submit a revised DBE Goal Compliance Plan. These revised DBE Goal Compliance Plans will be submitted to the Department's Contract Administrator or Project Manager on or before the tenth (10th) day of the month following any execution of a Change Order/s that increases or decreases the contract value.

A. DBE PARTICIPATION GOAL

The DBE participation goal which applies to this solicitation is as follows: **DBE Goal 9.89%**

The DBE goal is a reflection of the total offer amount of the contract. The DBE participation shall be computed as outlined in Section C.

B. DEFINITIONS

1. Affiliates: Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties control or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 C.F.R. PART 124.106 will be used to guide the City in determining whether firms are affiliated.
2. Commercially Useful Function:

A DBE is considered to perform a commercially useful function when it:
 - (a) Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,
 - (b) Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.
3. Consultant (Prime Consultant): An individual or firm that has entered into a Professional Services Agreement (PSA) with the City.
4. Contractor: Any person or business enterprise that submits a bid or proposal to provide labor, goods or services to the City by contract for profit; any person who supplies or provides labor, goods or services to the City by contract for profit; any person who is a subconsultant under any such contract.
5. DBE or Disadvantaged Business Enterprise: DBE refers to firms meeting the social and economic disadvantage criteria as defined in 49 C.F.R. PART 26.67 or other applicable federal regulations.
6. SMBR is an acronym for the City of Austin's Small and Minority Resources Department.
7. Eligible DBE shall mean firms that have submitted proof to SMBR of their DBE Certification from another agency to the SMBR or the Texas Unified Certification Program.
8. Good Faith Efforts: efforts to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
9. Joint venture: shall mean an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interests. All joint venture agreements with DBE partners must be submitted to SMBR for approval to be counted as DBE participation on the project
10. Letters of Intent (LOI): signed agreements between the respondent and DBE subconsultants in which each expresses their intent to enter into a contract after award of proposal for the scope of work and price indicated on Section V of the DBE Goal Compliance Plan. Letters of Intent are required for all levels of subconsulting.
11. Respondents: Any business enterprise that submits a response to this solicitation. This includes consultants, contractors, and proposers.

12. Subconsultant: Any person or business enterprise providing goods, labor or services to a consultant if such goods, labor or services are procured or used in fulfillment of the consultants obligations arising from a contract with the City. Subconsultant includes every level of subconsulting required to fulfill a contract with the City. For purposes of this chapter, the term subconsultant includes subcontractors. Subconsultants are persons or business enterprises providing professional services to a prime consultant if such professional services are procured or used in fulfillment of the prime consultant’s obligations arising from a contract with the City and includes every level of subconsulting required to fulfill a contract with the City.

C. COUNTING DBE PARTICIPATION - The City will count DBE participation as follows:

TYPES OF BUSINESS STRUCTURE	PERCENTAGE OF PARTICIPATION COUNTED
Certified DBE Prime consultant	The Percentage equal to the value of the work actually performed by the DBE with its own forces.
Joint Venture with DBE Partners	The Percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
Non-DBE Prime consultant:	The Percentage equal to the value of the work actually performed by the DBE with its own forces.

- (A) When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted towards the goal.
- 1) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBEs subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal.
 - 2) The entire amount of that portion of a construction contract that is performed by the DBEs own forces shall be counted, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate).
 - 3) The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services shall be counted.
- (B) When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals shall be counted.
- (C) Only expenditures to a DBE consultant that is performing a commercially useful function shall be counted. In determining whether an DBE consultant is performing a commercial useful function, the following considerations shall be taken into account:
- 1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing

(where applicable) and paying for the material itself. The determination that a DBE is performing a commercially useful function will be informed by the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- 2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - 3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.
 - 4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (C)(3) of this section, the DBE may present evidence to rebut this presumption. SMBR may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (D) If a firm ceases to be a certified DBE during a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.
- (E) In determining achievement of DBE goal, the participation of a DBE subconsultant shall not be counted until the amount being counted toward the goal has been paid to the DBE.
- (F) Where the solicitation requires the Respondent/Respondent to submit a base proposal and one or more alternates, the City's decision regarding whether the Compliance Plan demonstrates the respondent's achievement of the goal or sufficient good faith efforts will be determined only on the base proposal. However, the respondent is encouraged to use DBEs to complete any additional work added through alternates.

Counting Joint Ventures

A DBE joint venture must be certified by the City prior to or on proposal opening. Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. A Joint Venture can include partners that do not include any DBE firms and obviously will not count toward the goal. However, a Joint Venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function.

Joint Ventures with DBE Partners

The required documentation to be submitted to SMBR for Joint Ventures with DBE partners shall include:

1. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
2. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
3. Proof of current certification status of the individual DBE venture partners. (Certification must be from the City of Austin or the Texas Unified Certification Program.
4. A Description of the work to be performed by all the Joint Venture Partners.

D. DOCUMENTATION TO BE SUBMITTED WITH PROPOSAL

The following documents shall be submitted as part of the Proposal:

DBE Goal Compliance Plan

The respondent is to submit a *DBE Goal Compliance Plan* indicating how the Participation goal is to be achieved. If the respondent is unable to achieve the DBE goal, it must submit documented Good Faith Efforts as set forth in Section E.

All respondents including those who are City of Austin certified or recognized as DBEs or joint ventures and who plan to count themselves to fulfill the DBE requirement shall submit the *DBE Goal Compliance Plan* prior to the time specified in the solicitation documents. The *DBE Goal Compliance Plan* consists of Sections I-VI, *the Log of Contacts for Soliciting Subcontract Participation*, and all appropriate documentation to demonstrate good faith efforts.

By listing City certified DBE firms on the *Compliance Plan*, the respondent indicates that both firms agree to the price and scope of work. In the event the respondent is awarded the contract, the respondent agrees to contract with these businesses for the scope and price disclosed. Unit price subcontracts are acceptable if appropriate to the type of work being performed.

The *Compliance Plan* shall list all firms that will participate on the contract, including prime consultants, joint ventures, subconsultants of all levels, manufacturers, suppliers, and distributors. Use Section IV for certified DBE subconsultants who will be performing all work themselves. Section V for non-certified subconsultants who will be performing all work themselves. The *Compliance Plan* should be signed and dated by an authorized representative of the respondent.

If a *DBE Compliance Plan* is not submitted prior to the deadline specified in the solicitation documents, the proposal will not be accepted for consideration.

SMBR may request written clarification of items listed on the *Compliance Plan*, provided that such clarification does not include an opportunity to augment listed DBE participation or good faith efforts. Changes to the *Compliance Plan* are permitted only after award of the proposal and only with prior written approval of SMBR.

The *DBE Compliance Plan* is to include the names of all firms that are participating in the contract, (including prime consultants, joint ventures, subconsultants, manufactures, suppliers, distributors); the address of each firm, the work for which they will be responsible including the scope (labor only, material only, both), and the agreed price for such work. **This form should be signed and dated by the respondent.**

In addition, all respondents will be required to submit the following information with their proposal;

- (a) The names and addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE will perform;
- (c) The dollar amount of the participation of each DBE firm participating;
- (d) **Written documentation of the respondent commitment to use a DBE subconsultant whose participation it submits to meet a contract goal;**
- (e) **Written confirmation from the DBE that it is participating in the contract as provided in the prime consultant's commitment.**

E. GOOD FAITH EFFORTS

In those instances where the Prime consultant is unable to meet the DBE goal, the respondent is asked to demonstrate and provide documentation supporting "good faith efforts". The respondent shall demonstrate to the satisfaction of SMBR, that genuine efforts have been made. In making this determination, SMBR will consider, at a minimum, the Consultant's efforts to do the following:

1. Written notices to every DBE on the City's certified vendor list for the Project for those specific scopes of work identified by the Respondent for subconsulting opportunities not less than five (5) business days prior to proposal date. Such notices shall include information on the plans, specifications and scope of work, and subconsulting procedures, including the deadline for submission of proposals. The respondent must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;
2. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the Goal;
3. For those DBEs responding affirmatively in writing to the notice required by paragraph (1) above,

- (a) Negotiating with interested DBEs; reasons why agreements were not reached, including written explanation for rejection of proposals;
- (b) if additional elements of work have been identified by the Respondent as available for subconsulting, the Respondent shall contact the Small and Minority Resources Department or the DBE Manager to ascertain the availability of DBE Consultants in those areas.

4. Seeking the assistance of the DBE Manager and the SMBR in contacting DBEs.

F. EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a respondent will be evaluated by the City to determine whether the efforts to obtain DBE participation were those that a firm seeking subconsultants would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions which the City of Austin may consider as part of the respondent's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

1. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The respondent must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The respondent must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a). Negotiating in good faith with interested DBEs. It is the respondent’s responsibility to make a portion of the work available to DBE subconsultants and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subconsultants and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subconsulting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b). A respondent using good business judgment would consider a number of factors in negotiating with subconsultants, including DBE subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a respondent's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the respondent of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the consultant's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.

7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women consultants' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a respondent has made good faith efforts, the City of Austin may take into account the performance of other respondents in meeting the contract. For example, when the apparent successful respondent fails to meet the contract goal, but others meet it, the City of Austin may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful respondent could have met the goal. If the apparent successful respondent fails to meet the goal, but meets or exceeds the average DBE participation obtained by other respondents, the City of Austin may view this, in conjunction with other factors, as evidence of the apparent successful respondent having made good faith efforts.
10. In cases of dispute over the evaluation of Good Faith Efforts, the decision in determining whether Good Faith Efforts have been made rests with the City Manager. The City Manager may determine that the efforts of the Respondent substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City.

G. Letters of Intent (LOI)

The lowest responsive respondent is required to submit a signed and notarized Letter of Intent (LOI) from each DBE that is identified in the *DBE Compliance Plan*. The LOIs must be in the format shown on the sample and must contain all information included in the sample. LOIs are required for all levels of subconsulting. LOIs must be submitted within three (3) business days after receipt of a written request by the City.

H. POST -AWARD COMPLIANCE

1. Compliance Review

All respondents are hereby notified that the City will conduct post-award compliance reviews to ensure that the named DBEs on the original or, as a result of contract modification, *amended DBE Compliance Plan*, submitted to and accepted by the City, perform the work that was identified on the *DBE Compliance Plan*.

The City's will conduct monitoring of post-award compliance with the DBE program regarding use of certified DBE firms listed on the *DBE Compliance Plan* as set forth in Chapter 2-9B-22 of the City code, as amended, and in the Program Rules. The consultant will be required to submit post award reports detailing the utilization of all subconsultants. The reports and other information regarding post award compliance will be discussed with the successful respondent.

The Consultant cannot make changes to the DBE Goal Compliance Plan or substitute DBE subconsultants named in the Compliance Plan without the prior written approval of the Director of the Small and Minority Business Resources Department in conjunction with DBE Manager.

2. Payment Verification

- (a) Respondents are advised that the contract resulting from this solicitation includes a subconsultant payments clause. The prime consultant agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Prime consultant receives from the City of Austin. The prime contract agrees further to return retainage payments to each subconsultant within ten (10) days after the subconsultant's work is satisfactorily completed. Any delay or postponements of payment from the above referenced time frame may occur only for good cause following written approval from the City of Austin. This clause applies to both DBE and non-DBE subconsultants.
- (b) The Consultant and/or any subconsultant whose subcontracts are being counted toward the Contract's DBE requirement shall allow the City access to records relating to the Contract, including but not limited to,

subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the DBEs are performing the scheduled subcontract work.

- (d) The Prime consultant shall submit a Subconsultant/Supplier Awards and Expenditures Report to the Project Manager and/or Contract Administrator no later than the 10th calendar day of each month. The report shall be in the format required by the City and shall include all awards and payments to subconsultants/suppliers for goods and services provided under the resultant contract during the previous month. This report may be used by the City to verify utilization of and payment to DBEs.

3. Change Order Requirements

The DBE goal on this project shall also apply to “Change Orders” which require work beyond the scope of trades originally required to accomplish the project. The consultant is asked to make good faith efforts to meet the goal. Change orders, which do not alter the type of trades originally required to accomplish the project, may be undertaken using the subconsultants and suppliers already under the contract. Any change orders affecting the scope of work or value of the contract should be reflected in an amended DBE Compliance Plan, including increases and decreases.

I. NON-PERFORMANCE SANCTIONS

The consultant’s DBE Compliance Plan shall be incorporated into the Contract and shall be considered as part of the Consultant’s overall performance requirements. Consequently, sanctions may be imposed for failure to perform in accordance with the Compliance Plan. Refer to Section 2-9B-25 of the MBE/WBE Procurement Ordinance for additional information.

DBE PROGRAM FORMS AND ATTACHMENTS

CONTENTS INCLUDE:

- A. Sample Letter to Potential Subconsultant from Prime consultant
- B. Sample Confirmation Letter from Subconsultant to the Respondent
- C. Explanation of Letter of Intent and Sample Letter of Intent
- D. DBE Availability List Explanation
- E. Compliance Plan Instructions
- F. DBE Compliance Plan (Sections I – VII)
 - Good Faith Efforts Check List
 - Log of Contacts for Soliciting Subconsultant Participation

SAMPLE LETTER TO POTENTIAL SUBCONSULTANT FROM RESPONDENT

(For Professional Service Contracts)

_____ is soliciting Disadvantaged Business Enterprise participation for the following project.

Name of Project _____

Project/Solicitation Number _____

Pre-Response Conference (If applicable): Date: _____

Location: _____

Solicitation Date and Time: _____

Plans (if any) are available at the Austin area plan room.

Examples of the types of work that may be performed on this Project includes the following:

(Please list work areas that pertain to the subconsultant's expertise)

- | | |
|--|--------------------------------|
| <input type="checkbox"/> Architecture | <input type="checkbox"/> Other |
| <input type="checkbox"/> Engineering | <input type="checkbox"/> Other |
| <input type="checkbox"/> Accounting | <input type="checkbox"/> Other |
| <input type="checkbox"/> Law | <input type="checkbox"/> Other |
| <input type="checkbox"/> Interior Design Services | <input type="checkbox"/> Other |
| <input type="checkbox"/> Environmental Engineering | <input type="checkbox"/> Other |
| <input type="checkbox"/> Land Use Planning | <input type="checkbox"/> Other |
| <input type="checkbox"/> Planning Services | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other | <input type="checkbox"/> Other |
| <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> 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 proposals MUST be received by: _____

**CONFIRMATION LETTER
FROM SUBCONSULTANT TO THE RESPONDENT**

**SAMPLE LETTER FROM SUBCONSULTANT CONFIRMING BEING CONTACTED AND PROVIDING SERVICES FOR
THE PROJECT -TO BE SUBMITTED WITH QUALIFICATION STATEMENT**

(LETTERHEAD FROM SUBCONSULTANT)

(Date)

(Addressed to Respondent)

Street Address

City, State, Zip

Re: City of Austin Request For Qualification Statements
(Name of Project)

Dear:

This letter is to confirm that (name of subconsultant/supplier) is pleased to provide (type of services to be provided) for the above referenced project(s).

We look forward to working with you should our team be awarded the project(s).

Sincerely,

Name of Subconsultant/Supplier

By: _____
Authorized Signature

Print Name

Title

**EXPLANATION OF LETTER OF INTENT (LOI)
BETWEEN PRIME CONSULTANT
AND DBE SUBCONSULTANT/SUPPLIER**

**(TO BE COMPLETED BY RESPONDENT
AFTER NOTIFICATION OF THEIR STATUS
AS APPARENT LOW RESPONDENT)**

The lowest responsive respondent is required to submit a signed and notarized *Letter of Intent (LOI)* from each DBE (of all levels) that is identified on the Compliance Plan. A sample LOI is attached. The LOIs must be in this format and must contain all the specified information. LOIs must be submitted within three (3) business days after receipt of a written request by the City. LOIs must be notarized by both parties. Submit a separate LOI for each DBE subconsultant/supplier. The amount and scope of work indicated on each LOI shall be the actual amount indicated on the *DBE Compliance Plan* submitted with the proposal and approved by the City.

Changes to the Compliance Plan including substitution of DBE subconsultants/suppliers are permitted only after award of the proposal and only with prior written approval of SMBR. Request for changes to the compliance plan must be submitted on the *Request for Change of Compliance Plan Form* for all levels of subconsulting. LOIs must be submitted for all additions of DBEs to the *Compliance Plan* prior to the start of work.

**LETTER OF INTENT
BETWEEN PRIME CONSULTANT
AND DBE SUBCONSULTANT/SUPPLIER
(Page 1 of 2)**

Name of Prime Consultant: _____

Address: _____
Street City State Zip Code

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

Project/Solicitation Number: _____

Project Name _____

Type of Agreement: _____
(Lump Sum/Unit Price/Commodity)

Period of Performance: _____

Name of DBE Subconsultant/Supplier: _____

Level of Subconsulting: 1st _____ 2nd _____ 3rd _____

Address: _____
Street City State Zip Code

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

Commodity Code and description of work to be performed by DBE firm:

**LETTER OF INTENT
BETWEEN PRIME CONSULTANT
AND DBE SUBCONSULTANT/SUPPLIER
(Page 2 of 2)**

The Prime Consultant and the DBE listed above hereby agree that upon the execution of a contract for the above-named project between the Prime Consultant and the City of Austin, the DBE will perform the scope of work for the price as indicated above.

Prime Consultant:

Name of Firm

By: _____
Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 200_____.

Notary Public

Printed Name of Notary

DBE Subconsultant/Supplier:

Name of Firm

By: _____
Signature

Print Name

Title

Date

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 200_____.

Notary Public

Printed Name of Notary

**DBE AVAILABILITY LIST
EXPLANATION**

PROJECT NAME:

PROJECT/SOLICITATION NUMBER:

DATE ISSUED:

The availability list found on the following pages includes names of certified DBE businesses. It includes DBEs certified for work areas identified by the City for potential Subconsulting opportunities on this project. Proposers are encouraged to visit the Texas Unified Certification Program website to secure additional DBE subconsultants for this project in order to meet the established DBE goal. <http://www.dot.state.tx.us/business/tucp/>

Concerns about a particular DBE’s certification status may be addressed to the Small and Minority Resources Department (SMBR) (512) 974-7600. **Please note that subconsultants/suppliers must be certified by the City of Austin or the Texas Unified Certification Program (TUCP) as a DBE on or before the submittal date to achieve the DBE goal.** If you want to use a subconsultant/supplier whose name does not appear on this list, request the subconsultant/supplier to furnish proof of certification and the specific work areas for which it has been certified. This information may also be acquired from SMBR.

The availability list is not a comprehensive identification of all areas of potential subconsulting opportunities, and should not be construed as such. **If a respondent identifies one or more work areas that are appropriate subconsulting opportunities but are not included on the availability list, the respondent shall contact SMBR to request the availability of DBE firms in those areas. Requests for supplemental availability lists will be evaluated as a part of the respondent’s good faith efforts to meet the goals.**

If you believe any of the work areas on the availability list are not applicable to the project’s scope of work or if you believe that the lists are inaccurate, notify the project manager or buyer of your concern. If it is determined that there are errors in the list or that the work area(s) in question are not applicable to the project’s scope of work, all respondents will be notified in writing of the determination by addendum to the solicitation.

The City neither warrants the capacity nor guarantees the performance of any DBE/MBE/WBE firm indicated on the availability list.

Gender/Ethnicity	Code	Location	Code
Female / Asian-American	FA	Austin	AU
Male / Asian-American	MA	Local (Austin MSA)	LO
Female / African-American	FB	Texas	TX
Male / African-American	MB	Significant Local Business	
Female / Hispanic	FH	Presence (SLBP)	SL
Male / Hispanic	MH		
Female / Native American	FN		
Male / Native American	MN		
Female	FW		

USING THE DBE AVAILABILITY LIST

The attached availability list titled Subcontract Vendor List is provided for use in contacting DBE firms. This list is sorted in numerical sequence by National Institute of Governmental Purchasing (NIGP) Commodity Code. It lists all the vendors certified for the applicable commodity area. Attached to that list is a report containing the names and addresses of all the DBEs in alphabetical order. This report is in label format and is designed for making mailing labels. To make mailing labels, use the report to make copies onto label stock. The label stock must be designed for two labels across, size 4 1/4" x 2" labels, or three labels across, 30 labels per sheet, size 2 5/8" x 1" labels.

To read and interpret the list properly, begin on page 1 at the top left hand corner that shows:

Solicitation No.: (e.g. PW96300082) This tells you the solicitation number for the project that the availability list belongs to.

Selection Criteria: Indicates the type of firms and types of Commodity Codes used to generate the availability list.

Type of Firms: For City funded and federally funded projects, except DOT, the category "DBE" will be used.

NIGP/CSI Code: Identifies which type code was used to pull availability. NIGP commodity codes will be used.

Availability Information: Current information on the DBEs certified in the applicable commodity area. Some vendors may be listed in multiple areas.

Commodity Code: The numeric commodity code begins below the dotted line. Numbers between 005 - and 898 are for supplies only. These are in alpha and numeric sequence.

Numbers between 905 - and 998 are for services and list firms that primarily perform the services (which may include providing the appropriate supplies). These too are in alpha and numeric sequence.

NIGP/CSI Code Description: This is the description of the NIGP or CSI code.

Vendor Code and Address: The code assigned to the firm along with their address. **Phone and Fax numbers**: Numbers on file for the firm.

DBE: This vendor is certified as a Disadvantage Business Enterprise.

M/WDB: A firm with this code is certified as a Minority-owned Business Enterprise, a Woman-owned Business Enterprise **and a Disadvantaged Business Enterprise**.

W/MDB: A firm with this code is certified as a Woman-owned Business Enterprise, a Minority-owned Business Enterprise **and a Disadvantaged Business Enterprise**.

GND: The two digit gender/ethnicity code (e.g. FA, Female Asian American).

LCTN: The two digit location code for the firm (e.g. AU, Austin).

COMPLIANCE PLAN INSTRUCTIONS

All respondents, whether certified DBEs or non-certified firms, must submit a complete DBE Compliance Plan (Sections I-VI) and Log of Contacts, prior to the deadline indicated in the solicitation document. **Failure to submit a DBE Compliance Plan will render the proposal non-responsive.** The DBE Compliance Plan, which is attached, consists of Sections I-VI, the *Log of Contacts for Soliciting Subconsultant Participation*; and all appropriate documentation to demonstrate good faith efforts. Please complete all portions of the DBE Compliance Plan. Any questions regarding preparation of the compliance plan should be directed to the DBE Manager at: (512) 974-7603.

How to Complete the DBE Compliance Plan:

1. Section I Project Identification and Goals
 - Pre-printed includes Project/Solicitation Number; Project Name and goals stated.
2. Section II Respondent Information
 - Includes respondent's information and signature box. Complete and sign this section.
 - Reserved for City of Austin SMBR Only. You do not have to complete this section.
3. Section III Compliance Plan Summary
 - Summary of DBE participation. Calculate total percentage of participation based on type goal set.
 - 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 to the solicitation.
4. Section IV Disclosure of DBE Participation
 - Disclosure of DBE participation. List certified DBEs, add the requested information for each DBE. This section will only be for subconsultants who will perform all work themselves.
 - 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 to the solicitation.

5. Section V Disclosure of Other Subconsultants/Suppliers

- If the respondent will not use any non-certified firms, check the appropriate box.
- If the respondent will be subconsulting with non-certified firms, add the requested information for each non-certified firm (including the vendor code).
- 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 to the solicitation.
- The scopes of work indicated in Section V will be considered subconsulting opportunities for DBEs. Unless shown that certified DBEs are unavailable or do not possess the requirements in the technical portion of the solicitation to perform the work involved.
- The respondent must provide an explanation why DBEs were not used as subconsultants.
- This section will only be for subconsultants who will perform all work themselves.

6. Section VI DBE Compliance Plan Check Sheet

- DBE Compliance Plan Check Sheet shall be completed and submitted with the submittal.

Additional Information:

- All DBEs must be certified by SMBR or approved as eligible on the day specified in the solicitation document for receipt of proposals.
- Please type or clearly print all information. Sign and date DBE Compliance Plan.
- The *DBE Compliance Plan* and documentation to demonstrate Good faith efforts, if applicable, must be submitted prior to the time specified in the solicitation document. Failure to submit the *DBE Compliance Plan* will render the proposal non-responsive.

DBE COMPLIANCE PLAN

All sections (I-VI) must be completed and submitted

Section I	Project Identification and Goals
Project Name	
Solicitation Number	

The Small and Minority Resources Department has determined that the goal for this project is:

Project Goal	Percent
DBE	0%

Section II	Prime Respondent 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"/>

THE COMPLIANCE PLAN MUST BE SUBMITTED
PRIOR TO THE DATE AND TIME SPECIFIED IN THE SOLICITATION

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

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Signature _____
Date

Reserved For SMBR Use
For Small and Minority Resources Department Use Only:
I have reviewed this compliance plan and found that the bidder or proposer HAS <input type="checkbox"/> or HAS NOT <input type="checkbox"/> complied as per the requirements of 49 CFR Part 26 and the applicable City Code, Chapter 2-9B, as amended.
DBE Manager _____ 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 to the solicitation

Is the stated DBE goal of the solicitation met?

Yes No

If no, attach documentation of Good Faith Efforts as required by 49 CFR Part 26 and the applicable Chapter 2-9B-21 of the City Code

Subconsulting Information

	Percentage
DBE	%
Non-Certified	%

Respondent's Information

Disclose bidder's own participation of base bid, less any amount sub-contracted:

Percentage: _____ %

<p>FOR SMALL AND MINORITY RESOURCES DEPARTMENT USE ONLY:</p> <p>Verified DBE Goal: _____ DBE _____ %</p>
--

Section IV DUPLICATE AS NEEDED	Disclosure of DBE Participation
	LIST ALL KNOWN DBE CERTIFIED SUBCONSULTANTS/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.

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 to the solicitation.**

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Percentage of Subcontract	%
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Percentage of Subcontract	%
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Percentage of Subcontract	%
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Percentage of Subcontract	%
List commodity codes & description of services	

Name of DBE Certified Firm	
City of Austin Certified	DBE <input type="checkbox"/> Ethnic/Gender Code:
Vendor Code	
Contact Person	Phone Number:
Percentage of Subcontract	%
List commodity codes & description of services	

Section IV DUPLICATE AS NEEDED	Disclosure of DBE Participation
--	--

	LIST ALL KNOWN DBE CERTIFIED SUBCONSULTANTS/SUPPLIERS CURRENTLY TO BE USED IN THE PERFORMANCE OF THIS CONTRACT.
--	--

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 to the solicitation**

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Percentage of Subcontract	%	
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Percentage of Subcontract	%	
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Percentage of Subcontract	%	
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Percentage of Subcontract	%	
List commodity codes & description of services		

Name of DBE Certified Firm		
City of Austin Certified	DBE <input type="checkbox"/>	Ethnic/Gender Code:
Vendor Code		
Contact Person	Phone Number:	
Percentage of Subcontract	%	
List commodity codes & description of services		

Section V DUPLICATE AS NEEDED	Disclosure of Non-Certified Subconsultants/Suppliers
---	---

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

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 to the solicitation.**

If yes, list below of all known non-certified subconsultants/suppliers to be used in the performance of this contract. **If additional elements of work are identified as available for subcontracting, the bidder shall contact SMBR to request an availability list of firms in those areas.**

<i>SUBCONSULTANT/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Percentage of Sub-contract	%
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONSULTANT/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Percentage of Sub-contract	\$ %
List commodity code and description of service	
Reason DBE Not Used	

<i>SUBCONSULTANT/SUPPLIER</i>	
Vendor Code	
Address	
City / State / Zip	
Contact Person	Phone Number:
Percentage of Sub-contract	%
List commodity code and description of service	
Reason DBE Not Used	

Section VI	DBE Compliance Plan Check List
-------------------	---------------------------------------

The DBE Compliance Plan must be completed and submitted by the time specified in the solicitation documents. If the DBE goal was not achieved, good faith efforts documentation must be submitted with the DBE Compliance Plan. All questions in Section VI MUST be completed and submitted with the Compliance Plan if goals or sub-goals are not met.

1. Were written notices sent to DBEs on the availability list for scopes of work within at least 5 business days of submittal due date?

Yes No
2. Is documentation of the written notices to potential DBE subconsultants attached, if the goal was not met?

Yes No
3. Are the Logs of Contacts and other documentation of efforts made to meet the DBE goal attached?

Yes No
4. Were additional elements of work identified to achieve the DBE goal?

Yes , explain No
5. Is there written documentation of efforts to reach agreements with the DBE who responded affirmatively to the respondent's written notice?

Yes No
6. Are all responses received in response to written notices included with the documentation?

Yes No
7. Was SMBR contacted for assistance or any other Minority or Women organization:

Yes No

If yes, complete following:

Organization: _____

Contact Person: _____

Date of Contact: _____

LOG OF CONTACTS FOR SOLICITING DBE SUBCONSULTANT PARTICIPATION

(Documentation of contacts must be submitted with bid/proposal if the DBE goal(s) was not achieved.)
(Duplication of this form or the format of this form is acceptable for documentation of contacts.)

Please use the below form, or the format of this form, to document all conversations and contacts regarding the solicitation of prospective subcontractors/subconsultants/ suppliers, including responses to phone calls, letters, faxes and advertisements.

THE FOLLOWING FIRMS WERE NOTIFIED OF SUBCONTRACTING/SUBCONSULTING/SUPPLIER OPPORTUNITIES:

NAME OF DBE	DATE WRITTEN NOTICE WAS SENT AND METHOD (LETTER, FAX)	SCOPE OF WORK/SERVICE SOLICITED	DID DBE SUBMIT WRITTEN RESPONSE? (YES/NO)	IF DBE RESPONDED, REASON AGREEMENT WAS NOT REACHED

BIDDER/RESPONDENT:

PROJECT NAME:

PAGE _____ OF _____

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:

- A) Breach of contract action, pursuant to the terms of the contract;
- B) Breach of contract action, pursuant to applicable Texas law.
- C) 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 IFB Program Packet and City of Austin DBE Program Packet – RFQ.

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



Texas Unified Certification DBE Program



HOWDY!!!

Welcome to the Federal Disadvantaged Business Enterprise (DBE) Program from the six certifying agencies of the **Texas Unified Certification Program (TUCP)**. The TUCP follows Federal regulation 49 CFR, Part 26. The TUCP is a "**one stop**" certification process for the Texas DBE Program, established October 1, 2002.

Six agencies have agreed to perform the certification processing of DBE Program applications within the state of Texas by specific TUCP regions. The Texas Department of Transportation (TxDOT), the North Central Texas Regional Certification Agency (NCTRCA), the South Central Texas Regional Certification Agency (SCTRCA), the City of Houston, the City of Austin, and the Corpus Christi Regional Transportation Authority (CCTRCA) are responsible for DBE Program certification in the TUCP. (See Section 6 TUCP Certifying Agencies for specific regions, page 9).

Benefits of TUCP Certification in the DBE Program:

- ◆ Registers your business in the State of Texas and lists it in the DBE Directory
- ◆ Provides the opportunity to bid statewide as a certified DBE firm on all U.S. Department of Transportation (DOT) transportation modes, including Aviation, Highways, and Public Transportation

DBE PROGRAM APPLICATION

The DBE certification instructions and application can be found on pages 1-29. Once your firm is certified as a DBE you will be included in the TUCP Directory.

The consolidated TUCP system allows you the opportunity to bid statewide, without obtaining DBE Program certification from numerous agencies throughout the state. Firms DBE certified by TUCP agencies will be included in the TUCP's DBE Directory. The directory is on the INTERNET at:

<http://www.txdot.gov/business/tucp/default.htm>

If you have any questions about TUCP DBE Program certification, please contact the serving DBE certification agency listed on page 9.



TEXAS UNIFIED CERTIFICATION PROGRAM DISADVANTAGED BUSINESS ENTERPRISES INSTRUCTIONS AND APPLICATION

1. INTRODUCTION

- A. All governmental entities in the State of Texas who receive funds from the U.S. Department of Transportation have, as part of their operating procedures, an economic program designed to increase participation of Disadvantaged Business Enterprises (DBE) in their federally assisted contracts. The authority for this program is 49 Code of Federal Regulations Part 26 (49 CFR Part 26).
- B. There are six governmental agencies (Page 9) in the State of Texas certifying DBEs capable of performing services and providing products, which can be credited toward the overall annual DBE goal for entities receiving DOT funds. Only those businesses which perform a commercially useful function can be counted toward DBE goals on federally assisted contracts.
- C. Certification must be obtained through your local certifying agency in accordance with 49 CFR Part 26 for firms wanting to perform work as a DBE on federally assisted contracts.

2. DEFINITIONS

- A. Affiliate - firms are affiliates of each other when, directly or indirectly, a firm or a third party (or parties) controls or has the power to control both; or there is evidence that a relationship exists between or among parties that produces an affiliation. In determining whether affiliation exists, consideration shall be given to such factors as: common ownership, common management, and contractual relationships.
- B. Commercially Useful Function (CUF) - an element of work, under a contract, that is measurable and observable and has actually been performed under standards consistent with industry practice for which a monetary sum can be assessed.
- C. Disadvantaged Business Enterprise (DBE) - a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more disadvantaged individuals. Owned and controlled means a business, which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least 51 percent of the stock must be owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

D. Personal Net Worth (PNW) - the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets, held jointly, or as community property with the individual's spouse. A contingent liability does not reduce an individual's net worth.

E. Socially and economically disadvantaged individuals - those individuals who are citizens or lawfully admitted permanent residents of the United States and who are as follows:

- (1) Women
- (2) Black Americans - includes persons having origins in any Black racial groups of Africa.
- (3) Hispanic Americans - includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- (4) Native Americans - includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
- (5) Asian-Pacific Americans - includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marinas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
- (6) Subcontinent Asian Americans - includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

NOTE: Individuals listed above in 2 through 6 as a member of a particular minority group must be recognized by their respective minority community.

- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration.
- (8) Other individuals as determined by the certifying entity to be economically and socially disadvantaged.

3. ELIGIBILITY STANDARDS

To determine a firm's eligibility to participate in the DBE program, the firm's business size, social and economic disadvantage, ownership and control (including independence) will be evaluated. The standards set forth in 49 CFR Part 26 will be used by the certifying entity. The following is a summary of the eligibility standards set forth in 49 CFR Part 26.

- (1) Disadvantaged status shall be determined on the basis of the individual's claim that he or she is a member of one of the groups mentioned in Section 2. e. (1)-(8) and is so regarded by that particular community. However, the certifying entity is not required to accept this claim if it determines the claim to be invalid.
- (2) Only independent businesses may be certified as a DBE. An independent business is one whose viability does not depend on its relationship with another firm or firms. The ownership and control by disadvantaged individuals shall be real, substantial, and continuing. It shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The disadvantaged individuals shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a DBE. In determining whether a potential DBE is an independent business, the following will be considered:
 - (a) Relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - (b) Present or recent employer/employee relationships between the disadvantaged owner and non-DBE firms or persons associated with non-DBE firms.
 - (c) Relationships with prime contractors.
 - (d) The consistency of relationships between the potential DBE and non-DBE firms with normal industry practices.
- (3) The disadvantaged individuals shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the disadvantaged individual. There shall be no restrictions in by-law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the disadvantaged

individual, without the cooperation or vote of any non-disadvantaged individual, from making a business decision of the firm.

- (4) Individuals who are not socially and economically disadvantaged but are involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors must not possess or exercise the power to control the firm, or be disproportionately responsible for the operations of the firm. The disadvantaged owners may delegate areas of management, policy making, or daily operations of the firm, but such delegations must be revocable and the disadvantaged owners must retain the power to hire and fire persons to whom authority has been delegated.
- (5) The disadvantaged owners must have an overall understanding of the firm's operations; along with experience, managerial, and technical competence. The disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policy-making. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (6) All securities, which constitute ownership and/or control of a corporation for purposes of establishing it as a DBE, shall be held directly by disadvantaged individuals. No securities held in trust or by any guardian for a minor shall be considered as held by disadvantaged individuals in determining the ownership or control of a corporation, except when (1) the beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual, or (2) the beneficial owner of a trust is a disadvantaged individual who rather than the trustee exercises effective control over the management, policy making, and daily operations of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (7) The contributions of capital or expertise by the disadvantaged individual to acquire interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee rather than as a manager. If marital assets are used to acquire ownership the applicant's spouse must irrevocably renounce and transfer all rights in the ownership interest.
- (8) To be determined economically disadvantaged, the personal net worth of the individuals whose ownership and control are relied upon for DBE certification cannot exceed \$1,320,000.00.

4. DENIAL OF INITIAL CERTIFICATION

When a business is denied initial certification it will receive a letter of explanation from the certifying entity of why it was denied certification. The firm may appeal to the certifying entity, in writing, for a review of their file or directly to the U.S. Department of Transportation (DOT). To appeal a decision to DOT, the business owner(s) must submit a letter giving the reason(s) he or she believes that the business should be certified. Send the letter directly to the following:

**U. S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Program Development Division
1200 New Jersey Avenue SE, W78-338
Washington, DC 20590**

NOTE: The appeal to DOT must be filed no later than 90 days from the postmark date of the certification denial.

A business that is denied certification by a certifying entity may not reapply for at least 12 months from the date of the final decision. A copy of the decertification notice will be forwarded to the TUCP database repository. A business that appeals to the U.S. Department of Transportation cannot reapply to the certifying entity until a final decision has been rendered on the appeal or 12 months, whichever is longer:

5. THIRD PARTY COMPLAINTS

Third party complaints: If any person has reason to believe that a business has been wrongly granted certification as a DBE, they may advise the certifying entity. A thorough investigation will be initiated upon receipt of a signed complaint. A complaint may also be submitted directly to the U.S. DOT.

If you are a Woman, Black American, Hispanic American, Native American, Asian Pacific American, or Subcontinent Asian American, you are presumed to be socially and economically disadvantaged. Other persons knowing of your actual social and economic condition, living standards, success in business, and other factors have the right to challenge your recognition and certification as a DBE. If your status is challenged, you will be given every opportunity to offer a defense. The challenge will be fully investigated, heard, and a final determination made.

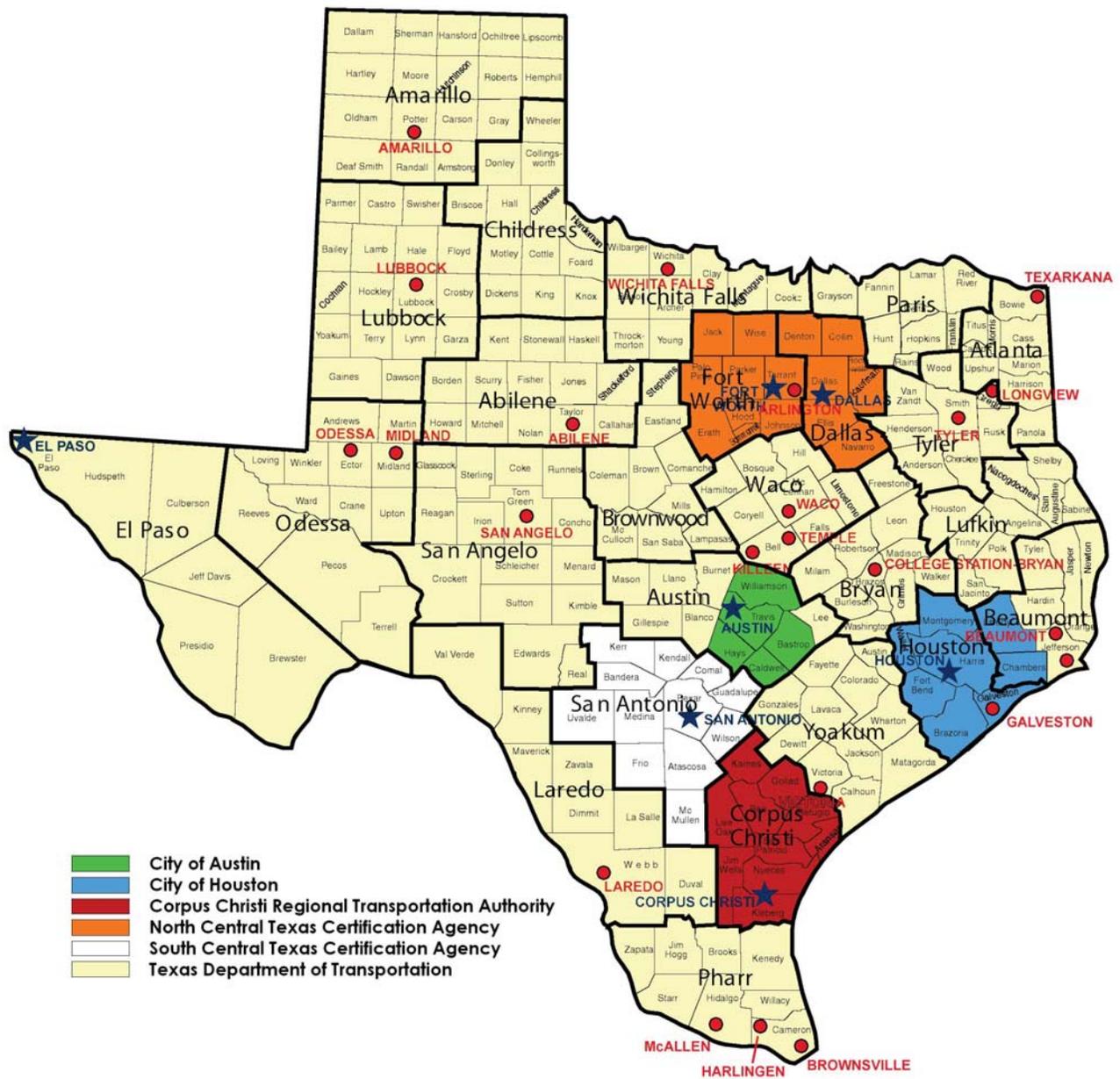
6. INSTRUCTIONS

- A. All businesses and trucking firms seeking to be certified as a DBE must complete the entire application. All questions must be answered and all information requested must be submitted. The applications must be legible, complete, signed, dated, and notarized to be accepted for review. Failure to provide the requested documents with the application will delay processing of your application.
- B. The certifying entity will evaluate the information contained in the application, along with the facts learned during the on-site review to determine if the business meets the eligibility standards to be certified as a DBE.
- C. Applicant will be notified of the certifying entity decision by letter. If the firm is certified as a DBE, the business will be added to the TUCP directory. The directory will show the name of the business, address, telephone number, and categories of work. A business may ask for expanded work capabilities as it acquires experience in new areas.

Remember - the application must be complete, every question answered, and the application must be either typed or printed clearly in ink. All affidavits must be notarized and all requested documents submitted; otherwise, the application will be delayed in its processing. Use additional sheets as necessary and reference the specific item(s) you are addressing.

A business must be functional and operating before applying for certification. It must possess the resources to perform the work in which it is requesting to be certified. By submitting this application and the accompanying information, the firm is authenticating the veracity and accuracy of the statements made in the application.

Texas Unified Certification Program - Certifying Entities Regional Map



7. TUCP CERTIFYING AGENCIES

Completed applications should be returned to the certifying agency that will service the Texas county in which their home or corporate headquarters is located. Select the appropriate address below:

City of Austin, Small and Minority Business
Resources Department
4201 Ed Bluestein
P.O. Box 1088
Austin, TX 78767-2516
Tel: (512) 974-7645
Fax: (512) 974-7609
E-mail: dsmbrcertification@ci.austin.tx.us

Bastrop
Caldwell
Hays
Travis
Williamson

City of Houston, Office of Affirmative Action
and Contract Compliance
611 Walker, 7th Floor
Houston, TX 77002
Tel: (713) 837-9015
Fax: (713) 837-9055
E-mail: mail@cityofhouston.net

Brazoria
Chambers
Fort Bend
Galveston

Harris
Liberty
Montgomery
Waller

Corpus Christi Regional Transportation
Authority (CCRTA)
5658 Bear Lane
Corpus Christi, TX 78405
Tel: (361) 289-2712 or (361) 289-2600 ext. 0
Fax: (361) 289-0605
E-mail: mail@ccrta.org

Aransas
Bee
Goliad
Jim Wells
Karnes

Kleberg
Live Oak
Nueces
Refugio
San Patricio

North Central Texas Regional Certification
Agency (NCTRCA)
624 Six Flags Drive, Suite 100
Arlington, TX 76011
Tel: (817) 640-0606
Fax: (817) 640-6315
E-mail: mail@nctrca.org

Collin
Dallas
Denton
Ellis
Erath

Hood
Jack
Johnson
Kaufman
Navarro
Palo Pinto

Parker
Rockwall
Somervell
Tarrant
Wise

South Central Texas Regional Certification
Agency (SCTRCA)
3201 Cherry Ridge St., Suite C-319
San Antonio, TX 78230
Tel: (210) 227-4722
Fax: (210) 227-5712
E-mail: info@sctrca.org

Atascosa
Bandera
Bexar
Comal
Frio
Guadalupe

Kendall
Kerr
McMullen
Medina
Uvalde
Wilson

Texas Department of Transportation (TxDOT),
Office of Civil Rights
125 E. 11th Street
Austin, TX 78701-2483
Tel: (866) 480-2518
Fax: (512) 486-5509
E-mail: OCR_TUCPdata@txdot.gov

ALL other remaining counties

Privacy Statement

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices - not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and
 - (d) Your firm has had any subsidiaries of its own.
- (3) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.
- (4) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with an ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.

- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. Indicate your firm's inventory in the following categories:

- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
- (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
- (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
- (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information

(1) Banking Information

- (a) State the name of your firm's bank.
- (b) State the main phone number of your firm's bank branch.
- (c) State the address of your firm's bank branch.

(2) Bonding Information

- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) State your agent's/broker's phone number.
- (d) State your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

L. List the three largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Uniform Certification Application

ROADMAP FOR APPLICANTS

1. Should I apply?

- ♦ Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- ♦ Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- ♦ Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$22.41 million in gross annual receipts?
- ♦ Is your firm organized as a for-profit business?

☞ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

2. Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

3. Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

4. Where can I find more information?

- ♦ U.S. DOT - <http://osdbuweb.dot.gov/DBEProgram/index.cfm> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- ♦ SBA - <http://www.census.gov/eos/www/naics/> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of NAICS codes)
- ♦ 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ___/___/___ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a)	STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
	<input type="checkbox"/> SDB	

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

Yes, on ___/___/___ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:	(5) Fax #:		
(6) E-mail:		(7) Website (if have one):		
(8) Street address of firm (No P.O. Box):	City:	County/Parish:	State:	Zip:
(9) Mailing address of firm (if different):	City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID#:
(3) This firm was established on	(4) I/We have owned this firm since:
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)	
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No	Ⓢ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

<p>(7) Type of firm (<i>check all that apply</i>):</p> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe:											
<p>(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain: </p>											
(9) Number of employees: Full-time	Part-time	Total									
<p>(10) Specify the gross receipts of the firm for the last 3 years:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;"></td> <td style="width: 20%;">Year</td> <td style="width: 40%;">Total receipts \$</td> </tr> <tr> <td></td> <td>Year</td> <td>Total receipts \$</td> </tr> <tr> <td></td> <td>Year</td> <td>Total receipts \$</td> </tr> </table>				Year	Total receipts \$		Year	Total receipts \$		Year	Total receipts \$
	Year	Total receipts \$									
	Year	Total receipts \$									
	Year	Total receipts \$									

C. Relationships with Other Businesses

<p>(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: Explain nature of shared facilities: </p>													
<p>(2) At present, or at any time in the past, has your firm:</p>	<p>(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>												
	<p>(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>												
	<p>(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>												
	<p>(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>												
<p>(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>													
<p>(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (5), identify the following for each (<i>attach extra sheets, if needed</i>):</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; text-align: left;"><u>Name</u></th> <th style="width: 30%; text-align: left;"><u>Address</u></th> <th style="width: 40%; text-align: left;"><u>Type of Business</u></th> </tr> </thead> <tbody> <tr> <td>1. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2. _____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table>		<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1. _____	_____	_____	2. _____	_____	_____	3. _____	_____	_____
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>											
1. _____	_____	_____											
2. _____	_____	_____											
3. _____	_____	_____											

D. Immediate Family Member Businesses

<p>Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then list (<i>attach extra sheets, if needed</i>):</p>				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm providing the information requested below
(If more than one owner, *attach separate sheets for each additional owner*);

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (<i>street and number</i>):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (<i>Check all that apply</i>):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (<i>specify</i>)	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial Investment	<u>Type</u>	<u>Dollar Value</u>
(3) Percentage owned:	to acquire ownership	Cash	\$
(4) Familial relationship to other owners:	interest in firm:	Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:	<u>Number:</u>	<u>Percentage:</u>	<u>Class:</u>
			<u>Date Acquired:</u>
			<u>Method Acquired:</u>
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function/Title:	
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (<i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i>)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function/Title:	
Nature of Business Relationship:			

C. Disadvantaged Status - NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (<i>Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying</i>)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (<i>attach additional sheets if needed</i>):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

(1) Officers of the Company					
	Name	Title	Date Appointed	Ethnicity	Gender
	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors					
	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<p>(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____</p>					
<p>(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____</p>					

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	(a)			
	(b)			
(2) Estimating and bidding	(a)			
	(b)			
(3) Negotiating and Contract Execution	(a)			
	(b)			
(4) Hiring/firing of management personnel	(a)			
	(b)			
(5) Field/Production Operations Supervisor	(a)			
	(b)			
(6) Office management	(a)			
	(b)			
(7) Marketing/Sales	(a)			
	(b)			
(8) Purchasing of major equipment	(a)			
	(b)			
(9) Authorized to Sign Company Checks (for any purpose)	(a)			
	(b)			
(10) Authorized to make Financial Transactions	(a)			
	(b)			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business?
 Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No
 If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment			
Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			
(2) Vehicles			
Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			
(3) Office Space			
Street Address	Owned or Leased?	Current Value of Property or Lease	
(a)			
(b)			
(4) Storage Space			
Street Address	Owned or Leased?	Current Value of Property or Lease	
(a)			
(b)			

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No If yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify:		(a) Binder No:			
(b) Name of agent/broker:		(c) Phone No:			
(d) Address of agent/broker:		City:	State:	Zip:	
(e) Bonding limit: Aggregate limit \$		Project limit \$			

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____, swear or affirm under penalty of law that I am
(full name printed)

_____ of applicant firm _____ and that
(title) (firm name)

I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (check all that apply):

- Women
- Black American
- Hispanic American
- Native American
- Asian - Pacific American
- Subcontinent Asian American
- Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$1,320,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____
(Date)

Signature _____
(DBE Applicant)

Date _____ State of _____ County of _____

Before me, a notary public, on this day personally appeared _____,
known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn,
declared that the statements therein contained are true and correct.

(Seal)

Notary Public

Commission Expiration

Texas Unified Certification Program
Supplemental Information Form

Proof of Group Membership:

In addition to the documents listed in the application checklist, please provide one of the following:

(Note - the item you provide should demonstrate proof of your membership in a disadvantaged group.)

Select One:

- Birth Certificate
- Passport
- Tribal Roll Card
- Tribal Voter Registration Certificate
- Naturalization Papers

Note - You may be requested to provide additional documentation if the information is insufficient to prove disadvantaged group membership.

PERSONAL NET WORTH STATEMENT

Complete a form for: (1) each socially disadvantaged proprietor, or (2) each socially disadvantaged limited and general partner whose combined interest total 51% or more, or (3) each socially disadvantaged stockholder owning 51% or more of voting stock. An individual's personal net worth includes only his or her share of the assets held jointly or as community property with the individual's spouse.

Name:	Date:
Residence Address:	Residence Phone:
City, State & Zip Code:	
Business Name:	Residence Phone:

PERSONAL FINANCIAL STATEMENT

As of ___/___/___ . In determining net worth, EXCLUDE individual ownership interest in the applicant business and personal residence. If married use only 1/2 of marital assets. Round all numbers to the nearest dollar.

ASSETS	LIABILITIES
Cash on hand and in bank \$ _____	Accounts Payable \$ _____
Savings Accounts \$ _____	Notes Payable to Banks and Others \$ _____ (Complete Section 1)
IRA or Other Retirement Account \$ _____	Installment Account (Auto) \$ _____
Accounts and Notes Receivable \$ _____	Installment Account (Other) \$ _____
Life Insurance - Cash Surrender Value Only \$ _____ (Complete Section 7)	Loan on Life Insurance \$ _____
Stocks and Bonds \$ _____ (Complete Section 2)	Mortgages on Real Estate [Except for personal residence] \$ _____ (Complete Section 3)
Real Estate [Except for personal residence] \$ _____ (Complete Section 3)	Unpaid Taxes \$ _____ (Complete Section 5)
Automobile(s) – Present Value \$ _____	Other Liabilities \$ _____ (Complete Section 6)
Other Personal Property \$ _____ (Complete Section 4)	Total Liabilities \$ _____
Other Assets \$ _____ (Complete Section 4)	Net Worth \$ _____ (Total Assets minus Total Liabilities)
Total Assets \$ _____	
Other Source of Income:	Other Contingent Liabilities:
Salary/Commissions \$ _____	As Endorser or Co-worker \$ _____
Net Investment Income \$ _____	Legal Claims and/or Judgments \$ _____

Section 1. Notes payable to Bank and Others (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Note Holders	Original Balance	Current Balance	Payment Amount	Frequency (weekly, monthly, etc.)	How Secured or Endorsed; Type of Collateral

Section 2. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) NOTE: Must be within five (5) days of statement date.

Number of Shares	Original Balance	Cost	Market Value Quotation or Exchange	Date of Quotation or Exchange	Total Value

Section 3. Real Estate Owned. (Do not include your personal residence. List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name and Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 4. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe.)

Section 5. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 6. Other Liabilities (Describe in detail).

Section 7. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)

Section 8. Transfer of Assets.

Have you, the individual claiming disadvantaged status, transferred any assets within two (2) years, in full or in part, to a spouse or any other person or entity, including a trust? Yes No

If yes, provide the following information as an attachment: the date of transfer, to whom the assets were transferred, amount paid for the assets, the market value of the assets at the time of transfer.

NOTE: Individuals may exclude assets transferred to an immediate family member that are consistent with the customary recognition of special occasions and may also exclude any transfers to an immediate family member for educational, medical, or essential support purposes.

Please provide copies of complete personal income tax returns, including all schedules, W-2s, and 1099 forms. *49 CFR Part 26 and federal law classify all information submitted with this form as confidential. This form or its information cannot be released to any person, governmental or commercial entity without the written permission of the person submitting the information.*

PERSONAL NET WORTH AFFIDAVIT

The undersigned swear/affirm that the foregoing information and statements are true and correct, including all material and information necessary to identify and explain the financial net worth of

(Name of Individual)

Further, the undersigned agrees to permit the TUCP and/or U.S. Department of Transportation (DOT) as part of this certification process to interview owners, principals, officers, and employees; and to audit or examine books, records, and files of the above named individual.

If at any time the TUCP or DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, your file may be referred to the General Counsel of DOT. The General Counsel may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.062 and/or refer the matter to the Department of Justice under U.S.C. 1001, as the General Counsel deems appropriate.

NOTE: Under Title 18 U.S.C. Section 1001 and Title 15 U.S.C. Section 645, any person who misrepresents a firm's status as a small disadvantaged business concern; or makes false statements in order to influence the certification process in any way; or to obtain a government contract, shall be subject to fines of up to \$500,000 and imprisonment of up to 10 years, or both.

The burden of proving the financial net worth is the individual's. The Agency reserves the right to request any additional information deemed necessary to determine if an individual is economically disadvantaged. Failure to provide requested information within the time specified is grounds for termination of the process.

Name Signature

Title Date

Date _____ State of _____ County of _____

On this day before me appeared (name) _____ with proper identification, who being duly sworn, did execute the foregoing affidavit and did aver that he or she was properly authorized to execute this affidavit and did so as his or her free act/deed.

(Seal)

Notary Public Commission Expiration

AFFIDAVIT OF MANAGERIAL TECHNICAL COMPETENCE

Name: _____

Special qualification in the work areas requested in DBE Application:

Professional licenses held: _____

Union/professional association membership: _____

Education/Technical training: _____

School	Dates	# of hrs.	Degree	Field

Position with applicant firm: _____

Title: _____ Salary: _____

Dates employed: From: _____ To: _____ Hours per week: _____

Duties and responsibilities:

Previous employment: (list most recent employment first, may continue on back of page)

Firm: _____

Type of business: _____ Location: _____

Dates employed: From: _____ To: _____ Hours per week: _____

Title: _____ Salary: _____

Number of persons supervised: _____ Type of employees: _____

Duties and responsibilities:

Knowledge, skills and abilities:

Hiring: _____

Contracting: _____

Purchasing: _____

Technical competence related to firm's operations:

Please identify the areas (Districts) of Texas in which your firm is ready, willing and able (based on employees and equipment) to work on TxDOT contracts. For some contracts requiring large staff and/or equipment, such as highway construction projects, keep in mind that you must either transport your equipment from your home office to the project site (or arrange for lease/rental of equipment and delivery to the project site) and secure lodging facilities for your employees.

For example: If your office is in Beaumont, TX and you indicate that you can work in all 25 Districts, then be prepared to perform highway project work with your equipment and employees in Amarillo, El Paso, Laredo, Texarkana and all other TxDOT districts.

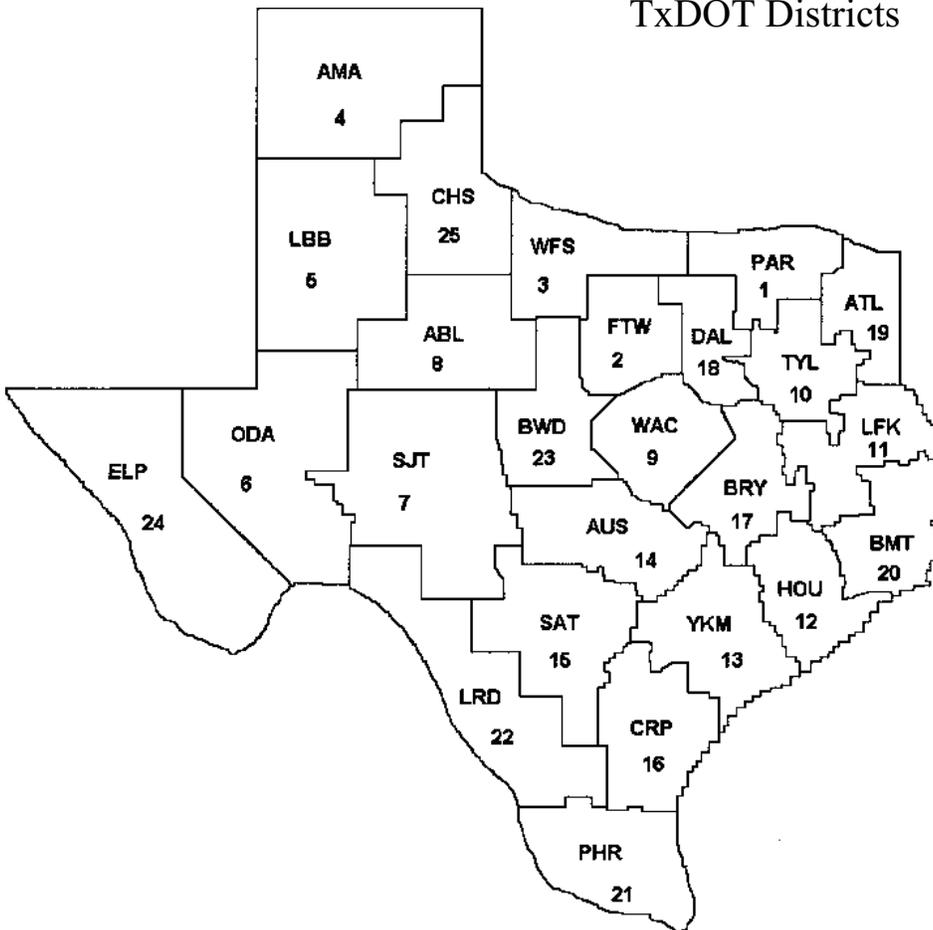
I am willing to work on TxDOT projects in the following Districts. (Select at least ONE, or up to TEN preferred work area(s), unless Statewide is preferred)

Preferred Work Area(s)

Statewide Work Area (ALL 25 Districts)

- | | | | | |
|---|---|---|--|---|
| <input type="checkbox"/> Abilene (8) | <input type="checkbox"/> Amarillo (4) | <input type="checkbox"/> Atlanta (19) | <input type="checkbox"/> Austin (14) | <input type="checkbox"/> Beaumont (20) |
| <input type="checkbox"/> Brownwood (23) | <input type="checkbox"/> Bryan (17) | <input type="checkbox"/> Childress (25) | <input type="checkbox"/> Corpus Christi (16) | <input type="checkbox"/> Dallas (18) |
| <input type="checkbox"/> El Paso (24) | <input type="checkbox"/> Fort Worth (2) | <input type="checkbox"/> Houston (12) | <input type="checkbox"/> Laredo (22) | <input type="checkbox"/> Lubbock (5) |
| <input type="checkbox"/> Lufkin (11) | <input type="checkbox"/> Odessa (6) | <input type="checkbox"/> Paris (1) | <input type="checkbox"/> Pharr (21) | <input type="checkbox"/> San Angelo (7) |
| <input type="checkbox"/> San Antonio (15) | <input type="checkbox"/> Tyler (10) | <input type="checkbox"/> Waco (9) | <input type="checkbox"/> Wichita Falls (3) | <input type="checkbox"/> Yoakum (13) |

TxDOT Districts



- ABL Abilene
- AMA Amarillo
- ATL Atlanta
- AUS Austin
- BMT Beaumont
- BWD Brownwood
- BRY Bryan
- CHS Childress
- CRP Corpus Christi
- DAL Dallas
- ELP El Paso
- FTW Fort Worth
- HOU Houston
- LRD Laredo
- LBB Lubbock
- LFK Lufkin
- ODA Odessa
- PAR Paris
- PHR Pharr
- SJT San Angelo
- SAT San Antonio
- TYL Tyler
- WAC Waco
- WFS Wichita Falls
- YKM Yoakum

NATURE OF BUSINESS

Check the type of work that makes up 75 percent or more of the dollar volume of work done by your business. Should your firm's type not be listed below, indicate service provided and percent of dollar value.

- Asphalt** - includes seal coats and surface treatments, limestone rock asphalt, cold-mix asphaltic concrete pavement, hot mix asphaltic concrete pavement, etc.
- Concrete Paving and Incidentals** - includes jointed concrete pavement and continuously reinforced concrete pavement
- Earthwork, Base and Subbase** - includes preparing ROW, clearing, removing old concrete, roadway and channel excavation, embankments, subbase courses, base courses, etc.
- Fencing** - includes wire, chain link and metal beam guard fence, metal bridge railing, etc.
- Hauling** - includes hauling of base material, gravel, sand, hot mix, etc.
- Illumination** - includes placement of conduit and wire, poles, roadway and bridge lights, etc.
- Landscaping** - includes roadside planting, erosion control, sodding, seeding, etc.
- Major Structures** - includes structural excavation, drill shafts, piling, concrete for columns, bents, abutments, slabs, structural steel, rebar, etc.
- Material Suppliers** - suppliers of construction materials kept in inventory for public sale (60% credit). Manufacturers and suppliers (100% credit).
- Minor Structures and Miscellaneous Concrete** - includes CGM and RC pipe, inlets, manholes, sewers, box culverts, sidewalks, driveways, riprap, curb and gutter, concrete bridge railing, concrete median barrier, etc.
- Painting** - includes painting of structural steel and concrete structures
- Professional Services** - includes consulting engineers, architects, and surveyors
- Rest Areas** - includes steel, masonry or wood fabrication and erection, electrical wiring, plumbing, etc.
- Traffic Control Devices** - includes traffic signals, signs, barricades, pavement markers, buttons, edge lines, striping, etc.
- Underground and Utility Work** - includes PVC pipe, underground conduit, utility telephone lines, etc.
- Miscellaneous.** Please specify. _____
- Banks owned and controlled by disadvantaged individuals.**
- Aviation.** Please specify. _____
- Public Transportation.** Please specify. _____

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (**e.g.**, both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

**Texas Unified Certification Program (TUCP) Participating Entities
DBE certifications through the TUCP are valid at the following entities:**

Airports:

Abilene Regional Airport
Austin-Bergstrom International Airport
Corpus Christi International Airport
Dallas-Fort Worth International Airport
Del Rio International Airport
Easterwood Field (Texas A & M)
Gregg County Airport – Longview
Houston Airport System
Killeen Municipal Airport
Lubbock Preston Smith International Airport

McAllen Miller International Airport
Midland International Airport
San Angelo Regional Airport/Matthis Field
San Antonio International Airport
Southeast Texas Regional Airport
Tyler Pounds Regional Airport
Valley International Airport (Harlingen)
Victoria Regional Airport
Waco Regional Airport
Wichita Falls Municipal Airport

Cities:

City of Amarillo
City of Arlington
City of Austin
City of Brownsville
City of Corpus Christi
City of Dallas
City of Denton
City of Desoto

City of El Paso
City of Ft. Worth
City of Garland
City of Grand Prairie
City of Houston
City of Lewisville
City of Longview
City of McAllen

City of Mesquite
City of Plano
City of Round Rock
City of San Antonio
City of Texarkana
City of Wichita Falls

Transit:

Beaumont Municipal Transit
Brownsville Urban System
Capital Metropolitan Transportation Authority - Austin
Central Texas Council of Governments (CTCOG) - Transit - Belton
City of Galveston - Island Transit
Corpus Christi Regional Transportation Authority (CCRTA)
Dallas Area Rapid Transit (DART)
Fort Worth Transportation Authority
Golden Crescent RPC - Transit - Victoria
Hill Country Transit District - San Saba
Lower Rio Grande Valley Development Council - Transit - McAllen
Lubbock Citybus System
Metropolitan Transit Authority of Houston
Texoma Council of Governments - Transit - Sherman
The Mass Transit Department of the City of El Paso (Sun Metro)
VIA Metropolitan Transit Authority - San Antonio
Waco Transit System

Other:

North Central Texas Regional Cert. Agency (NCTRCA) - Arlington
South Central Texas Regional Cert. Agency (SCTRCA) - San Antonio
Austin Water & Wastewater Utility
Bexar County
City Public Service - San Antonio
Dallas Community College District
Dallas County
Dallas Metrocare Services
Dallas Public Schools

Edwards Aquifer Authority
Fort Bend County
Fort Worth Housing Authority
Fort Worth Public Schools
Houston-Galveston Area Council
MHMR of Tarrant County
San Antonio Housing Authority
San Antonio Water System

ATTACHMENT 9

Texas Unified Certification Program (TUCP) Agreement

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

I 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 Business Park* February 17, 2012
Name *ETW Price* Title *Certification*
Agency *City of Austin* *Division Manager*

City of Houston *Carleen D. Wright* February 17, 2012
Name *Carleen D. Wright* Title *Director, D&ED*
Agency *City of Houston Mayor's Office of Business Opportunity*

Corpus Christi Regional Transportation Authority *Shumath* February 17, 2012
Name *Jose G. Cruz-Aedo* Title *MANAGING DIRECTOR of*
Agency *ADMINISTRATION*

North Central Texas Regional Certification Agency *Shreya Morani* February 17, 2012
Name *Shreya Morani* Title *Agency Director*
Agency

South Central Texas Regional Certification Agency *Blaine R. Mitchell* February 17, 2012
Name *Blaine R. Mitchell* Title *Executive Director*
Agency

Texas Department of Transportation *DE/Hubis BT Programs* February 17, 2012
Name *DE/Hubis BT Programs* Title *Director*
Agency

TEXAS
UNIFIED CERTIFICATION PROGRAM
STANDARD OPERATING PROCEDURE

I. INTRODUCTION

A Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) has been established in the State of Texas in accordance with Title 49 Part 26 of the Code of Federal Regulations (49 CFR Part 26). Pursuant to a Memorandum of Agreement (MOA) signed by all recipients required to participate in the TUCP, 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) as Certifying Partners for the TUCP. The cost of creating and establishing the TUCP web site and the electronic DBE Directory will be the responsibility of TxDOT. The TUCP reserves the right to develop a methodology to ascertain maintenance and operational costs. Any changes to the web site or Directory that results in costs to the Certifying and Non-Certifying Partners will be reviewed and approved by the TUCP recipients before the changes are implemented.

Each of the Certifying Partners is required to administer a DBE certification program in accordance with 49 CFR Parts 26 and 23. As part of the TUCP, Certifying Partners will make certification decisions on behalf of all USDOT recipients, sub recipients and grantees in Texas with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all USDOT recipients, sub recipients and grantees within Texas.

1. The following actions have been taken by the TUCP Partners: All TUCP Partners electronically submitted the current DBE firms to the DBE Database Manager for inclusion in the TUCP DBE Directory.
2. Each DBE firm was confirmed by each TUCP Partner, that the DBE firm was certified under the provisions of 49 CFR Parts 26 and 23.
3. The TUCP Partners met to review each of the DBE firms, and concluded which TUCP Partner would have custody of the certification record.

A thorough certification process ensures that the DBE program benefits only bona fide disadvantaged businesses. In order to ensure consistent application and interpretation of the regulatory requirements for DBE certification and consistent certification determinations, a Standard Operating Procedure (SOP) will be used by all Certifying Partners.

The Standard Operating Procedure sets forth the process to be utilized by the Certifying Partners when making determinations of DBE certification eligibility.

The procedures outlined herein are consistent with the U.S. Department of Transportation regulations codified at 49 CFR Part 26.

II. DEFINITIONS

Burden of Proof

Measure of persuasion that is required to convince someone that an alleged fact is true.

DBE Certification

A finding, after a certification eligibility review by a Certifying TUCP Partner that a business meets the certification eligibility requirements and is a bona fide Disadvantaged Business Enterprise in accordance with 49 CFR Parts 26 and 23.

Certification Interview

Face-to-face meeting between the applicant firm's qualifying owner(s) for DBE certification and the Certifying Partner

Decertification

The removal of certification based on a determination that a currently certified DBE no longer meets the eligibility criteria and is given due process under 49 CFR Part 26.

Decision Memorandum

Written document prepared by Certifying TUCP Partner detailing certification determination rendered.

Denial of Certification

A finding that a business is not a bona fide Disadvantaged Business Enterprise. A business that has been denied DBE certification or declared ineligible cannot again reapply for DBE certification for one year from the date of denial.

Executive Committee

A group consisting of representatives from each of the TUCP Certifying Partner agencies, who shall be designated by the signatories to the Memorandum of Agreement for the Unified Certification Program.

Grantee

Any public entity that has received USDOT assistance.

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. A Non-Certifying TUCP partner can neither issue nor revoke DBE certification.

TUCP Certifying Partner

A State of Texas federal aid 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. A Certifying Partner can issue or revoke DBE certification. The TUCP Certifying Partners are the Texas Department of Transportation (TXDOT), Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Austin, and the City of Houston.

TUCP Partner

All Texas State federal-aid recipients, both Certifying and Non-Certifying, participating in the TUCP.

Preponderance of Evidence

A standard of proof which is met when the evidence on a fact indicates that it is “more likely than not” true.

Recipient

Any public entity, which receives direct USDOT financial assistance.

Sub recipient

Any public entity that receives USDOT financial assistance through another recipient.

Withdrawal of Application

An applicant’s written request to the Certifying TUCP Partner to cease the certification review process. An applicant that has withdrawn its application cannot again reapply for DBE certification for twelve (12) months from the date of the withdrawal.

III. CERTIFICATION PROCEDURES

A. Application for DBE Certification

1. All applicants requesting initial DBE certification must complete and submit a complete certification application package to one of the TUCP Certifying Partners. The TUCP will accept a copy of a firm’s application package that was submitted to the SBA and a copy of their certification letter. SBA firms must undergo a site visit.
2. A complete package consists of the following:
 - a) USDOT Uniform Certification Application and Affidavit

- b) Personal Financial Statement for each qualifying socially and economically disadvantaged owner
- c) Required basic and support documentation as determined by business structure and in accordance with 49 CFR Parts 26 and 23.

B. Intake

1. Immediately upon receipt of the application package it is reviewed for completeness of form. Specifically, the Affidavit of Certification and Personal Financial Statement are reviewed for original signatures and notarization, and to determine whether the basic required supporting documents have been submitted.
2. The application is reviewed to ascertain the firm's line of work and services provided. Type of business service is necessary in determining whether the Certifying Partner in receipt of the application will process the application or transfer it to another Certifying Partner.
3. Only firms organized for profit are eligible for DBE certification.

C. Desk Audit

1. The processing staff will organize and assemble the applicant information in a business file. The processing staff must be mindful that all applications are to be processed within 90 days of receipt of a complete application.
2. The processing staff will thoroughly review the application package to determine whether all required supporting documentation has been submitted, and to determine if additional information will be requested. Care should be taken to ensure that any requested documentation/information is actually pertinent to the certification review.
3. If additional information is required, the processing staff will prepare a letter to the applicant firm requesting additional information. The letter will include a due date for submission of the additional information and advise the applicant that failure to respond will administratively close the application. In establishing a due date, processing staff must allow sufficient time thirty (30) days for the applicant to provide the requested information.
4. The processing staff will monitor the timely receipt of the requested information. Upon receipt of the additional information, the processing staff will review it and make a determination as to the completeness of the certification file. Processing staff are required to obtain information from the Texas State Comptroller/Texas Secretary of State for "standing" of the applicant business and all known affiliates.
5. Familial- marital relationships (see page 9).

D. Threshold Requirements

1. The processing staff will make a determination on each of the threshold requirements.
 - a) **Size standard** - in making a determination of *size standard*, processing staff must reference and adhere to §26.65 and 23.33 of the regulations.
 - b) **Social disadvantage** - In making a determination of *social disadvantage*, processing staff must reference and adhere to § 26.63 and §26.67 of the regulations.
 - c) **Economic disadvantage** – in making a determination of economic disadvantage processing staff must reference and adhere to §26.67 and 23.35 of the regulations.
 - d) **Citizenship** - each individual qualifying the firm for DBE certification must demonstrate that he/she is a citizen of the United States or a lawfully admitted permanent resident. Each individual must submit acceptable documentation as proof of citizenship or permanent resident status.
 - e) **Irrevocable separation of property:** When marital assets held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest. A copy of the document legally transferring and renouncing the other spouse's rights must have been filed in the proper court. The document must clearly show receipt by the court.
2. **FAILURE TO MEET REQUIREMENT** - If the applicant firm or its qualifying owners fail to meet any one of the threshold requirements for DBE certification, the firm is to be deemed ineligible for DBE certification. The firm may appeal the denial determination to the U.S. Department of Transportation in accordance with the procedures set forth in §26.89.
3. **REVIEW OF COMPLETED FILES** - If the firm meets the threshold requirements, the processing staff will, upon a thorough and careful review of the complete file, prepare a list of firm specific questions to be answered by the qualifying owners of the firm. These questions should be in addition to the standard questions asked of every firm and should address the particulars and unique facts of the applicant firm and its owners.
 - a) In preparing firm specific questions, processing staff should be sufficiently knowledgeable of the business area in which the firm is

seeking certification, anticipating issues, which will require close examination. The processing staff should have knowledge of the capitalization requirements, licensing, technical expertise, staffing and industry practices. In the event that processing staff is unfamiliar with the requirements for the applicant business, technical assistance should be obtained from technical personnel within the agency.

b) Once the applicant file is complete and the questions have been prepared, processing staff must schedule a face-to-face certification on-site review meeting with the qualifying owners at a time convenient for all participants.

E. On-Site Review

1. The purpose of the on-site review is to verify the firm's location, personnel and operations; to substantiate information/documentation contained in the applicant file and to review business and financial records. The on-site review is the second phase of the certification review process and will also be conducted on certified firms every three years. An on-site review of the applicant firm and an interview of the socially and economically disadvantaged principals of the firm must be made in accordance with §26.83(c) (1) of the regulations.

2. The following information, **if applicable**, should be received and reviewed no later than the on-site review:

a) Cash Receipts and Disbursements

- (i) Check for entries in the cash receipts journal, which disclose initial capital contributions.
- (ii) Verify operational expenditures in the cash disbursements journal. Note questionable/exceptional/unusual entries and the frequency or consistency of such expenditures.
- (iii) Note payments to and from shareholders, directors, officers and key employees in the cash disbursements journal.
- (iv) Note payments to similar businesses for possible broker activity or evidence of conduit activity.
- (v) Cross reference cash disbursements with cancelled checks.

(b) Bank Statements and Cancelled Checks

- (i) Verify initial capitalization of firm with the first bank statement, if available.
- (ii) Verify and document signature authority and consistency in which DBE owner v. non-DBE owner(s)/offices sign checks.
- (iii) Verify payments to shareholders, key employees and consultants.
- (iv) Pay particular attention to the "memo" section of checks.

- (v) Determine if there are any additional checking accounts not disclosed prior to the visit. If so, note the authorized signatories.
- (vi) Cross reference payments to and from clients, suppliers, consultants, etc.

(c) Payroll

- (i) Determine who is on the firm's payroll.
- (ii) Determine if the owner is receiving compensation in accordance with his/her ownership interest.
- (iii) Determine who receives bonus payments and amounts.
- (iv) Compare W-2's and 1099's to payroll register, to extent possible, for key employees.
- (v) Pay attention to any "memo" notations on any payroll checks.

(d) Invoices and Receipts

- (i) Check telephone bills to determine if they are addressed to the DBE firm.
- (ii) Review invoices to substantiate method and source of payment.
- (iii) Check invoices for suggestion of brokering activity or reliance on non-DBE firms.
- (iv) Examine invoices for resolution of regular dealer issues (freight charges).

(e) Contract Files

- (i) Determine who executes contracts on behalf of the firm.
- (ii) Verify the services provided by the applicant firm and the terms and conditions of the provision of their services.
- (iii) Verify consistency in which firm does business with a particular firm and whether any issues of dependency.

(f) Inventory and Equipment

- (i) Identify nature and use of equipment possessed by firm.
- (ii) Verify ownership of equipment with invoices.
- (iii) If equipment is leased, review equipment lease agreements.
- (iv) Identify inventory maintained by firm.
- (v) Determine whether lack of inventory suggests broker or conduit activity.
- (vi) If regular dealer, verify inventory, warehouse facility, transportation equipment, etc.
- (vii) Determine if firm's name on vehicles (trucks).

(g) Bonding and Insurance

- (i) Determine who is guaranteeing/financing bonding.
- (ii) Is bond commensurate with size of firm?
- (iii) Are insurance documents in the name of the firm?
- (iv) Verify types of insurance maintained by firm.
- (v) Does firm carry Key Man Insurance (life insurance on key person in business, should be owner—business is beneficiary)? If so, for whom?

(h) Corporate Kit or Business Organization Documents

- (i) Cross reference documents in corporate kit with original submission.
- (ii) Review all minutes and entries for voting, control, attendance, etc.
- (i) **Corporate Kit or Business Organization Documents**
 - (i) Review stock transfer ledger.
 - (ii) Review cancelled/voided stock certificates and note reasons for cancellations.
 - (iii) Review non-issued stock certificates to determine if there is numerical continuity.
 - (iv) Verify corporate seal.
 - (v) Review by-laws for revisions since original submission of documents
- (j) **Employment Agreements**
 - (i) Determine the existence of any Employment Agreements for owner(s) or key personnel.
 - (ii) Review terms of Employment Agreements for possible conflict with qualifying owner's ability to control operations of firm.
- (k) **Physical Characteristics of Office/Building Location**
 - (i) Determine if the firm has identifying signs outside or inside of the building/office.
 - (ii) Determine if DBE owner has own office.
 - (iii) Request a tour of facilities and observe equipment on premises.
 - (iv) Ask questions regarding operation of equipment.
 - (v) Determine if office space shared with other companies, and if so, the nature of the business of the other companies.
 - (vi) Determine if equipment, supplies, etc. is shared with other companies.
 - (vii) If shared facilities, equipment, verify arrangement for sharing.
 - (viii) Determine if owner(s) are operating other related or unrelated businesses from the location. If so, identify the business and its owners.
- (l) **Familial-martial relationships-** Familial-martial relationships between owners and employees that is pertinent to ownership and control of the company.

3. Information obtained during the on-site review must be compiled in a separate comprehensive written report. The on-site review report is made a part of the certification file and incorporated accordingly.

4. Depending upon the location of the firm, a Certifying Partner may request another Certifying Partner to conduct the on-site review. In such instances, a written request must be made to the Certifying Partner conducting the review with issues of concern identified. The Certifying Partner conducting the on-site review will be responsible for preparing the on-site review report.

5. An on-site visit to the job-site must be conducted if at the time of the on-site, the applicant firm is working.
6. In lieu of conducting an on-site review for a firm outside of Texas, a Certifying Partner may utilize an on-site review report from the potential DBE's home state DOT that certified the firm in accordance with 49 CFR Parts 26 and 23.
7. An applicant's failure to permit an on-site review shall be grounds for denial of DBE certification for failure to cooperate. The firm will be denied certification and cannot reapply for 12 months. The firm may appeal the denial determination to U.S. DOT in accordance with the procedures set forth in §26.89.

F. Certification Determination and Recommendation

1. **DECISION MEMORANDUM** - The certification recommendation is the final product of all information, which has been reviewed, and is an evaluation of the firm's compliance with the certification eligibility standards set forth in the regulations. The written recommendation must be sufficiently comprehensive to persuade an objective party of the merits of the recommendation.
2. **MANAGEMENT REVIEW** - The certification recommendation must be submitted to the supervisor responsible for certification review. The complete file must accompany the submission of the certification recommendation. The supervisor responsible for the certification review must provide written concurrence with the recommendation for certification or denial of certification before a letter can be forwarded to the firm's owners.

G. DBE Certification and Annual Certification Renewal

1. **WRITTEN NOTIFICATION** - A firm will be notified in writing by the TUCP Certifying Partner that it has been granted DBE certification.
2. **LENGTH OF CERTIFICATION** - Once a firm is certified as a DBE by the TUCP, it shall remain certified, unless and until its certification has been removed in accordance with procedures set forth in 49 CFR §26.87.
3. **CHANGE OF CIRCUMSTANCE** - A certified DBE firm has an affirmative responsibility to notify the TUCP Certifying Partner in writing, of any change in circumstances affecting size, disadvantaged status, ownership, or control requirements of the regulation, or any material change in the information provided in its application for DBE certification. Such notice must be within thirty (30) days of the change-taking place.
4. **NO CHANGE AFFIDAVIT** - A certified DBE firm must submit annually, on the anniversary of DBE certification, a No Change Affidavit. A

No Change Affidavit is a sworn affidavit affirming that there have been no changes in the firm's circumstances affecting its size, disadvantaged status, ownership or the control requirements of the regulation, or any material change in the information provided in its application for DBE certification, including the support documentation.

- a) Each firm will be notified by the TUCP Certifying Partner at least 30 days in advance of its anniversary date, of the annual submission requirement and will be provided with the necessary affidavits to complete and return.
- b) A firm failing to comply with the annual submission requirement will be notified in writing 30 days from the date that the submission was due, of the TUCP's intent to decertify the DBE in accordance with §26.87 of the regulation.
- c) A firm failing to comply with the annual submission requirement will be decertified under the procedures of §26.87.

H. Initial Denial of DBE Certification

1. A firm will be notified in writing by the Certifying Partner that it has been denied DBE certification by the TUCP.
2. The firm will be provided with a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for the denial.
3. All documents and information used to render a determination of denial will be made available for inspection by the applicant, upon written request to the Certifying Partner.
4. A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.
5. A firm denied DBE certification may appeal the denial of DBE certification to the USDOT in accordance with §26.89 of the regulation.

I. Removal of DBE Eligibility (Decertification)

1. The TUCP Certifying Partners will follow procedures consistent with §26.87 when removing DBE certification eligibility.
2. A DBE firm whose eligibility has been removed (decertified) for any of the following reasons will be afforded an Appeal Process as stated in Section J(2):

- a) The business has changed to the extent that it is no longer owned or controlled by socially and economically disadvantaged individual(s).
 - b) The DBE firm is no longer an ongoing business entity.
 - c) The socially and economically disadvantaged owners falsified a sworn statement. This action may also result in more punitive action such as debarment.
 - d) The DBE fails to notify the TUCP Certifying Partner, within 30 days, of changes in ownership, control, independence or status as an ongoing concern.
 - e) A determination by the TUCP Certifying Partner that the firm no longer meets certification eligibility standards.
 - f) The DBE exhibits a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirement of the regulations. This action may also result in more punitive action such as debarment.
- 3. Decertified firms shall be removed from the TUCP directory..
 - 4. A decertified firm may not again apply for certification with the TUCP for a period of one year.

J. Appeal Process

1. Initial Denials

- a) a firm denied DBE certification may appeal the denial of DBE certification to the United States Department of Transportation (USDOT) in accordance with §26.89 of the regulation. Such appeal must be filed within 90 days of the date of the determination letter.
- b) Pending a determination by USDOT, the decision rendered by the Certifying Partner remains in effect for the TUCP. Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review.
- c) All appeal decisions rendered by USDOT are administratively final and are not subject to petitions for reconsideration.
- d) A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.
- e) The Database Manager will receive written notification of the certification determination rendered by the TUCP Certifying Partner.

2. Removal of Certification

- a) Any firm that was certified under 49 CFR Part 26 and has had their certification removed may file a written rebuttal or appear in person at an informal hearing.
- b) All requests for an informal hearing must be filed with the TUCP Certifying Partner responsible for the removal of DBE certification. The firm will have the opportunity to present information in person or in writing.
- c) The TUCP Certifying Partner must maintain a complete record of the hearing, by a means acceptable under State law for the retention of a verbatim record of an Administrative Hearing.
- d) Separations of Functions: The TUCP Certifying Partner must ensure that the decision in a proceeding to remove a firm's eligibility (decertification) is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- e) Any firm may appeal directly to the United States Department of Transportation (USDOT). Such appeal must be filed within 90 days of the date of the denial letter from the Certifying Partner.
- f) Pending a determination by the USDOT, the decision rendered by the TUCP Certifying Partner remains in effect for the TUCP.
- g) Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review. USDOT will make a determination based solely on the administrative record.
- h) USDOT will provide written notice of its decision to the TUCP and the appellant.
- i) It is the policy of USDOT to make its determination within 180 days of receiving the complete administrative record. If a determination is not made within this period, USDOT will provide written notice to the parties explaining the reason for the delay and a date by which the appeal decision will be made.
- j) All appeal decisions rendered by the USDOT are administratively final and are not subject to petitions for reconsideration.

K. Third Party Challenge

1. In compliance with Section 26.87 the TUCP Certifying Partners shall accept written complaints from any person, including Non-Certifying Partners, USDOT, and or a TUCP Certifying Partner alleging that a currently certified DBE firm is ineligible.
2. The complainant must state the specific reasons for the challenge and submit documentation in support of the complaint. The complainant's identity shall be protected as provided for in §26.109 (b).
3. The challenged firm shall be notified, in writing, by the original TUCP Certifying Partner, of the challenge, the basis for the challenge and the relevant regulations.
4. The TUCP Certifying Partner responsible for the original certification shall thoroughly investigate the complaint within a reasonable time not to exceed 60 days.
5. The TUCP Certifying Partner shall notify the challenged firm in writing via certified mail of the preliminary findings of the complaint.
- ~~6.~~ If reasonable cause to remove DBE certification eligibility is found, the original Certifying Partner will notify the complainant and DBE firm of the specific grounds for removal and will inform the DBE firm of its right to an informal hearing to address the preliminary findings.
7. The challenged firm may request reconsideration in writing, of the intent to remove certification eligibility, within 15 days of the date of the notice.
8. The request for an informal hearing must be made to the investigating TUCP Certifying Partner and must indicate whether the firm wishes to file a written appeal or appear in person for a hearing.
9. USDOT may also notify the TUCP of reasonable cause to find a certified DBE firm to be ineligible. In such cases, the TUCP shall without delay begin a proceeding to determine whether the firm's eligibility should be removed, as provided in Section 26.87.

III. AGENCY COMPLIANCE

If any TUCP Certifying Partner has reason to believe that another TUCP Certifying Partner is not in compliance with the requirements of 49 CFR 26, Subpart E, they should bring the matter to the attention of the TUCP Executive Committee. The TUCP Executive Committee will be responsible for reviewing any compliance matters that pertain to the requirements of 49 CFR Part 26 Subpart E. If the TUCP Certifying Partner raising a compliance matter is not satisfied with the action taken by the TUCP Executive

Committee to resolve the matter, they may make a written complaint to the appropriate U.S. DOT Intermodal Agency, e.g., FTA, FAA, FHWA etc.

ATTACHMENT 10

Small Business Element Program

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.

Over the course of several years, the City of Austin worked diligently to create an effective set aside program for small businesses. However, governing laws separate contracts based on size (> or < \$50,000) and service (construction and professional). For example, construction contracts over \$50,000 are subject to Texas competitive bidding laws (Tex. Loc. Gov't Code §252.021). The law provides that such procurements must generally either be awarded to the lowest responsible bidder or awarded pursuant to methods based on best value criteria.

For construction-related professional service contracts, the City must comply with the Professional Services Act (the "Act") which requires the City to solicit certain professional services solely "on the basis of demonstrated competence and qualifications to perform the services...." (Tex. Gov't Code §2254.003(a)(1)), regardless of contract size.

Therefore, the City cannot impose the small business set aside program for construction contracts over \$50,000 or award a construction-related professional services contract to a firm on the basis of its size.

Nonetheless, within the parameters of state law, the City of Austin initiated the Small Business Construction Program (SBCP) on June 1, 2011. Under this program:

- 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).

The SBCP is race and gender-neutral; projects facilitated through SBCP will not have goals.

Since the inception of SBCP less than a year ago, one project was awarded to an SBE at Austin-Bergstrom International Airport (ABIA). Although this project was funded through USDOT, the City aims to utilize the SBCP on future qualified USDOT funded projects.

Aside from using the existing SBCP, the City will also be looking at implementing the following to assist in fostering small business participation:

- Reviewing review 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 contracts and providing greater subcontracting opportunities on a smaller scale, thus providing more opportunities for small businesses.
- Promoting the use of joint ventures on federal projects by educating vendors on the benefits of forming partnerships with smaller businesses.
- Develop and deliver trainings to small businesses interested in working on ABIA 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 City procurements at ABIA.

- 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. Trainings may consist of the following: installation of security doors, pouring concrete slabs, and installing sheetrock.

The City of Austin will continue to evaluate opportunities to assist in fostering small business participation in its commitment to providing opportunities to small businesses.