



**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) The City of Austin is not required to submit the Uniform Report of Awards or Commitments and Payments to FAA. The City will however, collect data, analyze information, prepare a report and take corrective actions developed under paragraphs(c) (1) and (2) of this section, retain a copy of the report and make available to FAA upon request.

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:

Urcha Dunbar Crespo, Acting Purchasing Officer
124 W 8th Street, Suite 308
Austin, TX 78701
512/974-2500
Urcha.Dunbar-Crespo@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 9.60% 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

Certification Reviews 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.

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ATTACHMENT 1

Regulations: 49 CFR Part 26

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

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of June 27, 2013

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

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Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

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AUTHORITY: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47107, 47113, 47123; Sec. 1101 (b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or *MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

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

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means 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.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which 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 Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011]

§ 26.7 What discriminatory actions are forbidden?

(a) You must 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 this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must 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 program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

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

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient 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 recipient 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 recipient'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 recipient 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.*).

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

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 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 recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The

Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

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

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

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

(c) For purposes of this section, 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 recipient. When a recipient 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.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

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

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What information must you include in your DBE directory?

(a) In the directory required under § 26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list 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. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

§ 26.39 Fostering small business participation.

(a) Your DBE program must include an 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.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However,

if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau’s County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your 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, you must 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 your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must 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 appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging 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 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(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 your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

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

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.* , not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.* , from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to

meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

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

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must 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.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a

recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) 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;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine 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.

(4) Before transmitting to you 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 you, of its intent to request to terminate and/or substitute, and the reason for the request.

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

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(h) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.55 How is DBE participation counted toward goals?

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

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

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

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(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. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, 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. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(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, you must presume that 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. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(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 DBE goals.

(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 from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(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) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) 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.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) 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.

(A) 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.

(B) 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 as provided in this paragraph (e)(2)(ii) 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.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) 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 DBE goals, provided you determine the fees to be 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 DBE goals, however.

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

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 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.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(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 operational activities 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.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the

normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

- (i) In a specialized field;
- (ii) Of outstanding quality;
- (iii) In areas critical to the firm's operations;
- (iv) Indispensable to the firm's potential success;
- (v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), 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 in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions

precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically 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 policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the

remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm

in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011]

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size

standards of § 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may

conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If you have grounds to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011]

§ 26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) 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.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see § 26.83(j)) and any notices of changes (see § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85 (c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§ 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is

reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility 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.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.* , an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109 (c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may

commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must 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, you must 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.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

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

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.* , obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should 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.

A. 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.

B. 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.

C. 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.

D. (1) 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 suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. 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.

(2) 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.

E. 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.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. 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.

V. In determining whether a bidder has made good faith efforts, you 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, you 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, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

****Submit your completed report to your Regional or Division Office.**

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UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS
*Please refer to the instructions sheet for directions on filling out this form**

1. Submitted to (check only one): FHWA FAA FTA—Vendor Number

2. AIP Numbers (FAA Recipients Only):

3. Federal fiscal year in which reporting period ends: FY _____ 4. Date This Report Submitted: _____
 Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30)

5. Reporting Period: FAA Annual Report

6. Name of Recipient: _____

7. Annual DBE Goal: _____ % Race Conscious Goal _____ % Race Neutral Goal _____ % OVERALL GOAL _____ %

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during this reporting period.)	Race Conscious Goal		Race Neutral Goal		OVERALL GOAL		Percentage of total dollars to DBEs										
	A	B	C	D	E	F											
	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)										
8. Prime contracts awarded this period																	
9. Subcontracts awarded/committed this period																	
TOTAL																	
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD—BREAKDOWN BY ETHNICITY & GENDER	A		B		C		D		E		F		G		H		I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Year-End TOTALS				
10. Total Number of Contracts (Prime and Sub)																	
11. Total Dollar Value																	
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D		E								
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DSE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation												
12. Race Conscious																	
13. Race Neutral																	
14. Totals																	

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[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and

goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D) (1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect

cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose 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 disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this

appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26—Uniform Certification Application Form

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) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

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- (4) 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.

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 any 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:

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- (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.
- I. 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.

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

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 \$17.42 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/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
 - SBA – <http://www.ntis.gov/nascs> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tables/size.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.

Page 1 of 8

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Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
	Has your firm's state UCP conducted an on-site visit?	
	<input type="checkbox"/> Yes, on / / State: <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 <i>(if have one)</i> :			
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State:	Zip:	
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State:	Zip:	

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID <i>(if any)</i> :
(3) This firm was established on / /		(4) I/We have owned this firm since: / /
(5) Method of acquisition <i>(check all that apply)</i> :		
<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 <i>(explain)</i>		
(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.

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(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(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?
 Yes No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

Name	Address	Type of Business
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

Name	Relationship	Company	Type of Business	Own or Manage?
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

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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 (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(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
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Subcontinent Asian
<input type="checkbox"/> Other (specify) _____		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:	Number	Percentage	Class
			Date acquired
			Method Acquired
(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 (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: 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? (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)
(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 (attach additional sheets if needed):

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Section 4: CONTROL

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

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(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.)? Yes No
 If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

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.			

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(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 Vehicle	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: _____

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(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.			

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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.					

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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.

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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 _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that 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) (circle all that apply):

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

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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 \$750,000, 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)

NOTARY CERTIFICATE

2

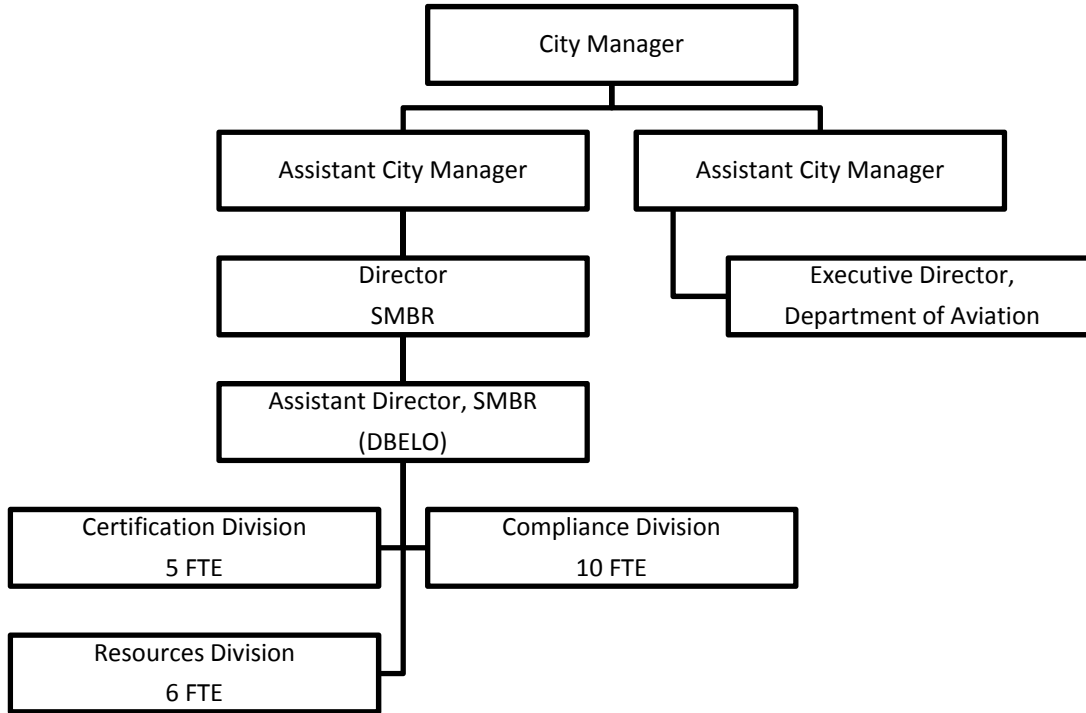
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[68 FR 35559, June 16, 2003]

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.
For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

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: 9.60% to be accomplished through **9.60% RC measures**

Total dollar amount to be expended on DBEs: \$2,064,000.00

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 Austin-Round Rock Metropolitan Statistical Area (MSA), which includes the counties of Bastrop, Caldwell, Hays, Travis, and Williamson, has been identified as the market area. This area is where the substantial majority of the Airport’s contractors and subcontractors that seek to do business with the Airport are located and also the area in which the Airport spends the substantial majority of its contracting dollars.

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 first extracted 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 narrowed by headquarter location to display only those firms headquartered 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	Reprographic 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%
	Reprographic 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%
	Reprographic	Printing Services	561439	\$25,000	148	3	2.03%	\$507	2.50%	0.05%

	Services									
Total Project			\$1,000,000	2103	108	5.14%	\$51,355	Total WBF→	6.38%	
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	237110	\$400,000	144	13	9.03%	\$36,111	13.33%	1.20%

		related structures								
	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%
	Reprographic 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%	\$37,466	Total WBF→	5.61%

	00			2		
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	4.89%	8.02%	3.47%	3.34%	11.91%

Median Past Participation	
	3.34%
	3.47%
	4.89% <Median
	8.02%
	11.91%

Arranging this historical data from low to high, 3.34%, 3.47%, 4.89%, 8.02%, and 11.91%, the median is 4.89%.

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 11.44% $(=18.00+4.89)/2$
- Fiscal Year #2 – 12.11% $(=19.33+4.89)/2$
- Fiscal Year #3 - 5.25% $(=5.61+4.89)/2$

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 9.60%. $(11.44+12.11+5.25)/3$

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 City is proposing that in meeting the overall goal of 9.60%, it will operate in a Race and Gender Conscious environment.

This determination 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. In terms of contracts, over \$38 million were awarded to primes, with \$288 thousand awarded to DBEs as primes, which equals .75% of funds to DBEs.

In reviewing the Prior Year Participation table and methodology documentation from the 2009 plan, it appears the 28.56% overall goal was due to calculation error. Therefore the City was not able to meet or achieve participation from RC measures. In an effort to meet the anticipated goal of 9.60%, the City is proposing to operate in a Race and Gender Conscious (RC) environment during the new plan period.

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.

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for 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.

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.

In conjunction with goal development, the City of Austin consulted 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. Notices and Invitations to participate in the consultation were distributed to all of our local small businesses, including the following individuals and organizations:

- Asian Contractors Association
- Austin Area Black Contractors Association
- Austin Energy – City of Austin’s Electric Utility Department
- Austin Independent Business Alliance
- Big Austin
- Capital City African American Chamber of Commerce
- Capital Metropolitan Transportation Authority
- City of Austin's Aviation Department
- City of Austin's Contract Management Department
- David Hinson - Minority Business Development Agency
- Economic Growth Business Incubator
- FHWA c/o Mark Arrington
- Greater Austin Asian Chamber of Commerce
- Greater Austin Hispanic Chamber of Commerce
- Hispanic Contractors Association de Austin
- National Association Women in Construction (Austin Chapter)
- National Black MBA (Austin Chapter)
- National Hispanic MBA (NSHMBA)
- PeopleFund, local nonprofit
- Score Austin
- South Central Texas Regional Certification Agency c/o Ross Mitchell
- Texas Association of HUBS
- Texas Department of Information Resources (TxDIR)
- Texas Department of Transportation (TxDOT)
- Texas State University Small Business Development Center
- Travis County
- University of Texas HUB Construction Program
- Williamson County African American Chamber

Notices were also distributed to the following Media outlets:

Local newspapers/ newsletters

- Austin American Statesman - PRINTED
- Austin Business Journal
- Austin Chronicle - PRINTED
- Community Impact
- InFact Daily Newsletter
- La Prensa Newspaper
- The Villager Newspaper

Alternative Media (Radio, Electronic, etc.)

- Bid Bullet, US Hispanic Contractors Association de Austin e-newsletter- POSTED
- City of Austin Website -POSTED
- Channel 6, City of Austin owned television station- AIRE
- CityView, City of Austin owned YouTube Channel- POSTED
- Dad's Radio Show
- DBE Good Faith, e-newsletter
- SMBR Website- POSTED

Local news stations

- KEYE
- KTBC Fox 7
- KVUE
- KXAN
- Univision
- YNN

In addition, a Public Comments Hearing to discuss the proposed DBE goals was held Tuesday, July 23rd at 5:30pm at One Texas Center, 505 Barton Springs Road, Third Floor, Room 325, Austin, TX 78704. Information on the DBE Public Comments Hearing was available online at www.austintexas.gov/smbr or by calling 512/974-7677.

Finally, a public notice was posted on the City of Austin and SMBR websites of the proposed overall goal, informing the public that the proposed goal and its rationale were 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 was accepting comments on the goals for 45 days from the date of the notice.

Although a majority of the comments received during the consultation process were positive, participants expressed concern regarding the number of contracts awarded to small African-American owned businesses and requested the City set separate participation goals by ethnicity and gender, similar to the City's local Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) Procurement Programs, to increase African-American participation.

At present, the City is precluded from awarding contracts by ethnicity in the DBE program. However, the City is currently in the process of commissioning a new Disparity Study which will evaluate the City's current MBE, WBE, and DBE programs and related policies. The Disparity Study will also include recommendations to the City for future initiatives and enhancements.

PUBLIC NOTICE

The City of Austin hereby announces its fiscal year 2014-16 goal of 9.60% 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:

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 2-9A, 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 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 2-9A-21 of the City Code

Total Base Bid (if applicable): \$ _____

Subcontracting Information

Goals: Proposed Participation		
	Dollar	Percentage
DBE	\$ _____	_____ %
Non-Certified	\$ _____	_____ %

Bidder's Information

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

Amount: \$ _____ **Percentage:** _____ %

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Verified DBE Goal: _____ DBE _____ %

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"/>
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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
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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:

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

**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/MDDB: 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 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.

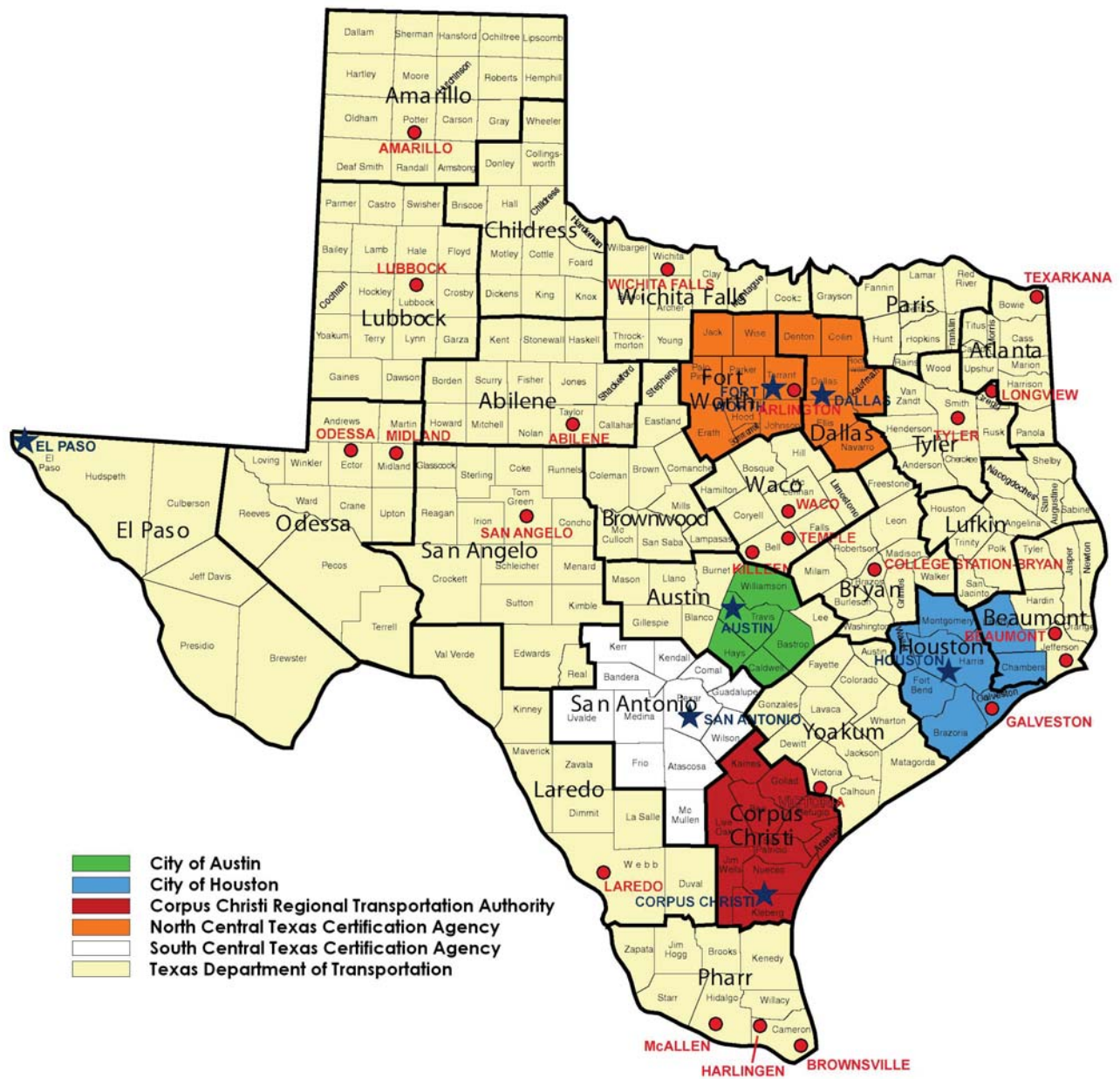
6. INSTRUCTIONS

- 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 any 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.

(7) Type of firm (<i>check all that apply</i>): <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:		
(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:		
(9) Number of employees: Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years:		
	Year	Total receipts \$
	Year	Total receipts \$
	Year	Total receipts \$

C. Relationships with Other Businesses

(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:		
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(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		
(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>):		
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

D. Immediate Family Member Businesses

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>):				
<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.

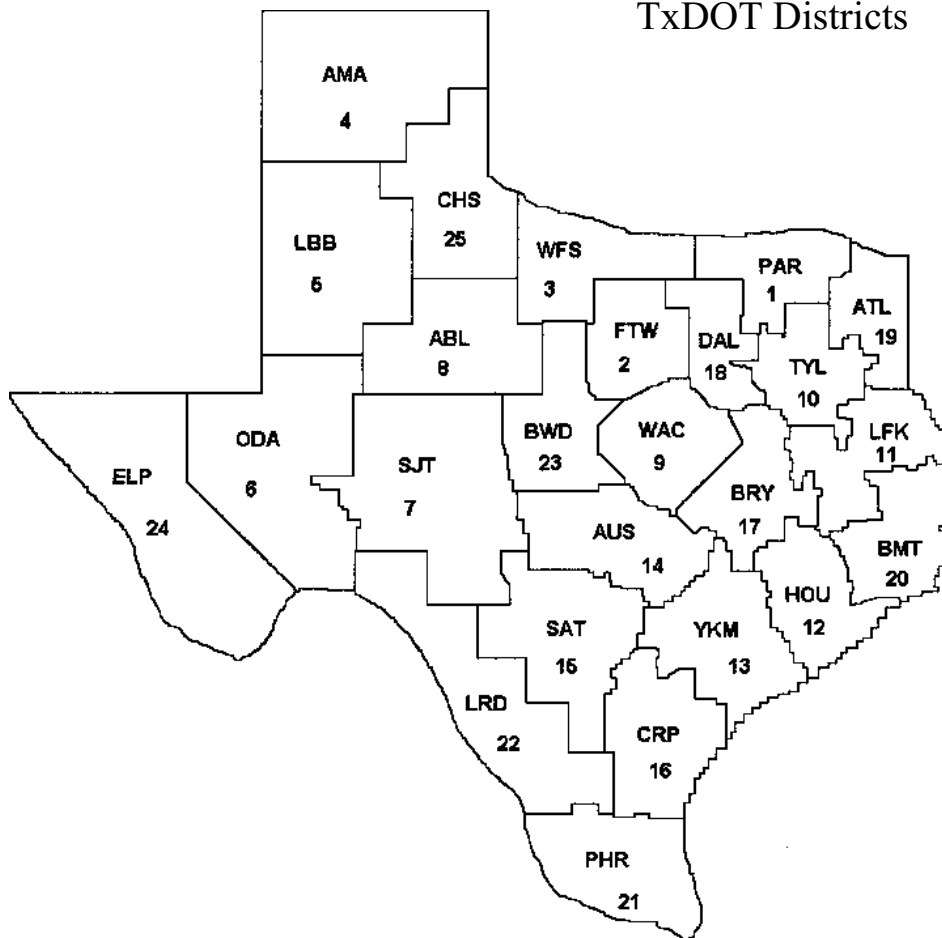
I am willing to work on TxDOT projects in the following Districts. (Select at least ONE, or up to TEN preferred work area(s), unless Statewide is preferred)

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 *ETAN 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 to assist small business owners who wish to build capacity to bid as a prime on COA projects. In order to qualify for inclusion in the SBCP, a firm and its affiliates must meet the Small Business Size Standards as reflected in the U.S. Small Business Administration's Subsector 238-Specialty Trade Contractors of \$14 million in average gross receipts for the past three years and be certified as a Small Business Enterprise (SBE) by the City of Austin.

All businesses regardless of geographic location are eligible to apply for Small Business Enterprise Certification and those who are eligible for SBE certification are also eligible to participate in the SBCP. Certified DBEs that meet the size criteria are presumptively eligible to participate in the SBCP.

In order to verify that businesses are eligible to participate in the SBCP they are required to complete and submit either the SBCP Certified Public Accountant (CPA) Small Business Enterprise Affidavit or the SBCP Small Business Enterprise Affidavit. In either case a CPA verifies the small business size qualification for this program or SMBR verify small business size qualification for this program through file audits and or on-site audits if necessary.

The SBCP Program is administered and managed by SMBR and the Contract Management Department. The Departments work closely with COA's Construction Division to monitor the progress of contracts that are included in the SBCP Program following the same guidelines and procedures established under the City's construction and contract management procedures as well as the City's MBE/WBE/DBE Program guidelines and rules. 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).
- There are no limits on the number of contracts awarded to firms participating the program.

The SBCP is race and gender-neutral; projects facilitated through SBCP will not have goals. 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 plans to implement the following elements to assist in fostering small business participation:

- 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.
- Seek opportunities through various outreach efforts to encourage and educate eligible minority and women owned businesses to become certified.

The City of Austin will continue to evaluate opportunities to assist in fostering small business participation and is committed to providing opportunities to small businesses. Every effort will be made to seek opportunities that eliminate and remove barriers as well as promote the use of new and emerging businesses.