

DBE Contract Specific Goal Phases

Jan 2024

Grant Application and Execution Phase

Step	Task	Pipeline Phase	Assignment	Assignment Description	Notes
1	Establishing Subrecipient DBE Goal	Programming, Planning & Scoping	PTN DBE Subject Matter Expert (SME)	SME will develop the DBE goal with subrecipient data. Goal will be provided to Subrecipient and Program Manager for documentation in any related solicitations and the Project Grant Agreement (PGA).	PTN Compliance team will be available for any technical assistance, if needed.

Procurement Preparation Phase

Step	Task	Pipeline Phase	Assignment	Assignment Description	Notes
2	Solicitation Development	Procurement Phase	Subrecipient	Subrecipient will develop project solicitation which includes all required DBE terms and conditions. The terms and conditions must be included in the solicitation. This requirement includes the DBE Goal, federal DBE clauses, DBE Commitment forms, and Good Faith Effort form.	Subrecipients can use PTN's DBE forms; otherwise, they may create their own with PTN's concurrence.
3	PTN Solicitation Concurrence	Procurement Phase	PTC, Procurement SME(s), and Facility Program Manager	PTN will review the solicitation for all elements and give concurrence before the solicitation can be advertised.	PTN will give technical assistance as needed.

Procurement Phase

Step	Task	Pipeline Phase	Assignment	Assignment Description	Notes
4	Solicitation Bid Review	Procurement Phase	Subrecipient	Subrecipient reviews bids to determine if the bidders are responsive and if an award can be made.	Only responsive bids should be accepted. A responsive bidder would have submitted a list of commitments or Good Faith Effort documents at the time of bid or within 5 days of bid closing.

5	Proposal Evaluation	Procurement Phase	Subrecipient	Make award determination and document bidder evaluation process for procurement files.	Submit award information to assigned PTC prior to making final decision.
6	PTN Proposed Award Review	Procurement Phase	PTC	The PTC shall review the proposed award to ensure compliance with all Federal and State requirements.	PTC may contact the PTN DBE SME, Compliance Section, or Facility Program Manager for assistance with this review.
Contract Phase					
Step	Task	Pipeline Phase	Assignment	Assignment Description	Notes
7	Construction Contract Execution	Construction Phase	Contractor	Contractor must specify all federal DBE terms, conditions, and requirements in their subcontracts.	PTN available for guidance if necessary.
8	Construction Kick-off Meeting	Construction Phase	Contractor, Subrecipient, and PTC	PTN will organize a preconstruction kick-off meeting to discuss the items listed below.	PTN Compliance and PTN Facility Program Manager will assist with developing the kick-off meeting agenda. (See agenda items below)
9	Monthly DBE Progress Report	Construction Phase	Contractor	Contractor completes the monthly DBE progress report and submits it to the subrecipient. The subrecipient tracks progress towards goal attainment and submits the document for PTC review.	PTC will review form to ensure it was completed correctly; forwards document to PTN Facility Manager who tracks goal attainment.
10	Commercial Useful Function (CUF) Review	Construction Phase	Subrecipient	Subrecipient conducts CUF review and submits the required form to PTC.	PTC reviews form and submits form to the PTN Facility Manager.
11	DBE Substitution / Termination Review (If applicable)	Construction Phase	Contractor, Subrecipient, PTC, and DBE SME	Removal of a DBE must be submitted in writing by the subrecipient/contractor. The prime contractor must notify the DBE in writing that it intends to terminate and list the cause. The DBE has five days to respond.	After this process is complete, the subrecipient can request to TxDOT to terminate a DBE and seek a substitute DBE. This in accordance with Title 49 Part 26.53
12	DBE Substitution	Construction Phase	Contractor, Subrecipient, PTC, and DBE SME	The contractor submits DBE substitution commitment information to the subrecipient. The subrecipient confirms if the replacement is a qualified substitute. If approved, subrecipient will forward the information to the PTC.	PTC and Facility Program Manager review the submission.

13	DBE Replacement Good Faith Efforts (If applicable)	Construction Phase	Contractor, Subrecipient, PTC, and DBE SME	The contractor must document GFE when replacing a DBE; this information would be reviewed by the PTC and DBE SME to confirm the correct steps were followed.	After the removal of the DBE, did the removal effect the established DBE goal? If yes, what Good Faith Efforts were performed to ensure the DBE goal was met?
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Construction Kick-off Meeting Agenda

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|--|---|--|
| <ol style="list-style-type: none"> 1. Pre-Construction Meeting – Items to Address 2. Monitoring, Oversight, and Quality Control 3. Safety Plan (publish, post, and present) | <ol style="list-style-type: none"> 4. Federal Posters 5. Reporting Requirements (DBE, Wage, Davis-Bacon) 6. Wage Rate Semi-Annual Interviews 7. Construction Meetings 8. Pay Applications / RFR(s) | <ol style="list-style-type: none"> 9. RFI(s) 10. Change Orders 11. Build America, Buy America Act (BABA) / Buy America Certificates |
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Procurement Preparation Phase

Example RFP Language

**NOTICE TO BIDDERS/PROPOSERS
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
AND
DBE PARTICIPATION GOAL**

Bidders and proposers are advised that (Entity) has established an overall DBE goal for this solicitation to ensure equal participation of DBE groups specified in 49 CFR 26.5. In compliance with 49 CFR 26, (Entity) has set a contract goal for DBEs participating in this solicitation expressed as a percentage of the total dollar value of the resultant agreement.

The DBE participation goal for this solicitation is **XXXXXX** Percent (**XX%**).

The attached forms, (FORM Name 1) and (FORM Name 2) must be submitted (with the bid by the bid due date and time) or (no later than 7 days after bid opening) as indicated in the solicitation:

- (FORM Name 1: Example: Commitment Agreement Form)
- (FORM Name 2: Example: Contractor Certification of Good Faith Efforts)

Failure to complete and submit the required DBE information and forms, will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal.

AUTHORITY AND BIDDER'S RESPONSIBILITY

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. Bidders/Proposers (bidder) shall be fully informed of the requirements of the regulations. It is the policy of the (Entity), that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The Bidder should ensure that DBE firms have an opportunity to participate in the performance of this solicitation and shall take all necessary and reasonable steps for this assurance. The bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

It is the bidder's responsibility to make work available to DBEs and select portions of work, services, or material needed from the proposed project scope of work. The required work, services and/or material must be relevant to the DBEs work codes to meet the contract goal for DBE participation in this solicitation or provide information to establish, that prior to bidding, the bidder made an adequate Good Faith Effort (GFE) to meet the goal.

To be eligible for award, the bidder shall demonstrate that the contract goal for DBE participation was met or that, prior to bidding, an adequate GFE to meet the goal was made. Final determination of goal attainment or GFE by the bidder will be at (Entity's) discretion.

SUBMISSION OF DBE INFORMATION AND PARTICIPATION

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal or make a GFE to meet the contract goal for DBE participation as established for this Agreement. Bidder shall submit the attached form(s).

- (FORM Name 1: Example: Commitment Agreement Form)
- (FORM Name 2: Example: Contractor Certification of Good Faith Efforts)

DBE CERTIFICATION REQUIREMENTS

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR 26 and (Entity's) DBE Program developed pursuant to the regulations. Particular attention is directed to the following:

1. A DBE must be certified through the Texas Unified Certification Program (TUCP). In accordance with 49 CFR 26, the DBE must be certified by bid opening date of the Invitation for Bid (IFB), the Request for Proposal (RFP), or the Architectural and Engineering (A&E) Request for Quotations (RFQ), before credit may be considered toward meeting the DBE goal. It is the bidder's (prime contractor's) responsibility to verify that DBEs are certified by accessing the TUCP database.
2. Access the TUCP database from the Texas Department of Transportation web site at: <https://txdot.txdotcms.com/>
 - a. Click on the "Search the Texas Unified Certification Program" link.
 - b. Select "DBE" in the "Search by Certification Type"
 - c. Select additional search criteria such as location or business description
 - d. Click "Search"
 - e. Print out results (incl. date it was printed) and attach to DBE Commitment Agreement Form
3. NAICS Work Codes and Work Descriptions
The North American Industry Classification System (NAICS) work codes are used to identify the type of work performed by DBEs. You will need to have the NAICS work code numbers before querying. The TUCP allows searching of NAICS codes to locate DBEs.
4. In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a Good Faith Effort to meet the contract goal for DBE participation established for the Agreement. The bidder can meet this requirement in one of two ways:
 - a. Meet the contract goal and document commitments for participation by DBE firms.
 - b. If the contract goal is not met or is partially met, the bidder must document an adequate GFE.
5. A bidder (prime contractor), who is not a certified DBE, will be required to document one or a combination of the following:
 - a. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
 - b. Prior to bidding, the bidder made an adequate GFE to meet the contract goal for DBE participation.
6. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
7. A certified DBE bidder not bidding as a joint venture with a non-DBE, is required to document one or more of the following:
 - a. The DBE bidder will meet the goal by performing work with its own forces.
 - b. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
 - c. Prior to bidding, the bidder made adequate GFEs to meet the contract goal for DBE participation.
8. A DBE must perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for material and supplies to be used on the Agreement for negotiating price, determining quality, and quantity, installing (where applicable), and paying for the material itself.
9. Any dollar amount of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.

10. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE subcontractors.
11. If the bidder performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the bidder failed to meet the goal.

CREDIT: MATERIAL-SUPPLIES-TRUCKING COMPANIES

A. CREDIT FOR MATERIAL OR SUPPLIES PURCHASED FROM DBEs WILL BE AS FOLLOWS:

1. If the material or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the material or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the material or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the material or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the material, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. To be a DBE 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. A person may be a DBE 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 if the person both owns and operates distribution equipment for the products.
6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
8. Credit for material or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the material and supplies or fees or transportation charges for the delivery of material or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of material or supplies is not counted toward the DBE goal in this instance.

USE AND/OR TERMINATION OF PROPOSED DBES

If awarded the Agreement, the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Prime Contractor may not substitute, add, or terminate a DBE subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of the Subrecipient, and only as allowable as specified in the Agreement. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm. Subrecipient will notify TxDOT PTN in writing prior to substituting or terminating a DBE using the Substitution/Termination Request Form. TxDOT PTN will also verify this information using the PTN-138 Form (Quarterly Construction Progress Report).

Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection. The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1. The DBE fails or refused to execute a written contract.
2. The DBE fails or refuses to perform the work consistent with normal industry standards.
3. The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4. The DBE becomes bankrupt or has credit unworthiness.

5. The DBE is ineligible to work because of suspension and debarment.
6. It has been determined that the DBE is not a responsible contractor.
7. The DBE voluntarily withdraws, with written notification, from the contract.
8. The DBE is ineligible to receive credit for the type of work required.
9. The DBE owner dies or becomes disabled resulting in the inability to perform the work.
10. Or other documented compelling reason.

The Contractor must make an adequate GFE to find another certified DBE subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Agreement. Substitutions of DBEs after award must be certified at the time of the substitution or addition.

AWARD

Contract award will be in accordance with the respective solicitation. The bidder receiving the award shall be responsible for implementing the applicable requirements of 49 CFR 26. The bidder receiving the award shall complete and submit Monthly Disadvantaged Business Enterprises Progress Reports.

This content is from the eCFR and is authoritative but unofficial.

Title 49 – Transportation

Subtitle A – Office of the Secretary of Transportation

Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

Subpart C – Goals, Good Faith Efforts, and Counting

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, et seq.; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324; 49 U.S.C. 47113, 47123; Sec. 150, Pub. L. 115–254, 132 Stat. 3215.

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

§ 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 or 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (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; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see [Appendix A of this part](#)). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

What are the good faith efforts procedures recipients follow in...

(3)

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

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

(B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

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

(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)

What are the good faith efforts procedures recipients follow in...

- (i) 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.
- (ii) You must include in each prime contract a provision stating:
 - (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and
 - (B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
- (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 to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (vii) You have determined that the listed DBE subcontractor is not a responsible contractor;
 - (vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
 - (vii) The listed DBE is ineligible to receive DBE credit for the type of work required;
 - (viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - (ix) 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.

What are the good faith efforts procedures recipients follow in...

- (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 as provided in paragraph (f) of this section, 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. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.
- (h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate 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.
- (j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

Procurement Phase

Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Project #:		County:		Contract:	
Items of work to be performed (attach a list of work items if more room is required):					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
Total					

Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.

Prime Contractor:	Name/Title (Please Print)
Address:	Signature:
Phone number:	
E-Mail:	Date:

DBE:	Name/Title (Please Print)
Vendor: NO. NAICS Code:	Signature:
Address:	
Phone Number:	
E-Mail:	Date:

Subcontractor: (if the DBE will be a second tier sub):	Name/Title (Please Print)
Address:	Signature:
Phone number:	
E-Mail:	Date:

Prime Contractor's verification that the DBE is certified.

___ DBE is certified and printout of TUCP listing is attached and dated.

___ DBE is NOT certified and printout of TUCP listing is attached and dated. (DBEs must be certified at the time of commitment.)

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

Purpose

The certification's intent is to document the good faith efforts (GFE) undertaken by the Contractor in soliciting and utilizing Disadvantaged Business Enterprises (DBE) to meet the good faith effort requirements for the contract. The completed certificate will assist in determining if the Contractor performed its due diligence in taking all necessary and reasonable steps by their scope, intensity, and appropriateness that could reasonably be expected to secure DBE participation, even if the contractor was not fully successful. Mere proforma efforts are not good faith efforts to meet the DBE contract requirements. The burden of proof in documenting good faith efforts rests with the Contractor

General

The information requested in this certificate is the information required to evaluate your firm's good faith efforts.

Prime Contractor:				
Project:	County	Contract Amount	DBE Percentage	
			Goal \$ _____ % _____	Proposed Goal to be Met (GCE)

Provide a brief summary on why you believe your firm is unable to meet the assigned DBE goal on this contract. Attach additional pages if necessary.

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

3. List all attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, organizations or publications that received announcements or written notifications from the Contractor, date published/sent and provide follow-up activity details. Provide explanation if no follow-up activities were performed.

Published Announcement/ Publication (Provide brief description)	Date Sent	Association/Organization	Contract Person & Phone	Date of Follow-up Activities

List all attendance at pre-bid and business matchmaking meetings and events

Pre-Bid/Business Matchmaking Events	Association/Organization	Date Attended

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

B. Identifying Subcontractor Work Units

The Contractor is strongly encouraged to select portions of work to be subcontracted to increase the likelihood of achieving the DBE participation. In selecting work to be subcontracted, the Contractor shall consider, where it is appropriate, breaking down the project into economically feasible work units to facilitate and promote DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

1. Which portions or sections of the Scope of Work are able to be subcontracted?

2. Is there a DBE firm currently on the contract/project team able to perform the Scope of Work above or a portion of the work?

Yes No Name of firm: _____

C. Providing Assistance to DBEs

1. Explain any efforts undertaken to provide DBE firms with adequate information in a timely manner about contract Scope of Work and requirements of this contract:

2. Describe any efforts undertaken to assist interested DBE firms in obtaining insurance bonding, lines of credit, or insurance:

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

3. Describe any efforts undertaken to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services:

4. Describe any efforts used to obtain services of available minority/women community organizations or other organizations:

- D. Negotiating in Good Faith Contractors shall solicit services in good faith with interested DBE firms listed in the Texas Unified Certification Program (TUCP) DBE directory with the certification NAICS code to perform the areas of work desired and which are located in the area or surrounding areas of the project. Proposals from interested DBE firms shall not be rejected by Contractors without sound business justification.

1. Provide the firm name, contact information and work proposed of all DBE firms that submitted a proposal for this contract that were not selected. The reason for rejection must be provided.

DBE Firm and Contact Person	Work Proposed	Explanation for Rejecting Proposal

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

2. Other comments or information:

The undersigned, _____ certifies that the information provided on this certificate is true and correct to the best of my knowledge and belief.

Signature: _____ Date: _____

Contractor / Authorized Representative

Note: The GFE form must be signed by an authorized signatory for the Contractor.

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

Purpose

The certification's intent is to document the good faith efforts (GFE) undertaken by the Contractor in soliciting and utilizing Disadvantaged Business Enterprises (DBE) to meet the good faith effort requirements for the contract. The completed certificate will assist in determining if the Contractor performed its due diligence in taking all necessary and reasonable steps by their scope, intensity, and appropriateness that could reasonably be expected to secure DBE participation, even if the contractor was not fully successful. Mere proforma efforts are not good faith efforts to meet the DBE contract requirements. The burden of proof in documenting good faith efforts rests with the Contractor

General

The information requested in this certificate is the information required to evaluate your firm's good faith efforts.

Prime Contractor:				
Project:	County	Contract Amount	DBE Percentage	
			Goal \$ _____ % _____	Proposed Goal to be Met (GCE)

Provide a brief summary on why you believe your firm is unable to meet the assigned DBE goal on this contract. Attach additional pages if necessary.

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3. List all attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, organizations or publications that received announcements or written notifications from the Contractor, date published/sent and provide follow-up activity details. Provide explanation if no follow-up activities were performed.

Published Announcement/ Publication (Provide brief description)	Date Sent	Association/Organization	Contract Person & Phone	Date of Follow-up Activities

List all attendance at pre-bid and business matchmaking meetings and events

Pre-Bid/Business Matchmaking Events	Association/Organization	Date Attended

**Disadvantaged Business Enterprise
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B. Identifying Subcontractor Work Units

The Contractor is strongly encouraged to select portions of work to be subcontracted to increase the likelihood of achieving the DBE participation. In selecting work to be subcontracted, the Contractor shall consider, where it is appropriate, breaking down the project into economically feasible work units to facilitate and promote DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

1. Which portions or sections of the Scope of Work are able to be subcontracted?

2. Is there a DBE firm currently on the contract/project team able to perform the Scope of Work above or a portion of the work?

Yes No Name of firm: _____

C. Providing Assistance to DBEs

1. Explain any efforts undertaken to provide DBE firms with adequate information in a timely manner about contract Scope of Work and requirements of this contract:

2. Describe any efforts undertaken to assist interested DBE firms in obtaining insurance bonding, lines of credit, or insurance:

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3. Describe any efforts undertaken to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services:

4. Describe any efforts used to obtain services of available minority/women community organizations or other organizations:

- D. Negotiating in Good Faith Contractors shall solicit services in good faith with interested DBE firms listed in the Texas Unified Certification Program (TUCP) DBE directory with the certification NAICS code to perform the areas of work desired and which are located in the area or surrounding areas of the project. Proposals from interested DBE firms shall not be rejected by Contractors without sound business justification.

1. Provide the firm name, contact information and work proposed of all DBE firms that submitted a proposal for this contract that were not selected. The reason for rejection must be provided.

DBE Firm and Contact Person	Work Proposed	Explanation for Rejecting Proposal

**Disadvantaged Business Enterprise
Contractor Certification of Good Faith Efforts**

2. Other comments or information:

The undersigned, _____ certifies that the information provided on this certificate is true and correct to the best of my knowledge and belief.

Signature: _____ Date: _____

Contractor / Authorized Representative

Note: The GFE form must be signed by an authorized signatory for the Contractor.

Contract Phase

Commercially Useful Function (CUF) Review

Per 49 CFR 26.55(c) "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... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purpose of reviewing DBEs for compliance with the CUF requirements for credit.

INSTRUCTIONS:

- CUF review must be performed a minimum of one time during the contract period for each DBE.
- CUF must be completed within 30 days of the DBE starting the work.
- Submission form must have signature and date of the compliance review.

Project ID: _____	Reviewer: _____
County: _____	Reviewer's Title: _____
Subrecipient: _____	Review Date: _____
Name of DBE: _____	Date DBE started work: _____

DBE is performing as: Prime Contractor Subcontractor Other Tier Subcontractor
 Material Supplier: Manufacturer Regular Dealer Broker

Provide a brief description of the DBE's scope of work. (Obtain a copy of the Subcontractor Agreement and/or Purchase Order if needed.)

COMMENSURATE	Yes	No	
Is the payment received by the DBE commensurate with the work being performed?	<input type="checkbox"/>	<input type="checkbox"/>	
PERFORMING	Yes	No	
Does the DBE have employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>	
Do the DBE employees exclusively work for the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the DBE working without assistance from the prime contractor or another subcontractor? (Use of prime's equipment in an emergency is allowed but the cost associated with the use of the equipment cannot be credited towards the goal.)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the DBE only using equipment it owns, rents, or leases?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the DBE performing at least 30% of their work?	<input type="checkbox"/>	<input type="checkbox"/>	
HAULING	N/A <input type="checkbox"/>	Yes	No
Does the DBE hauling firm own or lease their trucks? (If yes, obtain verification of ownership or lease documents in the name of the DBE)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does a review of the haul tickets associated with the project indicate that hauling is being performed by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MATERIALS	Yes	No	
Does the DBE's name appear on all invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>	

Commercially Useful Function (CUF) Review

SUPERVISING	Yes	No
Is the DBE supervising its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>
Is the supervisor an employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
Description of supporting documentation that was reviewed (invoices, lease documents, payrolls, etc.)		
CUF	Yes	No
Does the DBE appear to be performing a Commercially Useful Function (CUF)?	<input type="checkbox"/>	<input type="checkbox"/>
If no, provide comments:		
Additional Comments:		

Reviewer's Signature:

Date:

Commercially Useful Function (CUF) Review

CUF DETERMINANTS

PERFORMING

- DBE must be responsible for performing its own work on the project
- At least 30% of the work must be performed by the DBE with its own workforce
- The DBE keeps a regular workforce and has its own employees
- The DBE is utilizing its own equipment

RED FLAGS

- A portion of the DBE's work is being done by the Prime Contractor or jointly with another contractor
- Employee working for both the Prime and the DBE
- Equipment used by DBE belongs to the Prime Contractor or another contractor with no formal lease agreement
- Equipment signs and markings cover another contractor's identity

Records/Documents

- Subcontractor Agreement or Purchase Order
- Equipment ownership, rental, or lease documents
- Certified payrolls

MATERIALS (For Material Credit)

- DBE is responsible for delivery of the materials
- DBE is ordering the material and invoices indicate that DBE is the customer
- Material invoices indicate that DBE owner of Superintendent is the contact person

RED FLAGS

- Materials for DBE credited work are delivered by the Prime Contractor
- Materials are ordered, billed to, and/or paid by the Prime Contractor
- Invoices do not indicate that DBE is the customer
- Prime's employee is listed as the contact person on invoices
- Materials from Prime's stockpiles

Records/Documents

- Invoices
- Haul Tickets or Bills of Lading
- Material on Hand documentation
- Joint check agreement
- Cancelled Checks

SUPERVISING

- DBE supervisor is a full time employee for the DBE
- Employees are being supervised by the DBE Supervisor
- DBE is scheduling work operations

Commercially Useful Function (CUF) Review

Red Flags

- DBE's employees are being supervised by Prime Contractor or another contractor
- DBE provides little or no supervision of work
- DBE supervisor is not a full-time employee of the DBE

Records/Documents

- Certified Payrolls
- Document communication with DBE owner or Superintendent

Disadvantaged Business Enterprise (DBE)
Substitution/Termination Request Form

Project Number:		County:		Contract		
Request Date:		Prime Contractor:				
Date Prime determined DBE unwilling, unable or ineligible:						
List Previous Approved Subcontractor:				Proposed Subcontractor:		
Bid Item	Work Description	Dollar Amount Completed	Remaining Dollar Amount	Bid Item	Work Description	Dollar Amount
Totals				Totals		

Will termination result in a goal shortfall? Yes No If so, how much? _____

Projected date Proposed Subcontractor will commence work? _____

Reason(s) for substitution Check Appropriate Block

- The listed DBE is no longer in business. The listed DBE requested removal.
- The listed DBE failed or refused to perform the contract or furnish the listed materials.
- The work performed by the listed DBE was unsatisfactory and was not accordance with the scheduled plans and specification.
- Other Issues not listed: _____

Provide copy(s) of the following items: Termination letter, DBE Termination agreement statement or if applicable DBE letter of voluntary removal request.	
Contractor Signature:	
<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	Reason:
DBE Coordinator Signature:	Date:

TXDOT PTN has been notified in writing (via this form) prior to termination/substitution of a DBE on _____ Date.