



Disadvantaged Business Enterprise Plan

Civil Rights Division

Small Business Development Program

Revised 4/10/2019

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Subpart A – General

Objectives/Policy Statement (§26.1 / §26.23)

Tennessee Department of Transportation Disadvantaged Business Enterprise Program Objective and Policy Statement



As a recipient of federal financial funding of the United States Department of Transportation, The Tennessee Department of Transportation (TDOT) is required to administer a Disadvantaged Business Enterprise (DBE) Program in compliance with all laws, regulations, Executive Orders, and guidance.

TDOT is committed to the objectives of the DBE Program and it is their policy to fully support and comply with 49 C.F.R. Part 26 and all other applicable statutes, regulations and guidelines of the United States Department of Transportation. In order to achieve these goals, it is the policy of TDOT:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in TDOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

TDOT has designated a DBE Liaison Officer (DBELO) within the Office of Civil Rights who is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is in accordance with the same priority as compliance with all other legal obligations incurred by the TDOT in its financial assistance agreements with the Department of Transportation.

The Small Business Development Office Certification Officers are tasked with certifying eligible DBEs as required by 49 C.F.R. Part 26 in order to participate in federally assisted contracts. Certified, eligible DBEs are included in a DBE directory. To meet the maximum feasible portion of its overall goal by race-neutral means, TDOT will make this policy statement available to all branches of State government and post it online for public viewing. It will be distributed to DBE and non-DBE communities that perform work on USDOT-assisted contracts by newspaper legal notices, and other appropriate means. In meeting its race-neutral participation policy, TDOT will make DBEs aware of contract opportunities and projects.



Clay Bright, Commissioner
Tennessee Department of Transportation

Date: April 10, 2019

Definitions (§26.5)

The terms used in this program have the meanings defined in 49 C.F.R. §26.5 (some terms/acronyms may be TDOT specific and are noted below with an *)

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 Metlakatla 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.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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.

CRD* means TDOT's Civil Rights Division.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

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 Federal financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

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, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State 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.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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 most current North American Industry 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, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

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. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

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 Small Business Enterprise (SBE) 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.

SBDP refers to the Tennessee Department of Transportation's (TDOT) Small Business Development Program.

Small business concern means, with respect to firms seeking to participate as a Small Business Enterprises (SBEs) 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 has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(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 enrolled members of a federally or State recognized Indian tribe, Alaska Natives, 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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, 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.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

TDOT means the Tennessee Department of Transportation.

TNUCP means the Tennessee Uniform Certification Partners.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with

disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

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).

Nondiscrimination (§26.7)

TDOT 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, national origin, age or disability. In administering its DBE program, TDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration, that effect or defeat or substantially impair accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, age or disability.

What records do recipients keep and report? (§26.11)

Uniform Report

TDOT is committed to submitting the **Uniform Report of DBE Commitments/Awards and Payments** biannually (no later than June 1st for the first reporting period of October 1 – March 31 and no later than December 1st for the second reporting period of April 1 – September 30). Reports will comply with the format included in 49 CFR Part 26, Appendix B. **See Attachment Q.**

Bidders List – 26.11(c)

The apparent low bidder for each project is required to provide a list of all subcontractors who provided a quote to perform work (both DBEs and non-DBEs). The list shall be provided electronically on the TDOT form “Certification Regarding Subcontractor Bid Quotes” (Bidders List). The apparent low bidder shall submit this form before the close of business (4:30 PM, Central Time) five (5) calendar days after the date on which bids are required to be submitted (e.g., if bids are required to be submitted on a Friday, then the completed form is due by 4:30 PM on the following Wednesday). Emergency contracts will not require a bidders list. Failure to complete and submit this form within the time period required may result in the rejection of the bid.

Records Maintenance – 26.11(d)

The SBDP keeps complete DBE applications and all supporting documentation (including affidavits of no change, changes submitted by the firm, and onsite reports) indefinitely. Additionally, the three most current corporate tax returns (if applicable) and the most recent personal net worth statement and personal tax

return are maintained in the DBE file. All DBE application materials and information are stored in a secured, locked room that is only accessible by certification staff.

UCP Directory Reporting – 26.11(e)

TDOT will report to the Department of Transportation's Civil Rights Division by January 1 of each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

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

Federal Financial Assistance Agreement Assurance (§26.13)

TDOT will take all necessary and reasonable steps under 49 CFR to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 TDOT of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26. Additionally, the Department 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.).

The Commissioner of TDOT has signed an assurance applicable to all USDOT-assisted contracts and their administration:

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of contracts let by the Department. Consequently, the disadvantaged business enterprise requirements of 49 CFR Part 23/26 applies to this contract.

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23/26 to ensure that disadvantaged enterprises, including enterprises owned and controlled by women, have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, religion, national origin, sex or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Division Small Business Development Program copies of any agreements with DBE/WBEs upon execution.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy deemed appropriate by the Department.

Elsewhere in the contract it states under TDOT's Special Provision Regarding DBE Contract Goals:

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 26 in the award and administration of Department 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 Department deems appropriate.

Contract Assurance

TDOT will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT 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, disqualifying the contractor from future bidding as non-responsible, assessing sanctions or such other remedy, as the recipient deems appropriate per FHWA 1273 required contract provisions. See Attachment L.

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

Who Must Have a DBE Program (§26.21)

TDOT will continue to carry out the DBE program until all funds from USDOT financial assistance have been expended. TDOT will provide updates to USDOT (as needed) regarding any significant changes in the program and/or current DBE Business Plan. TDOT's sub-recipients who award federally assisted contracts must also incorporate and fully comply with TDOT's DBE Plan.

Policy Statement (§26.23)

See signed letter from TDOT Commissioner John Schroer (page 1)

DBE Liaison Officer (DBELO) (§26.25)

TDOT has designated the following individual as its DBE Liaison Officer (DBELO):

**Director of the Civil Rights Division
505 Deaderick Street, Suite 1800
Nashville, TN 37243-0347
(615) 741-3681/1-888-370-3647**

In the capacity of the DBELO, the Civil Rights Director along with the Construction Office, the Director of the Design Division and other Division Directors within TDOT, are responsible for implementing the DBE program and ensuring that TDOT complies with all provisions of 49 CFR Part 26. The Civil Rights Division Director, via the TDOT Deputy Commissioner, has access to the Commissioner of TDOT concerning DBE program matters. The Civil Rights Division/Small Business Development Program has a staff assigned to the DBE program on a full-time basis and supportive services personnel who devote a great portion of their time to the program in regards to training, business planning and technical computer assistance. An organizational chart displaying the Civil Rights Division and the DBELO is provided in **Attachment A**. Also, a TDOT Departmental Directory is available as **Attachment U**.

TDOT and the Small Business Development Program, along with the Construction Division are responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include, but are not limited to, the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors those results.
5. Analyzes Tennessee Department of Transportation's progress toward goal attainment and identifies ways to improve progress.
6. Advises the Commissioner and executive staff on DBE matters and achievements.
7. Participates with the legal counsel and Construction Office engineers to determine contractor compliance with good faith efforts.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

9. Plans and participates in DBE training seminars.
10. Certifies DBEs according to the criteria set by USDOT.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains the Tennessee Department of Transportation's updated directory of certified DBEs.
13. Monitors DBE work to assure performance of a Commercially Useful Function.
14. While the Small Business Development Program, within the TDOT Civil Rights Division, is charged with the responsibility of assuring the enforcement of 49 CFR Part 26 for the Disadvantaged Business Enterprise (DBE) Program, it is understood that the success of the program is incumbent upon a cooperative and coordinated compliance monitoring effort shared with the Construction Division, along with other divisions within the department.
15. The Civil Rights Division operates in accordance with a Manual of Standard Operating Procedures (MSOP) that adheres to rules of the DBE program as set forth in the federal regulations.
16. The Construction Division operates under various Circular Letters. These letters are posted to their website. In addition, the Construction Division and CRD have implemented a Commercially Useful Function (CUF) Checklist.

DBE Financial Institutions (§26.27)

Prime contractors working on TDOT contracts are encouraged to utilize all financial institutions owned and controlled by socially and economically disadvantaged individuals.

Prompt Payment (§26.29)

TDOT will include the following clause in each USDOT-assisted prime contract:

Pursuant to TCA, Section 12-4-707, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contractor receives from TDOT. **See Attachment N.**

Prompt payment provisions must be included in all contracts, including those between prime contractors and all subcontractors.

Retainage – 26.29(b)

TDOT does not hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

Acceptable work – 26.29(c)

Pursuant to TCA, Section 12-4-707, the prime contractor agrees to pay each subcontractor and supplier under this prime contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contractor receives from TDOT. “Satisfactorily performance” means that the work has been inspected by TDOT and is accepted as complete according to the required TDOT specifications prior to the submission deadline for monthly estimates and after the information has been so recorded in the field office. Also, all required certifications must be in the field office and accepted according to the same time frame. Any delay or postponement of payment from the above referenced time frame will result in accrual of interest as provided under TCA, Section 12-4-707(b). Delays or postponements of payments to subcontractors may occur only for good cause following written approval of the TDOT, and approval of delays or postponements are also subject to interest accrual pursuant to TCA, Section 12-4-707(b). This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement – 26.29(d)(e)

TDOT will require prime contractors to maintain records and documents of payments to DBEs for three years following the administrative closure of the contract. These records will be made available for inspection upon request by any authorized representative of the TDOT. This reporting requirement also extends to any certified DBE subcontractor.

TDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This information will be submitted to a dedicated email address: dbe.runningtally@tn.gov. See **Attachment N**.

Prompt Payment forms (**See Attachment N**) are to be submitted by all Prime contractors for any TDOT contract utilizing a DBE or Small Business Enterprise (as defined by TDOT’s **Small Business Enterprise Program**). A dedicated mailbox is set up to receive these documents and they are processed through a macro-enabled Excel workbook to show prompt payments to date. The SBDP office is currently working with the Construction Office and IT to provide enhanced real-time monitoring of subcontractor payments. One solution is the AASHTO Ware Project – Civil Rights and Labor (CRL) program that will automate many aspects of the DBE process, including prompt payment monitoring. Prime Contractors would log-in via the internet to enter their payments, and subcontractors could verify via the same method.

If the Contractor fails to comply with Prompt Payment provisions, the Department may take one or a combination of the following steps (as outlined in TDOT SP 1247):

- Require the Contractor to have its entire management staff attend DBE training arranged by the Department and paid by the Contractor.
- The next time the Contractor is the low bidder on a DBE goal project, require that Contractor to achieve a DBE participation that is twice the stated goal.
- The Department may withhold from the Contractor an amount not to exceed the amount of money originally committed to the non-complying DBE subcontractor, not as a penalty but as liquidated damages.
- Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.
- For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.
- Invoke other remedies available by law and/or in the contract.
- Invoke remedy agreed upon by the Commissioner and the Contractor in writing.

DBE Directory (§26.31)

TDOT maintains a directory/certified listing identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, and phone number, email address, and the type of work the firm has been certified (North American Industry Classification System (NAICS)) to perform as a DBE. The Department revises the Directory as needed. The Department also makes the Directory available as follows through mailings, through the Small Business Development Program Website and of course upon request. The DBE Directory may be accessed at www.tdot.tn.gov/APPLICATIONS/DBEDirect/ and also the full link to the Directory is shown in **Attachment B**.

DBE Over-Concentration (§26.33)

Over concentration is monitored after each Letting through the creation of a DBE Utilization Memo. This memo is available online and is a record of the DBEs committed for each goal project by DBE name and specialty area(s). Any patterns or trends that may exist would become evident via this document which is available on the TDOT website. At this time, TDOT has not received any comments or complaints that non-DBEs are unduly burdened from participation in any specific types of work. When monitoring the utilization of DBEs, if an over-concentration is found that meets the definition as described in 26.33, implementation of one or more of the measures suggested in the

regulations will be employed (subject to the approval of the concerned USDOT operating administration).

Business Development / Mentor Protégé Programs (§26.35)

Business Development Program

The purpose of a Business Development Program (BDP) 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.

TDOT's Civil Rights Division Small Business Development Program is currently operating a Business Development Program open to all TDOT and TNUCP-certified DBE firms. This program provides extended business development and supportive services to approximately eight DBE firms (two per region) looking to develop their self-sufficiency and enhance their competitiveness. The BDP Application is **Attachment S**.

DBEs interested in this program complete an application for admission into this multi-year program (note: actual times will vary depending on each DBE's needs). Those selected to participate in this specialized program receive the highest levels of technical assistance possible through expert one-on-one support and development services. Targeted technical assistance is available to help under-utilized DBEs who are ready, willing, and able to compete for, and perform on state highway contracts. Marketing, Financial, Accounting, Information Technology, Human Resources and Business Planning are a few of the types of assistance offered through this program. DBEs are prompted on the application to check off the areas they need assistance with, and the consultant team will help target these areas. These include:

- Joint Venturing/Teaming Assistance
- Business Planning Assistance
- Financial Assistance (loan application packaging)
- Bonding Assistance (bonding application packaging)
- Marketing Assistance (presentation skills and materials)
- Bidding/Estimating and Project Management Training
- Preparation for the General Contractors License or a Specialty License Exam
- Human Resources Program Development
- Accounting System and Financing Reporting Assistance
- Safety and Operations Training
- Guidance in Diversification and Expansion
- Information Technology (Computer Training)
- Limited Legal Assistance (contracts, legal structure)

Enrolled DBEs begin by receiving a comprehensive assessment to determine the strengths and weaknesses in their company, as well as to evaluate the DBE owner's business knowledge as it pertains to daily operations and growth of their

business. The results are then compiled into a Plan of Action which consists of a baseline where TDOT's BDP consultants outline steps to help DBE owners grow their business throughout the contract period. All DBEs enrolled in the program are required to budget time to engage in specialized one-on-one technical assistance services. These services are reviewed periodically to determine DBE performance in reaching set goals.

The BDP is currently being provided by a small business engineering consultant company. The consulting staff is experienced with working with small business and has on staff a professional engineer, marketing and human resources managers, a C.P.A. and QuickBooks Advisor.

Mentor- Protégé Program

TDOT has researched Mentor- Protégé programs in the past for viability within this program, but as of now there are no formal plans for a Mentor- Protégé Program.

Monitoring and Enforcement Mechanisms (§26.37)

Construction Period Requirements

TDOT utilizes a Commercially Useful Function (CUF) Checklist. This document is a joint effort between the Construction Division and the SBDP. This checklist is attached to Circular Letter 1247-01 and is revised as needed.

The CUF Checklist, **Attachment H**, is a tool for monitoring contracts to ensure that work committed to DBEs on TDOT projects are actually being performed by the DBE. After each Letting, a DBE Utilization memo is sent to TDOT's Construction Office to be disseminated to the field offices. This memo lists the DBEs (and their approved work items for each project) who have committed for each project and ensures that the field personnel can confirm each DBE working for goal credit has been approved by the CRD as certified to perform in the listed capacity. The CRD also confirms when the CUF has been completed that the DBE listed has been certified and approved to perform for each particular job. The CUF Checklist is completed for each DBE on-site by a TDOT project supervisor and is sent to the Civil Rights Division for review and recordkeeping. Red flags are to be reported immediately. TDOT's Field Operations Supervisors, inspectors and other field staff also monitor and help enforce DBE regulations by being a steady presence on the job-site and through observing and documenting the DBE's and Prime's workforce and activity on the contract. All information is recorded in a physical file on-site at TDOT headquarters. Field Officers and Prime contractors send DBE-related information to a dedicated mailbox at: TDOT.DBE.Program@tn.gov.

The Small Business Development Program Office is also working on a FAQ list to send to all DBEs, Primes and Field Officers with information that will address situational problems we see most often. This will also be sent out after each Letting to each prime and DBE subcontractor on goal projects to ensure they have this information.

During the Letting process, each DBE prime contractor and/or DBE subcontractor identified by a subcontractor to be used for goal credit is reviewed to ensure they are certified for the work area they will be performing. Each Prime must abide by Federal and State contract requirements including 49 CFR 26, and each subcontract must include form FHWA-1273 in its entirety. Contracts between TDOT and the prime contractor also include TDOT Special Provision 1247 (**Attachment L**), which includes TDOT rules and some of the more applicable information found in 49 CFR 26, such as the DBE/prime responsibilities, good faith effort, DBE dismissal, possible sanctions, etc.

A running tally of actual DBE attainments (e.g., payments actually made to DBE firms), is also maintained to compare actual DBE payments to DBE commitments (see **Attachment N**). This form must be completed by the prime contractor each month and is sent to a dedicated mailbox, DBE.Runningtally@tn.gov.

A DBE Project Spreadsheet is maintained in TDOT's Civil Rights Division to lists all DBE Goal contracts and race-neutral contracts. Excel formulas split the amount that each goal project exceeds the goal amount per federal funding and this amount is added to the race-neutral figures along with all contracts that had DBE participation but no DBE goal. This spreadsheet is updated after each Letting and as notification of race-neutral participation is received.

TDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. TDOT will also consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Engineer certification of the dollars paid to each DBE firm, using **Form CC3, Certification of DBE Accomplishment**. The certification shall be dated and signed by a responsible official legally representing the Contractor and the representative of the DBE subcontractor. Falsification of this certification may result in suspension of bidder qualifications per Special Provision 1247. See **Attachment L**.

Reporting to USDOT

Reporting of the TDOT's and TDOT's subrecipients DBE participation to USDOT is as follows:

TDOT and TDOT's subrecipients report DBE awards, commitments and payments biannually using the **Uniform Report of DBE Commitments/Awards and Payments** document provided by FHWA. The report due June 1 will cover data from October 1 – March 31, and the report due December 1 will cover data from April 1 – September 30. All dollar

amounts reported reflect the Federal share of such contracts. (**See Attachment Q**)

Fostering Small Business Participation (§26.39)

In order to comply with 49 CFR Part 26.39, The Tennessee Department of Transportation (TDOT) has established a race-neutral Small Business Enterprise (SBE) Program. The SBE facilitates competition and expands opportunities for small business concerns in contracting opportunities with TDOT. As a recipient of federal-aid highway funds, TDOT implemented this SBE program as a part of our existing DBE Program as specified in **49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.**

Participation in the SBE program is available exclusively to those firms that meet the program standards contained in this document - with no regard to race, ethnicity, or gender of the business owner. This element of the DBE program encourages small business participation in the competition for contracting opportunities. Businesses certified as Disadvantaged Business Enterprises by TDOT and the Tennessee Uniform Certification Program are presumed eligible for participation in all small business element contracting opportunities.

Program Eligibility

TDOT shall ensure SBE firms meet the following requirements:

- Total gross receipts of the business shall not exceed ten million dollars (\$10,000,000) averaged over a three-year period
- The business shall not employ more than thirty (30) persons on a full-time basis
- The business must be independently owned and operated
- The business must be a "for profit" business which performs a commercially useful function
- The owner must demonstrate "real and substantial" control of the daily operation of the business, as expressed through an understanding and competence of the type of business owned
- The firm must not be under the control or influence of a non-SBE firm

Certification Overview

SBE Certifications shall be conducted through Tennessee's Governor's Office of Diversity Business Enterprise Program (Go-DBE). Go-DBE has been in operation since 2004 certifying minority owned, woman owned, service-disabled veteran owned and small businesses for use in state procurement and contracting opportunities. Utilizing Go-DBE's *Small Business Enterprise* certification, TDOT will have the advantage of having an established pool of small businesses for use from the onset of the SBE Program.

Another advantage to using the Go-DBE certification is that Go-DBE maintains a searchable database of all certified SBEs. Prime contractors or other interested parties may find small businesses by business name, description, location, activity and category.

Procedures for SBE Certification

- Electronic registration through the TN Go-DBE software system
- SBE Applicants must submit Federal Tax returns in order to prove they meet the eligibility guidelines for annual sales
- SBE Applicants must submit copies of three (3) most recent *Employer's Quarterly Statement Form 941* to verify the number of employees
- Upon receipt of all required and requested documentation, the processing time for certification is 45 (forty-five) days or less
- Out of State Firms – Firms meeting eligibility requirements must provide a copy of current certification from their home state
- Firms that complete the certification process and have met program guidelines will receive an electronic notification of their certification
- Certifications are valid for period of two years, after which they expire on the date of certification
- Businesses must provide copies of their prior tax return and three (3) most recent Employer Quarterly Statements Form 941 in order to renew their Small Business certification
- Denials - if applicants wish to file for reconsideration, they must send a letter within 10 days from the date of denial to request reconsideration

Removal of SBE Status

SBE certification status may be removed for any of the following reasons:

- Exceeding the gross receipt and business size limit
- Failing to renew or maintain SBE status
- Attempting to evade or subvert the intent of the SBE program
- Submission of fraudulent or falsified information

Small Business Participation

In providing contracting opportunities to facilitate competition, the SBE Program may include, but is not limited to, the following:

- **Project Unbundling:** TDOT will consider unbundling projects, or separating large contracts into smaller contracts (which may be more suitable for small business participation), when feasible. TDOT utilizes a very conservative approach to its project development from design to construction. By employing this method, TDOT projects are typically much smaller than those of our counterparts. Throughout the year, TDOT contracts typically average out to around \$2 million per contract, while the mean contract size is even smaller. Even though most contracts are already of a size that facilitates small business participation, TDOT will conduct contract reviews on FHWA-assisted contracts to determine whether portions of the project could be packaged in such a way as to promote more inclusive participation by SBEs. This determination will be made based on several factors, including the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Note: many TDOT contracts are already at a size that could facilitate SBE participation as a prime contractor.
- **Project Set asides:** TDOT may establish that a portion of FHWA-assisted contracts be set aside for participation by small businesses, when feasible. A set-aside is the reserving of a contract or a portion of a contract exclusively for participation by small businesses (DBEs are presumed eligible for participation on any and all project set-asides). A small business set-aside is open to all small businesses regardless of the owner's gender, race or geographic location. TDOT will review all contracting projects utilizing FHWA funding to assess the small business opportunities, giving consideration to the size and scope of each project to establish if a set-aside is warranted. This determination will be made based on several factors, including the estimated availability of small businesses deemed able to provide the scope of work required in the contract. These set-asides will be in addition to DBE contract goals. All construction projects designated as set-asides will be advertised as part of TDOT's normal letting process.
- **SBE Marketing** - TDOT will promote and market the SBE Program, as well as ensure easy and direct access to program information, through outreach efforts on the website, through electronic and print media, through Industry partners, and through other mediums.
 - TDOT's Construction Division and Civil Rights Division webpages will provide links and electronic information concerning the Go-DBE Small Business Enterprise Program. The TDOT Civil Rights Webpage will provide an outline of 49 CFR 26.39, a description of how TDOT is

complying with this directive, and any other relevant information as deemed necessary as the program proliferates.

- SBE related activities, as they will also affect the DBE community, may be posted in the Quarterly DBE newsletter, through e-mail notifications, and through other marketing endeavors.
- TDOT will encourage small businesses to create joint ventures qualified to bid and perform work on contracts. Emphasis will be placed on this approach during outreach efforts.
- Promote awareness of the SBE program at trade fairs, workshops, conferences, DBE Annual Meeting etc.

Small businesses who meet the criteria of a DBE will be encouraged to complete the necessary paperwork to become certified with TDOT. TDOT will promote the benefits of DBE certification on the same webpage concerning the Small Business Element. Small Businesses can then see firsthand the additional benefits and training available through TDOT and its Supportive Services staff for TDOT-certified DBEs. A link to the certification page will be made available on the page.

Subpart C—Goals, Good Faith Efforts, and Counting

Quotas (§26.43)

TDOT does not use quotas in any way in the administration of the DBE program.

Setting Overall Goals (§26.45)

Goal Setting Process

Before establishing the overall goal each cycle, TDOT will consult with the construction office, TNUCP and the certified DBE list from the Small Business Development Program to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TDOT efforts to establish a level playing field for the participation of DBEs.

Consultation will also include meeting and/or interacting with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts to establish a level playing field for the participation of DBEs. TDOT's proposed DBE Goal is shared locally for consultation at the TDOT DBE Annual Meeting, with the Association of General Contractors, TDOT DBE Advisory Committee, Tennessee Road Builders Association, as well as other local groups and associations.

Following this consultation, a notice of the proposed overall goal will be published informing the public that the proposed goal and its rationale are available for inspection during normal business hours in the **Civil Rights Division, 505 Deaderick Street, Suite 1800, Nashville, TN 37243**, for 30 days following the date of the notice, and informing the public that TDOT and USDOT accepts comments on the goals for 45 days from the date of the notice.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

TDOT will meet the maximum feasible portion of its overall goal by using race-neutral and race-conscious measures of facilitating DBE participation.

TDOT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following:

- 1) DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- 2) DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- 3) DBE participation on a prime contract exceeding a contract goal;
- 4) and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Data Collection (§26.45)

For the 2015-2017 DBE goal, TDOT has utilized new methods for collecting data in regard to goal setting. In July of 2013, TDOT's Construction Office began tracking contractor bid information by capturing the lowest (winning) bid for each contract. This Bid List method allows us to measure availability of the number of firms that have directly participated in, or attempted to participate in, our DOT-assisted contracting program in the recent past. This data calculates the relative availability percentage of DBEs who quoted bids in relation to the overall number of all contractors quoting bids.

U.S. Census County Business Patterns (CBP) data was also used in conjunction with TDOT's DBE Directory to determine the percentage of ready, willing and able (RWA) DBEs in the Tennessee market area. The results were an analysis of firms in those NAICS codes in comparison to the 2011 CBP NAICS codes for all businesses in Tennessee.

TDOT's Prequalified Contractor List is another method used in data collection. Contractor prequalification considers such things as: financial ability, equipment availability, work experience, the size of organization of each contractor, and whether or not they are prime or sub-contractors, DBEs or non-DBEs. The

evaluation of this information allows TDOT to determine a contractor's prequalification status and its work capacity value, which establishes the total amount of outstanding work that the contractor desires to have under construction at any given time, thus helping to determine if they are RWA.

Other data collection methods used include employment data from the U.S. Bureau of Labor Statistics, past DBE participation, DBE participation from local agency projects and census educational information [*Educational Attainment by State: 1990 to 2009*].

Failure to Meet Overall Goals (§26.47)

If the awards and commitments shown on the **Uniform Report of Awards or Commitments and Payments** at the end of any fiscal year are less than the stated overall goal, TDOT will follow the steps as outlined in 49 CFR 26.47. Such steps would include analyzing the details for why the goal was not attained and providing corrective measures and steps to insure the goal is met in the next fiscal year. This information will be submitted in writing to FHWA within 90 days of end of the fiscal year. TDOT will then utilize the submitted plan if accepted by FHWA or, in the event the submittal is rejected, shall implement further good faith efforts as dictated by FHWA.

TDOT will follow the rules as outlined beginning in 49 CFR 26.47(c)(1):

- (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.

Transit Vehicle Manufacturers (TVM) (§26.49)

The TDOT Multimodal Transportation Resources and the Aeronautics Division will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA – assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, TDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicle in lieu of the TVM complying with this element of the program.

Contract Goals (§26.51)

TDOT will use contract goals to meet any portion of the overall goal that is not projected and met by using race-neutral 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 our overall goal that is not projected to be met through the use of race-neutral means.

TDOT will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Department 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).

TDOT will express contract goals as a percentage of the total amount of the USDOT assisted funds with the aspirations of achieving the state's goals with the Federal share of the USDOT assisted contracts.

TDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any situation in which a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, and/or 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). Race-Neutral means include, but are not limited to, the following:

- (1) 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);
- (2) Providing technical assistance and other services;
- (3) 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);
- (4) 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;
- (5) 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;
- (6) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (7) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The Civil Rights Division works with the Construction Office on setting goals on contracts approximately one month before projects are to be Let. The type of job, funding amount and type, location (and proximity to "ready, willing and able" DBEs) are a few of the considerations when setting goals. Upcoming projects are broken out by work types/NAICS codes to show the percentage that could be accomplished by DBE subcontractors. These are then reviewed to see the amount that could be feasibly contracted out to DBEs without be overly burdensome.

Demonstration of Good Faith Efforts (§26.53)

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Requirements for good faith efforts are found in – **Tennessee Special Provision 1247 Regarding DBE Contract Goal – See Attachment L (SP 1247), Attachment T (Good Faith Effort Procedures), and 49 CFR 26.53.**

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

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within three days of the project award:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participation;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Dollar amount verbal confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts as spelled out in TDOT S.P. 1247, must be submitted with bidding documents and approval by TDOT prior to award.

A panel of TDOT employees has been established to review all GFE submittals.

TDOT developed a written DBE Commitment Verification form to be submitted by DBEs to comply with 49.26.53(b)(2)(iv) and utilization began in the June 17, 2011 Letting. **See Attachment K.**

Good Faith Effort Procedures Implemented Through:

SP1247 Contract Award Procedures Page 5 – C3; c and d

If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award.

Failure of the bidder to meet the DBE goal in its bid or failure to provide documentation clearly evidencing good faith efforts to meet the goal, may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but in liquidation of damages sustained.

STEPS

1. Prime Contractor must submit sufficient DBE participation to meet goals within 3 business days after the letting (Wednesday by 4:00 pm).
2. If the Prime contractor is unable to reach the DBE goal, they must inform the CRD before the end of the third day that they wish to begin the GFE review process. The CRD will inform the prime of SP 1247/49 CFR 26 Good Faith Effort requirements.
3. A GFE Panel meets/confers on day 4 after letting once GFE notification is received. This panel will review the efforts/documentation by the Prime Contractor. [A GFE checklist may be used at by the GFE panel to assist in seeing if the Prime has been *“actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.”*]
4. Day 5 (after letting) a determination is made by the DBE Panel and a letter is submitted to the potential contractor (apparent low bidder) regarding acceptance of GFE or denial of GFE. Construction Division is also notified at this time.
5. If the GFE panel rejects the contractor GFE, the contractor has the opportunity to present their case in person (via written documentation and/or through argument) to a Reconsideration Official on whether they felt they made adequate Good Faith Effort in trying to meet the goal.
6. Recommendations by the Reconsideration Official/CRD Director are made to the Construction Director. The Construction Department accepts or rejects the Recommendations by the Reconsideration Official/CRD Director. The contractor is then notified in writing.
7. If the GFE is accepted, the contractor is awarded the contract with a modified goal. If the GFE is rejected, the contract may then be awarded to the second lowest bid or all bids may be rejected.

Note that Good Faith Efforts apply to *all* DBE goal contracts, including Construction Manager/General Contractor (CMGC) and Design Build (DB) projects utilizing DBEs.

Administrative Reconsideration

Within two days of being informed by TDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the Small Business Development Program. The Reconsideration Official shall be TDOT’s Staff Attorney and will not have played any role in the

original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation and refute the determination of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will also then have the opportunity to meet in person with TDOT's Reconsideration Official to discuss the determination. The Department will then send the bidder/offeror a written decision on the final reconsideration determination, explaining the basis for finding. The result of the reconsideration process is not administratively appealable to the USDOT.

Good Faith Efforts when a DBE is replaced on a Contract

When a DBE subcontractor is terminated as provided in 49 CFR 26.53 (f) or fails to complete its work on the contract for any reason, the prime contractor must 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 established for the procurement. The Prime contractor may utilize DBE participation in any work item code so long as they reach their DBE goal. The good faith efforts shall be documented by the contractor. 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 a written determination to the contractor will be provided stating whether or not good faith efforts have been demonstrated. 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. – **Tennessee Special Provision 1247 Regarding DBE Contract Goal in Attachment L.**

DBE Substitution and Termination

TDOT will defer to 49 CFR 26.53(f) in the case of DBE substitution and/or termination:

(f)(1)(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 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 pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The prime contractor must show they were actively and aggressively trying to obtain DBE participation in order to show a good faith effort. There must be a reasonable attempt and mere "pro forma" efforts are not considered to be in good faith.

In the event there is a significant change order, the prime and TDOT field supervisor will be contacted to see if the changes affected any of the proposed DBE work categories. If not, the DBE goal would still stand as is. If DBE work items were cut, the prime contractor should make a good faith effort to have DBE subcontracting on any remaining work as feasible. Several factors would weigh into this feasibility (including the length of the contract remaining, work types suitable for DBEs, etc.) and these would be judged on a case-by-case basis.

Whenever the DBE is also the prime contractor, 49 CFR 26.53(i) will be followed:

(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.

Prime contractors must also remain in compliance by furnishing the SBDP office DBE subcontracts on goal contracts, per 49 CFR 26.53 (j):

(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.

Counting DBE Participation (§26.55)

TDOT will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55:

(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 providing temporary labor/temporary employees, 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, normal 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 (not the prime), including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers.

Additional participation by non-DBE owned trucks equipped with drivers 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 DOT operating administration.

Example to 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 equipped with drivers 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. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

Credit Worksheet: DBE Firm X = 2 Trucks

DBE Firm Y = 2 Trucks

Total DBE = 4 Trucks

Total Non DBE Trucks Provided = 6

Total DBE goal credit can be given for the 4 DBE Trucks and 4 of the Non DBE Trucks but the remaining 2 Non DBE Trucks can only count fees and commissions.

This regulation allows for DBE goal hauling-credit for the DBE's own trucks, in trucks leased to the DBE firm or on a 1-to-1 basis for a non-DBE to DBE truck count. Leases cannot be TDOT contract-specific. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations. See revised guidelines in **Attachment L (Special Provision 1247)**.

A DBE Material Supplier/Trucker Contract Certification (Attachment R) form must be completed by the Prime Contractor, Subcontractor (if 2nd Tier agreement), and DBE Material Supplier/Trucker immediately following the award of a goal project. This form is to be submitted to TDOT's Small Business Development Program's mailbox with the Subcontract Agreement(s) and/or purchase order(s) prior to the pre-construction conference for each project.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Leasing Firm Z. DBE

credit would be awarded for the total value of the transportation services provided by all four trucks.

(7) 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.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

(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.

In TDOT's October 2, 2015 Circular Letter, **Section 108.1: Subletting of Contract**, all work to be sublet must be approved beforehand by TDOT, and must be performed by a subcontractor that is prequalified with the Department.

All required contractual work that is performed by a contractor other than the prime contractor will be considered a subcontractor (or tier subcontractor), and therefore must be prequalified, must submit sub-contract forms for approval, receive approval, and must submit certified payrolls (section 107.20).

No subcontractor work shall begin work until the subcontract has been approved by TDOT and the contract is put into effect. Any work completed before approval and without other prior authority of TDOT will be considered unauthorized and may not be paid for as stated in 105.12 of the specifications.

The actual, legal subcontract between contractors shall physically include the following and it cannot be referenced:

- FHWA 1273
- DBE Assurance Statement

Any work involving "laborers and mechanics", as defined by the Federal and/or State classification of workers and prevailing wage rates, will be required to be a subcontractor to verify compliance with Davis-Bacon Act and State prevailing wage laws. Therefore, a subcontract will be required for flagging, drilling/blasting, sweeping, surveying, trucking/hauling (see below) and all other standard work items.

When labor is subcontracted or the contractor enters into an employee lease agreement, the procedures in Circular Letter 1273-05 or 1273-05.01 must be adhered to.

Hauling/Trucking firms must have a subcontract when they are working and hauling material “on the project site” as defined in Circular Letters 1273-04 and 1273-04.01. When hauling/trucking firms are not working “on the project site”, and are hauling from a non-project specific or a commercial site, a sub-contract is not required. However, if a hauling/trucking firm is a DBE, then a subcontract and certified payrolls will be required for documentation purposes. (The prevailing wages under Davis-Bacon or TN Prevailing Wage Act are not required if the hauling/trucking firm is not working “on the project site” but the certified payroll will serve as proof the DBE hauling subcontractor was working on the project and the drivers are employees of the DBE)

Any DBE who is performing work, or providing materials, must enter into a subcontract so TDOT can accurately monitor both race conscious and race neutral DBE participation. However, if the DBE is a manufacturer or regular dealer/material supplier ONLY (as defined in SP 1247) they are not required to be pre-qualified. They must state on the Sub-contract form that they are a MANUFACTURER ONLY or MATERIAL SUPPLIER ONLY.

TDOT utilizes a Commercially Useful Function (CUF) Checklist - **A copy of the CUF is found in Attachment H.** This document is a joint effort between the Construction Division and the SBDP and is completed for every DBE and is evaluated on a case-by-case basis. This checklist is attached to Circular Letter 1247-01 and is revised as needed. Project Supervisors evaluate each DBE on the jobsite and send to the SBDP for review. Each CUF is checked thoroughly for completeness and if there are any red flags noticed by the Project Supervisors or SBDP staff, this is investigated. Should there be any further questions or clarification needed, the Project Supervisor is contacted and an unannounced follow-up visit to the jobsite may occur if necessary. The DBE, prime contractor, TDOT field personnel and any other party involved are all contacted in the event of any disputes with the CUF or otherwise on the project and mediation may be necessary in some cases.

The SBDP staff monitors each contract at the time of Letting (or when the subcontract is received for a race-neutral project) and will review the work type(s) to be performed by each DBE to ensure the DBE is certified in that particular area. Otherwise, the DBE cannot be used for goal credit. DBEs must be paid in full before DBE goal credit will be given. This is in compliance with 49 CFR 26.55 (f) - (h).

Trucking Guidelines

TDOT will continue to utilize the trucking regulations under 49 CFR Part 26.55, specifically with regards to counting (26.55 (d)). This regulation allows for DBE goal hauling-credit for the DBE’s own trucks, in trucks leased to the DBE firm or on a 1-to-1 basis for a non-DBE to DBE truck count. Leases cannot be TDOT contract-specific. The verification of truck drivers employed by DBE firms will

continue to be by submission of payrolls independent from any Davis-Bacon regulations. See revised guidelines in **Attachment L (Special Provision 1247)**.

A **DBE Material Supplier/Trucker Contract Certification** form (**Attachment R**) must be completed by the Prime Contractor, Subcontractor (if 2nd Tier agreement), and DBE Material Supplier/Trucker immediately following the award of a goal project. This form is to be submitted to TDOT's Small Business Development Program's mailbox with the Subcontract Agreement(s) and/or purchase order(s) prior to the pre-construction conference for each project.

Subpart D—Certification Standards

TDOT will use the certification standards of 49 CFR 26, Subpart D and the certification procedures of 49 CFR 26, Appendix E to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. TDOT will make certification decisions based on the facts as a whole.

Burdens of Proof (§26.61) and Membership Determinations (§26.63)

Certification is required to participate in the Tennessee Uniform Certification Program (TNUCP). The DBE certification process is separate and distinct from the TDOT prequalification process.

Firms applying for DBE Program certification have the burden of demonstrating by a preponderance of evidence that they meet the group membership, disadvantaged, business size, ownership and control requirements of 49 CFR 26, Subpart D and Appendix E.

Firms owned and controlled by individuals identified to be socially and economically disadvantaged are presumed to be eligible to participate in the TNUCP. As a result, these individuals are not required to bear the burden of proving their eligibility. However, the eligibility presumption is rebutted based upon the individual owner(s) ability to meet the personal net worth maximum threshold of \$1.32 Million.

As for the presumed disadvantaged groups, the TNUCP follows the regulations as found in 49 CFR 26.67:

(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.

Firms owned by individuals who are not presumed to be socially and economically disadvantaged, and firms owned by individuals about whom the presumption has been rebutted, have the burden of proving, by a preponderance of evidence that they meet the requirements of 49 CFR 26, Appendix E.

Firms owned and controlled by individuals about whom a question arises concerning his or her membership in a presumptively eligible group, must prove by a preponderance of evidence that its owner(s) are members of the group. Group memberships are appealable to USDOT.

In making such determinations, the TNUCP shall consider whether the individual has held himself/herself out to be a member of the group over a long period of time prior to applying for certification, and whether the individual is regarded as a member of the group by the relevant community. The firm must submit appropriate documentation of group membership. If it is determined 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. **(Ref: 49 CFR §26.63)**

Business Size Determinations (§26.65)

To be an eligible DBE, a firm (including its affiliates) shall be an existing small business, as defined by the SBA standards. The SBDP shall apply the current SBA business size standards found in 13 CFR 121 appropriate to the type of work the firm seeks to perform on USDOT-assisted contracts.

Even if the firm meets the requirements of 49 CFR 26, 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 (13 CFR Part 121.402), over the firm's three (3) previous fiscal years, in excess of the stated SBA threshold. USDOT adjusts this amount for inflation from time to time.

Social and Economic Disadvantage (§26.67)

Determinations of social and economic disadvantage are made by the TNUCP in accordance with 49 CFR 26.67.

Affidavit Social and Economic Disadvantage

It shall be rebuttably presumed 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. Applicants will be required to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Statement of Personal Net Worth

Each individual who makes this certification must support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. If needed, and on a case-by-case basis, additional financial information may be required from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

Personal net worth determinations made by the SBDP shall exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. A contingent liability does not reduce an individual's net worth (e.g., an applicant cannot use the risk of a judgment in a pending lawsuit to reduce his or her personal net worth).

Individual applicants are required to submit their personal income tax information to the SBDP so that an accurate determination of applicant eligibility for participation in the DBE Program can be made.

The value of a retirement accounts will be calculated in accordance with the standard set forth in 49 CFR 26.67.

If the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantaged is rebutted.

All disadvantaged business owner applicants whose eligibility under Part 26 is reviewed, are required to submit a statement of personal net worth annually.

Attachment D –sets forth the **Personal Net Worth Statement**.

Rebuttal of presumption of disadvantage

If an individual's personal net worth exceeds \$1.32 million (or is less than \$1.32 million but a reasonable person could conclude that he or she is not economically disadvantaged (as outlined in 49 CFR 26.67 in the example to paragraph (b)(1)(i)) a proceeding to rebut the presumption of economic disadvantage is not required by the TNUCP.

The TNUCP has the option (following the procedures of §26.87) to begin a proceeding against a DBE when there is 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.

Factors that will be considered include, but are not limited to, the following:

(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;

(2) Whether the income was unusual and not likely to occur in the future;

- (3) Whether the earnings were offset by losses;
- (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- (5) Other evidence that income is not indicative of lack of economic disadvantage; and
- (6) Whether the total fair market value of the owner's assets exceed \$6 million.

The firm cannot be deemed an eligible DBE when an individual's presumption of social and/or economic disadvantage has been rebutted. The TNUCP must prove by a preponderance of the evidence that the firm is not socially and economically disadvantaged.

Asset Transfers

For any individual claiming disadvantaged status, assets transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program are attributed to the individual applying, 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.

Exceptions would include 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. (Ref: **49 CFR §26.67(c)**)

Ownership Determinations (§26.69)

Determinations of ownership for purposes of DBE eligibility are made by the TNUCP in accordance with 49 CFR §26.69. All of the facts relative to ownership must be viewed as a whole.

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

Corporations - socially and economically disadvantaged individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

Partnerships - 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.

Limited liability firms - at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

Ownership

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.

Contributions of Securities

All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided below (§26.69 (d)):

(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.

Contributions of Capital

The contributions of capital by the socially and economically disadvantaged owners to acquire ownership interests must be real and substantial in accordance with 49 CFR 26.69(e).

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 the 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.

Contributions Expertise

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

The owner's expertise must be:

- (a) In a specialized field;
- (b) Of outstanding quality;
- (c) In areas critical to the firm's operations;
- (d) Indispensable to the firm's potential success;
- (e) Specific to the type of work the firm performs; and
- (f) Documented in the records of the firms. These records must clearly show the contribution of expertise and its value to the firm.

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

Assets Gained Through Divorce, Inheritance, or Death

The TNUCP will consider all interests in a business or other assets obtained by the individual resulting from a final property settlement or court order a divorce or legal separation, provided that no term or condition of the agreement divorce decree is inconsistent with this section; or through inheritance, or otherwise because of the death of the former owner, as held by a socially and economically disadvantaged individual, for purposes of determining ownership.

Gifts or Transfer

The TNUCP 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 gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

- (a) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- (b) Involved in the same or a similar line of business; or
- (c) Engaged in an on-going business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the SBDP, by clear and convincing evidence, that:

- 1) The gift or transfer 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 provided the gift or transfer.

Marital Assets

The TNUCP shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:

- (a) 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, the TNUCP 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 state in which either spouse or the firm is domiciled. The TNUCP does 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; and
- (b) 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.

Situations Warranting Additional Investigation

The TNUCP may consider the following factors in determining the ownership of a firm. However, the TNUCP cannot regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- (a) 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 through the exception in 49 CFR 26.69(h);
- (b) 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
- (c) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is such an individual. In this case, the TNUCP 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.

Control Determinations (§26.71)

Determinations of whether a disadvantaged individual controls the firm are made in accordance with 49 CFR 26.71. In determining whether socially and economically disadvantaged owner(s) controls a firm, the TNUCP shall consider all the facts in the record, viewed as a whole.

Independence

Only an independent business can 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. The TNUCP may consider several factors when determining whether the applicant DBE firm is independent:

- Relationships with non-facilities, equipment, financial and/or bonding support, and other resources.
- Present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms compromise the independence of the potential DBE firm.
- 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.
- The consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

Restrictions on Control

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.

A DBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners to operate the firm. 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 49 CFR 26.69 (j)(2).

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.

- (a) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president);
- (b) In a corporation, disadvantaged owners must control the board of directors; and
- (c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Involvement of Non-DBEs

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.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policy making, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals.

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.

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. (Ref: §26.71(p))

DBE's Knowledge of the Business

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 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.

Business Licenses

If state law requires a person(s) 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 person(s) who own and control a potential DBE firm of that type must possess the required license or credential. If state law does not require such a person to have such a license or credential to own and/or control a firm, the SBDP shall not deny certification solely on the ground that the person lacks the license or credential. The SBDP, however, 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.

Compensation of the DBE Owner

The SBDP may consider differences in compensation between the socially and economically disadvantaged owners and other participants in 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. The SBDP 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.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the SBDP may consider a difference between the compensation 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.

Outside Employment by the DBE Owner

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.

Participation of Family Members

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, the TNUCP must make a judgment about the

control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as is done in other situations, without regard to whether or not the other persons are immediate family members.

If the TNUCP 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 firm's activities. Where a firm was formerly owned and 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 the TNUCP by clear and convincing evidence, that:

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

Ownership of Equipment

In determining whether a firm is controlled by its socially and economically disadvantaged owners, the TNUCP may consider whether the firm owns equipment necessary to perform its work. However, the TNUCP must not determine that a firm is not controlled by socially and economically disadvantaged individual(s) 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.

Certification for Specific Types of Work/NAICS

The TNUCP shall 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 must demonstrate to the TNUCP only that it's socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The TNUCP may not, in this situation, require that the firm be recertified or submit a new application for certification; but must verify the disadvantaged owner's control of the firm in the additional type of work.

The type(s) of work each firm can perform shall be described in terms of the most specific available NAICS code for that type of work. At TNUCP's discretion, a descriptor from a classification scheme of equivalent detail and specificity may be used in conjunction with the NAICS code. Each code should describe, as specifically as possible, the principal goods or services which the firm would

provide to TNUCP recipients, and are to be kept up-to-date. Multiple NAICS codes may be assigned where appropriate. The DBE or DBE applicant must prove that they have the ability to control the firm with respect to that type of work they are seeking to be certified (and would therefore receive a NAICS code classification for that work type).

Operating under a Franchise/License Agreement

A business operating under a franchise or license agreement may be certified if it meets the standards in subpart 49 CFR 26.71 and the franchiser or licensor is not affiliated with the franchisee or licensee. (**Ref: §26.71(o)**)

Use of Leased Employees

The socially and economically disadvantaged individual(s) controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individual(s) 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.

Other Certification Rules (§26.73)

Other certification rules that apply to the DBE program are:

- CUF is not a certification issue.
- Evaluate certification on basis of present circumstances.
- TDOT must not refuse to certify based on historical information or the age of the firm if it currently meets the eligibility standards.
- Applicants must cooperate fully with request for information.
- Firm must be for-profit.
- Firm must be owned by socially and economically disadvantaged individuals (with the possible exception of Indian tribal and Alaska Native Corp).
- Pre-qualification cannot be a condition of certification. Sufficient proof must be shown the firm is an independent business, owned and controlled by an economically disadvantaged individual.

Subpart E – Certification Procedures

Uniform Certification Programs (UCP) (§26.81)

TDOT TNUCP Agreement:

- The TNUCP Agreement is signed by all USDOT recipients and requires approval by Secretary.
- UCP must meet the part of §26.81 just as recipients.

- There must be a commitment to have sufficient resources and expertise to carry out requirements.
- Implementation schedule to be fully operational 18 months after approval.
- Does not prescribe a specified form.
- Once submitted, Secretary has 180 days to respond.
- Mechanism to explain delays in meeting schedule due to circumstances beyond ones control.
- Makes all certification decisions for all USDOT recipients/UCP members.
- Pre-certification made prior to due date for bids.
- Must be certified first in state that firm has its principle place of business.
- Home state is required to share information.
- Maintain a uniform DBE directory accessible electronically (revisions made as they occur) and in print (revised annually).
- UCP members are subject to same certification requirements as outlined in 49 CFR Part 26.

TNUCP Members:

DBE applicants may submit their applications to any of the following TNUCP agencies. The following member agencies process DBE applications:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888)370-3647
<http://www.tn.gov/tdot/civil-rights/small-business-development-program>

Memphis Area Transit Authority
1370 Levee Road
Memphis, TN 38108-1011
(901)722-7138
www.matatransit.com

Chattanooga Area Regional Transportation Authority
1617 Wilcox Blvd.
Chattanooga, TN 37406
(423)629-1411
www.gocarta.org

Nashville Metropolitan Transit Authority/
Regional Transportation Authority [Middle TN]
430 Myatt Drive
Nashville, TN 37115
(615)880-3977
www.nashvillemta.org

Airport Concession DBE certification application package may be accessed at:

Memphis/Shelby County Airport Authority
3505 Tullahoma Road
Memphis, TN 38118-2718
(901)922-0255
www.mscaa.com

Metropolitan Nashville Airport Authority
One Terminal Drive, Suite 501
Nashville, TN 37214-4114
(615)275-1620
www.flynashville.com

Chattanooga Metropolitan Airport Authority
1001 Airport Road, Suite 14
Chattanooga, TN 37421
(423)855-2214
www.chattairport.com

Metropolitan Knoxville Airport Authority
P.O. Box 15600
Knoxville, TN 37901-5600
(865)342-3062
www.flyknoxville.com

Information concerning TNUCP partners (attached to the DBE Fact Sheet):

Rendering Certifications (§26.83)

Certification Overview

(The following bullet points apply to the certification process which must be followed by all TNUCP recipients pursuant to 49 CFR 26):

- Only eligible DBEs can participate (49 CFR 26 -Subpart D).
- 8 criteria to determine eligibility (49 CFR 26.83(c)(1)).
- Use federal standard application form (49 CFR 26 - Appendix F).
- Applicants are to be informed within thirty (30) days of receipt of applications as to whether the application is complete or as to what additional information or action may be required.
- Applicant swears to accuracy and truthfulness under the penalty of perjury.
- Make an informed decision based on all of the facts.
- Must share information on certification among recipients.
- May impose a reasonable fee.
- Must safeguard against disclosures of proprietary or other confidential business information consistent with all laws.
- Written sworn statement within 30 days of any changes in its circumstances affecting the firm's ability to meet all certification standards.
- If a DBE fails to comply, it's considered a failure to cooperate.
- On the firm's anniversary date, the firm must provide a sworn affidavit that it continues to meet the requirements including supporting documentation on the firm's size and gross receipts.
- If not timely, this will be considered failure to cooperate.
- Must process within 90 days after receipt of all required information. (may extend once for an additional 60 days).
- If recipient fails to meet processing time, it is considered a constructive denial and a basis for appeal to USDOT by the firm.
- Once certified, a DBE shall remain certified until and unless TDOT removes its certification, in whole or in part, through the procedures outlined in section 26.87.
- Additional on-site reviews may be conducted as necessary if TDOT is informed of misconduct or possible changes in a DBE's eligibility.
- Any firm that withdraws their application before a decision has been rendered may resubmit their application at any time.

On-site interviews conducted for an initial DBE application for certification are conducted after all pertinent documentation has been received for a comprehensive review. The on-site interview itself is a form developed by several southern states to allow for uniformity in interpretation. The DBE applicant is contacted prior to the on-site interview for an appointment at their convenience. The on-site is conducted by a trained TNUCP partner.

The information is analyzed based upon the guidelines as set forth within §26.69 and §26.71 of the Regulation.

Additional on-site reviews may be conducted as necessary if the TNUCP is informed of misconduct or possible changes in a DBE's eligibility. The TNUCP certifying partners will review the eligibility of certified DBEs to make sure that they meet the standards of 49 CFR 26, Subpart D. The review may take place no later than five to seven years, with renewal on-sites conducted based on the firm's construction-related work categories and TDOT's subcontract work history. In addition, inquiries from other State DOT's requesting a most current on-site for a DBE certified through our agency may be considered a priority based upon the urgency from the other State DOT.

Decision-making Certification decisions are made by the individual(s) within the TNUCP partner agency who hold the initial DBE application and who conducted the subsequent on-site interview. There is no fee charged based upon the Operating Agreement between the TNUCP partners. **Ref: (§26.81(a)(2)) & (§26.83(f))**

Timeliness DBE applications must be reviewed in an expeditious manner. Applications are reviewed in the order they are received. A DBE application must be reviewed within an acceptable time frame upon its initial arrival with a TNUCP recipient. Applicants are to be informed within thirty (30) days of receipt of applications as to whether the application is complete or as to what additional information or action may be required. A DBE application must have a decision rendered within 90 days after receiving the completed application. If a TNUCP certifying agency fails to meet processing time, it is considered a constructive denial and a basis for appeal to USDOT by the DBE applicant firm.

Removal of DBE Eligibility (This is an infrequent event. TDOT follows the rules as found in §26.87)

(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 decision maker 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 may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(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 relevant to eligibility that has been concealed or misrepresented by the firm;

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

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see §26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(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. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(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.

Affidavits/Changes On the firm's anniversary date, the firm must provide a sworn affidavit that it continues to meet the requirements including supporting documentation on the firm's size and gross receipts.

§26.83(i) states:

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).

§26.83(j) states:

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 (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

Additional information (Affidavit) If a sworn affidavit on the firm's anniversary date is not sent in timely by the DBE, this will be considered failure to cooperate. Additional on-site reviews may be conducted as necessary if the TNUCP is informed of misconduct or possible changes in a DBE's eligibility.

Additional information may be required if a TNUCP partner receives information concerning ineligibility complaints filed by any person through a written complaint

alleging that a currently-certified firm is ineligible, any TNUCP recipient, or a DOT directive to initiate a proceeding.

Ref: (§26.87(a)(1)(2)(3)(b)(c)(1)(2)(3))

TNUCP partners perform audits of certified firms once every 5-7 years or on an “as needed” basis.

Interstate Certification (§26.85)

For any firm located out-of-state desiring certification by the TNUCP, they must complete the TNUCP/DBE Program Application for out-of-state firms. As part of their certification application, prospective DBEs must submit a complete DBE/ACDBE (Airport Concessionaires Disadvantaged Business Enterprises) application with supporting documents (as needed), notices/correspondence from any and all other states (including their home state) regarding DBE status, a completed Affidavit of Certification and a Letter of USDOT Appeal/Response (if applicable).

Barring any issues with the application and/or prior certification(s), the TNUCP will certify the firm within sixty (60) days of receipt of all required information. However, should the TNUCP feel the previous certification is erroneous or would somehow not apply to Tennessee, it must, no later than 60 days from receipt of all the required information from the firm, send the firm a notice stating the reasons for its determination and offer it an opportunity to respond. The firm then has to prove by a preponderance of the evidence that the issue which was in question is unjust. The TNUCP will then either certify or deny. If denied, the firm has an option to appeal to the Departmental Office of Civil Rights under §26.89. **(Ref: §26.85)**

Continuation of Eligibility

TDOT will review the eligibility of certified DBEs annually with the submission of the No Change Affidavit to make sure that they meet the standards of 49 CFR 26, Subpart D. A more extensive review may take place no later than five to seven years, with renewal on-sites conducted based on the firm’s construction-related work categories and TDOT subcontract work history. In addition, inquiries from other State DOT’s requesting a most current on-site for a DBE certified through our agency may be considered a priority based upon the urgency from the other State DOT. See Attachment G – Uniform On-Site Inspection and Owner Interview Report. See **Attachment G – Uniform On-Site Inspection and Owner Interview Report**.

No Change Declaration

TNUCP requires all DBEs to provide to the TNUCP, 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 application for certification.

The TNUCP also requires all DBEs who are certified to submit, on the anniversary date of their certification, an affidavit meeting the requirements of §26.83(j). See **Attachment F – No Change Declaration**.

TNUCP will notify all currently certified DBE firms of these obligations to renew their certification. This notification will inform DBEs that to submit the No Change Declaration, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. TNUCP also requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts (DBE Firm's Gross Receipts (attach a copy for the firm's most recent tax return** and all attachments, if applicable)

**Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships. A firm's owner knows or should know when he or she has had a change in Part 26 eligibility requirements (e.g., personal net worth).

Denial of Initial Requests for Certification (§26.86)

TNUCP follows the rules found in §26.86:

26.86 allows for TNUCP certifying partners to deny initial requests for certification based upon the following guidelines:

(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) [Reserved]

(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. An applicant's appeal of your decision to the Department pursuant to §26.89 does not extend this period.

(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.

Firms denied or removed have right to appeal to USDOT. The TNUCP certifying partner's decision remains in effect if appealed to USDOT. TNUCP certifying

partner must provide the full administrative record within 20 days upon receipt of request from USDOT. USDOT expects record to be well organized, indexed, and paginated. USDOT will affirm a recipient's decision unless based on the entire administrative record that the decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of Part 26. USDOT's final administrative decision is binding on recipient and appellant. USDOT is not required to reverse a decision if there is a procedural error unless the error resulted in a fundamental unfairness to the appellant or substantially prejudice the appellant to present its case. USDOT may remand the record back to recipient if the record is sufficiently incomplete or unclear with respect to matters significant to the outcome of the case. USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

Appeal Rights The TNUCP has established the following process:

To file a DBE certification appeal, firms should send a letter to the U.S. Department of Transportation within 90 days from the date of denial by a DOT recipient. The appeal should at a minimum include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information you believe to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with; or who has rejected its application for certification; or removed the firm's eligibility within one year prior to the date of the appeal. All appeals should be submitted to:

U.S. Department of Transportation
Office of the Secretary
Departmental Office of Civil Rights (S-30)
1200 New Jersey Avenue, S.E.
Suite W78-101
Washington, DC 20590-0001

A prospective applicant may contact the respective TNUCP partner who denied the DBE applicant(s) with questions regarding the denial letter.

DBE withdrawal §26.83(m) provides TNUCP certifying partners the following guideline for a DBE applicant(s) to withdraw:

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.

Any firm that withdraws their application before a decision has been rendered

may resubmit their application at any time. (Ref: 49 CFR §26.83(m)). Denial Information is posted on DOCR's website.

Removal of Eligibility (§26.87)

A DBEs eligibility may be removed through the following means:

- A third party may file a complaint alleging ineligibility. The TNUCP is not required to accept general allegations or an anonymous complaint. The TNUCP will review record in light of allegations. If there is reasonable cause, they notify firms of ineligibility with explanation and evidence in support of finding. Recipients can act as third parties. Operating Authority can also act as third party and direct a proceeding to remove firm's certification.
- The Operating Authority may notify a recipient that a firm needs to be removed and the reasons for the removal. The TNUCP must immediately take action to remove eligibility. Under this process the firm has right to an informal hearing with the recipient. The burden is on the recipient to prove by a preponderance of the evidence that standards have not been met.

In both cases, a complete record must be maintained. The final determination must be someone not involved in the gathering of eligibility documentation. The implementation is spelled out in §26.87 and administered by a knowledgeable decision-maker. Must be applied to small airports/transit to the extent feasible.

Grounds for the decision must be fact based and can be based upon changes in firm's circumstances and/or new information or evidence not previously available and/or information previously concealed, misrepresented and/or new standards or requirements by USDOT and/or documented finding that certification decision was factually erroneous. The notice of decision is in writing and offering rights of appeal (there are no templates created by the TNUCP for such complaints). The firm remains eligible during process and is removed upon notification of action by the recipient. The firm is notified of the effects of removal. If the firm has no contract DBE related contract(s) then the ineligible firm's work simply does not count and must be replaced. If the DBE has related contract(s): total amount performed counts towards contract goal, however it's only the portion performed before notice that counts towards overall goal. An exception is if the reason due to size (exceed NAICS code(s): total performed counts towards both contract and overall goal. The determination is appealable to USDOT.

The timeframe for an investigation depends upon the circumstances. However, in all circumstances an investigation should be based upon §26.67(b)(ii)(B)(2) which states:

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.

The TNUCP 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. (Ref: §26.87(e))

Ineligibility due to complaint/investigation – (This is an infrequent event. The TNUCP follows the procedures as outlined in §26.87(d) in regards to this type of DBE ineligibility):

(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 decision maker 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 may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(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 relevant to eligibility that has been concealed or misrepresented by the firm;

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

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see §26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(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. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(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.

Suspension of Certification (§26.88)

This is an infrequent event. The TNUCP follows 49 CFR §26.88 in regards to summary suspension of certification:

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

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

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

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under §26.89 of this part, as a constructive decertification.

Certification Appeals to USDOT (§26.89)

- Firms denied or removed have the right to appeal to USDOT.

- Third party complainant may appeal if no action by recipient.
- Recipient's decision remains in effect.
- Must submit within 90 days after receipt of recipient's decision.
- Extension allowed if USDOT determines good cause.
- Appellant must identify all other recipients that have denied or decertified it within one year of the appeal; failure to do so may be deemed failure to cooperate.
- Recipient must provide the full administrative record within 20 days upon receipt of request from USDOT.
- USDOT expects record to be well organized, indexed, and paginated.
- USDOT will affirm a recipient's decision unless based on the entire administrative record that the decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of Part 26.
- USDOT's final administrative decision is binding on recipient and appellant.
- USDOT is not required to reverse a decision if there is a procedural error unless the error resulted in a fundamental unfairness to the appellant or substantially prejudice the appellant to present its case.
- USDOT may remand the record back to recipient if the record is sufficiently incomplete or unclear with respect to matters significant to the outcome of the case.
- USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

The certification application form and documentation requirements are found in **Attachment D – Certification Application**.

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

**The Tennessee Department of Transportation
Civil Rights Division Small Business Development Program
505 Deaderick Street, Suite 1800
Nashville, TN 37243-0347
1-888-370-3647/615-741-3681**

In the event TNUCP proposes to remove the DBE's certification, the Department will follow procedures consistent with 49 CFR §26.87.

If a firm's initial application is denied, the firm may reapply in 12 months or appeal to USDOT. If a certified DBE's eligibility is removed, the DBE may appeal to the reconsideration committee and/or the USDOT upholds the denial, the DBE may reapply in 12 months from the date of the denial.

Any firm or complainant may appeal the TNUCP's decision in a certification matter to the USDOT. Such appeals may be sent to:

**U.S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Program Development Division (S-33)
1200 New Jersey Ave., S.E.
Room W78-338
Washington, DC 20590
Phone: 202-366-4648
TTY: 202-366-9696 Fax: 202-366-5575**

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

DOT certification appeal (§26.91)

TDOT and TNUCP partners follow the regulations as outlined in 49 CFR 26.91 considering USDOT 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

Noncompliance (§26.103)

Any person who believes that TNUCP 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).

Enforcement Actions for firms participating in the DBE program (§26.107)

TDOT shall follow the regulations as set forth in 49 CFR §26.107

(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

Confidentiality and Cooperation (§26.109)

TNUCP will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. TDOT must take into consideration T.C.A. §10-7-503, Tennessee's Open Records Act. Notwithstanding any contrary provisions of state or local law, TDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

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. TNUCP does not allow financial information from DBE files to be reviewed by any outside parties, excluding legal and internal audit.

The TNUCP follows the guidelines as set forth in §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).

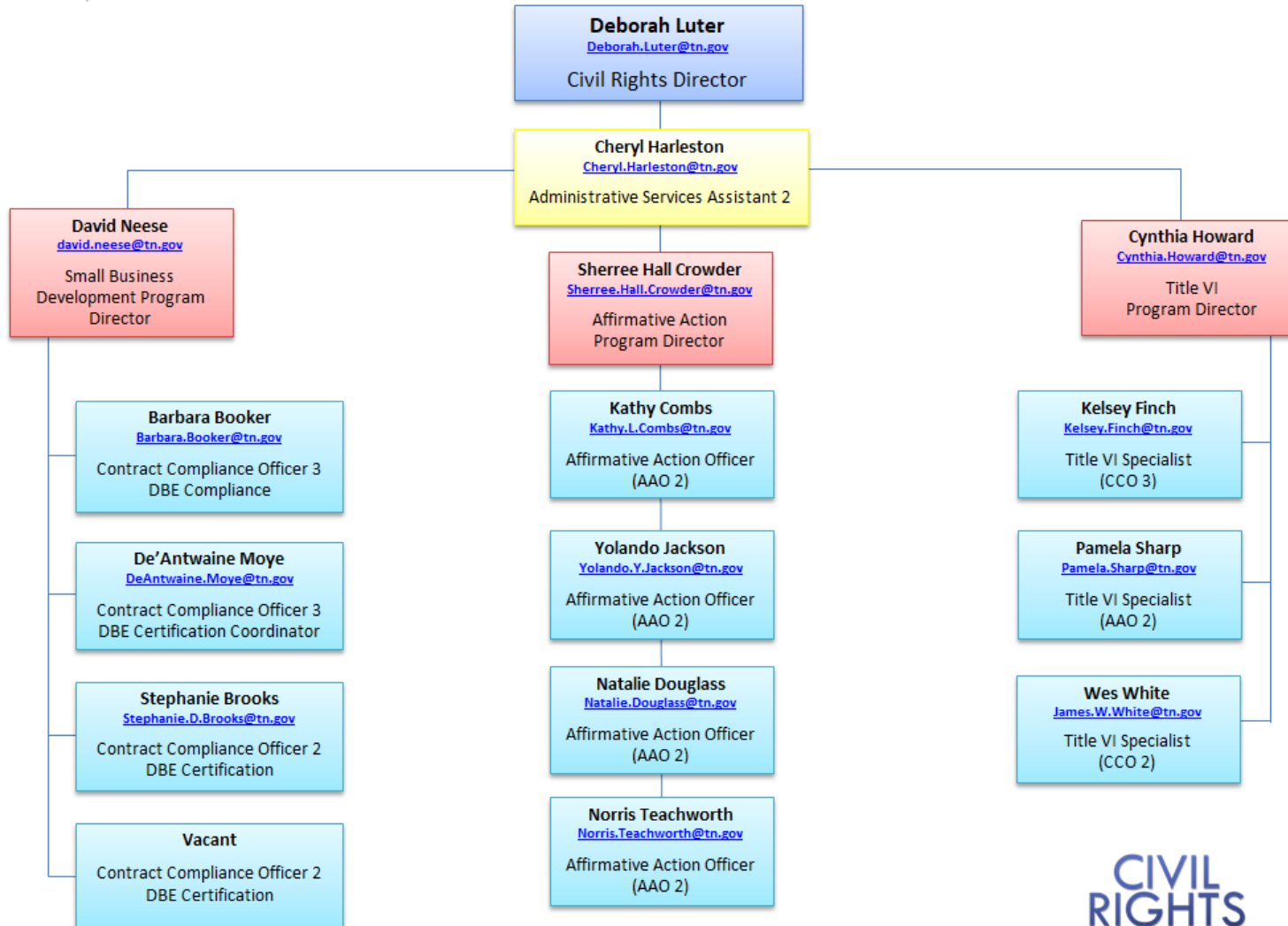
(d) Intimidation and retaliation. If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual 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.

ATTACHMENTS

ATTACHMENT A



CIVIL RIGHTS DIVISION ORGANIZATIONAL CHART



ATTACHMENT B

The TNUCP Directory may be found at:
www.tdot.tn.gov/APPLICATIONS/DBEDirect/

TDOT DBE Vendor Search

To get a complete listing of all DBE Companies, click the "VIEW REPORT" button now. Otherwise, you may narrow the search by making selections from criteria sections below. Each section provides a list of available options for each criteria. You may select multiple options in each criteria up to a total of 400 across all sections. Once you have made your selections, click "VIEW REPORT" to get to your report. Please make sure your browser's Pop-Up blockers are turned OFF.

Total Selected: 0 [View Report](#)

Speciality Selected: 0

[Clear Filter](#) [Add Top 400](#) [Remove All](#)

Available Selected

- *SHEET
- \$
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- +E
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- SALE
- SITE
- .

Company Types Selected: 0

[Clear Filter](#) [Add All](#) [Remove All](#)

Available Selected

- Construction

ATTACHMENT C

Disadvantaged Business Enterprise Supportive Services Scope of Work

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor will only participate with Disadvantaged Business Enterprises (DBE) certified through TDOT or through one of TDOT's Tennessee Uniform Certification Partners (TNUCP).

Background Information. Providing educational support programs for Disadvantaged Business Enterprises (DBEs) is a vital component of the State's Small Business Development Program (SBDP). The activities planned and implemented by the Contractor are critical to the ongoing growth and development of those DBEs needing and seeking assistance. Assistance performed by the Contractor should conform to the regulations contained in 49 CFR 26. To qualify as a DBE, businesses must meet the requirements set forth for DBE certification in the Code of Federal Regulations (CFR) in 49 CFR Part 26.

- a. In addition to service to all TDOT-certified DBEs in the state, the Contractor will also be responsible for creating a Business Development Program (BDP) for a limited number of DBEs from across the state. The BDP shall consist of enhanced developmental training and support that conforms with Appendix C to part 26 – DBE Business Development Program Guidelines from 49 CFR 26.
 - b. According to the Code of Federal Regulations, 23 CFR § 230.202(b), Supportive Services means “those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.”
 - c. DBEs certified through TDOT and/or any TNUCP agency will be deemed eligible for supportive services. Those DBEs active in the highway construction industry as demonstrated by their bidding on TDOT contracts, their past attainment of TDOT contracts, or through other methods that would show an interest and/or ability in attaining and performing on a TDOT contract shall be given priority for supportive services and training. TDOT and TNUICP-certified DBEs that are active outside of the highway construction area may also receive supportive services but only if it does not interfere with training and or services provided for DBES specializing in the highway construction industry.
 - d. DBE is defined as a for-profit small business concern that meets the following criteria:
 - (1) At least fifty-one percent (51%) is owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and
 - (2) Management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business
 - (3) Owners must not possess a personal net worth of more than \$1.32 Million (\$1,320,000)
 - (4) Is considered a small business as defined by Small Business Administration (SBA) standards, as found in 13 CFR, Part 121
- A.3. The Contractor shall provide specific information, communication, and materials regarding

contracting and subcontracting opportunities to assist DBEs participating in the supportive services program. These supportive services shall be given priority to DBEs determined to be eligible for participation in the federal-aid highway program in accordance with 49 CFR Part 26 and who have a work specialty in the highway construction and transportation industry.. The Contractor shall provide a wide range of assistance to small and disadvantaged businesses that are pre-qualified to perform work for prime contractors. Assistance should include, but may not be limited to the following:

- a. 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 obtain bonding and financing);
- b. Providing technical assistance and other services;
- c. Ensuring that DBEs are aware of bid opportunities within TDOT and are included in the dissemination of materials concerning these opportunities. Information concerning bid opportunities within other state and federal agencies, as well as those in the private sector, may also be sent out if they have the potential to be of interest to the DBE community.
- d. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capabilities for DBEs and other small businesses;
- e. Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- f. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- g. Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media.

While this contract is primarily set up for assistance for highway construction DBE firms, TDOT and TNUCP-certified DBEs that are certified in non-highway construction related fields would be eligible to receive assistance so long as it does not interfere or take time away from any assistance with DBEs specializing in road construction.

Overall administration and coordination of the program will be provided by the Contractor. Contract Administration includes all tasks with the exception of the training activities. The Contractor shall track the development of DBE participants for growth and shall also track the development of new DBEs for the program. The Contractor will maintain statistical data on certified DBEs obtaining State contracts to assess project progress.

The Contractor shall assemble a team skilled in the various disciplines, including but not limited to, accounting, office management, technical expertise, business development, bonding, marketing, human resource special events planning, and bidding and estimating.

There are currently 1,014 TDOT and TNUCP-certified DBEs doing business in Tennessee however, only approximately 210 of these firms would qualify for services as businesses that have, or potentially could, bid on and receive a TDOT contract..

Due to the number of DBEs certified through TDOT and TNUCP partners, DBEs wanting contractor services may need to be prioritized and/or put on a wait list depending on the demand. DBEs should be prioritized for assistance based on the relevance and urgency of their needs, as well as the need to achieve the purpose of providing these services that would help TDOT in achieving DBE contract goals.

- A.4. The Contractor shall report directly to the Civil Rights Division Director (CRD-D) and/or SBDP Director or her/his designee(s). The Contractor will be responsible for communicating to the SBDP Director and/or the CRD-D the plan of action, status of the program and any other

matters of significance to the program or contract. Dates, times and locations of meetings, training and/or seminars will be mutually agreeable to both parties. Under the direction of the CRO-D/SBDP Director, the Contractor Administrator will be asked to perform the tasks described here to include but not be limited by the following:

- a. The Contractor shall perform individual evaluations and assessments of highway construction- related DBE firm throughout the life of the contract whenever services are rendered and when new TDOT-certified DBEs are certified. The Contractor shall verify the work areas identified on the DBE's certification listing. The Contractor shall gather information such as equipment lists and current contracts prior to each of these meetings and shall prioritize the meetings as follows:
 - (1) DBEs currently active in Tennessee who have bid on State construction projects.
 - (2) New DBEs in Tennessee who are prepared to bid on State construction contracts,
 - (3) New DBEs who need direction to resources outside state government (federal and city work).

After each evaluation has been completed, the Contractor shall prepare a written report for the State. The report should include any recommendations for improvements.

- b. The Contractor shall offer their services in developing a business plan for TDOT and TNUCP- certified DBEs as services are rendered. Each business plan should be kept in electronic format to be viewed by the State on request. For any DBE already having a Business Plan, an attempt should be made to retrieve a copy for TDOT to have in the DBE's file. For any DBE that refuses assistance in developing a business plan, this should also be noted for the DBE's file.
- c. The Contractor shall maintain a toll-free hotline that is available Monday through Friday, 8:00 a.m. to 4:30 p.m. (Central Standard Time) with voice mail capability. The phone will be manned a minimum of 7.5 (seven and one half) hours per day to receive calls from DBEs and Prime Contractors.
 - d. The Contractor shall organize meetings quarterly, if necessary, in each of the State's four (4) regions for DBEs to meet and discuss concerns in an informal manner. The frequency of these meetings shall be subject to CRO-D/SBDP Director's discretion. Meetings may be scheduled to occur when information crucial to DBEs needs to be disseminated, therefore there may not be a need for a meeting in every region, every quarter. . While primarily for DBEs, these meetings should also be open to local small businesses and potential DBEs. Other agencies such as SBA and similar programs may help with email lists for these small businesses. Meeting attendance should be on a RSVP basis with DBEs having priority status for attendance. Small businesses should attend as meeting space allows.
 - e. The Contractor shall coordinate and organize, with prior approval from the CRO-D/SBDP Director, an Annual DBE Meeting at a local Nashville hotel. This is traditionally a 2-day event open to DBEs, Prime Contractors and Small Business Owners wishing to network and receive training on a diverse range of topics, and may also include a matchmaker event between State and Aeronautic staff, Prime Contractors, DBEs and others.
 - f. The Contractor shall maintain a website in order to display current information and news vital to the State's DBEs. This website should be maintained and updated at least weekly (or as new information is received). This website should also provide contact information for potential DBEs who may view the site and have inquiries into the program, and for those wishing to make comments on the website in general or activities presented therein. If necessary, the State should be able to submit documentation for the website to the Contractor and have it posted within two business days of receipt. The State's SBDP web page will add a link to the Contractor's website.
 - g. The Contractor shall provide clerical assistance to answer phones and to submit paperwork to the State as required.

A.5. Within the first year of the contract, the Contractor will develop PowerPoint presentations to be included on TDOT's Small Business website or a website the Contractor dedicates to TDOT DBE Supportive Services. Topics will be relevant for the DBE community and should be designed in a way to help prepare These DBEs for working on TDOT contracts by familiarizing the DBEs and other small businesses with the processes needed to win and successfully complete contracts. Topics and number of presentations shall be agreed upon between the Contractor and the State and should include presentations dealing with the bid process; navigating TDOT's website; networking; marketing; financial related information referrals to other partners, agencies and small business advocates; and similar information that would be instrumental in DBE success. These presentations should be updated as needed and additional presentations added to the website as necessary throughout the contract term.

A.6 The Contractor will work with DBEs on how to market their services to government agencies and prime contractors. The marketing development responsibilities will be to implement and promote a strong outreach program designed to attract and assist eligible non-certified minority and women-owned firms doing highway, road and bridge construction in becoming certified DBEs with the State.

A.7. The Contractor shall submit a written progress report each month to the CRO-D/SBDP Director. The report shall include:

- a. Staff allocation of time, giving dates and hours spent per task, per staff member
- b. Subcontractor allocation of time, giving dates and hours spent per task, per subcontractor
- c. Marketing efforts including any trade shows or industry meetings attended or planned
- d. Any contact with State Personnel concerning the TDOT DBE Program
- e. Any contact with prime contractors concerning the TDOT DBE Program.
- f. Cumulative expenditures to date with detailed explanation
- g. Accomplishments to date
- h. Problems encountered and resolutions implemented
- i. Additional items impacting work plan

A.8. The Contractor shall submit a monthly event calendar to the CRO-D/SBDP Director by the last Wednesday of each month. This report shall include a calendar of events which will show the meetings and activities planned for the next month.

A.9. The Contractor shall attend regional and national Civil Rights meetings of the Federal Highway Administration, the American Association of Highway and Transportation Officials, the Southern Transportation Civil Rights Executive Council, and other similar entities as feasible and as authorized by the CRO-D/SBDP Director. The Contractor shall request approval from the CRO-D/SBDP Director before attending regional and national conferences.

A.10. The Contractor shall make available and staff an exhibit booth for conferences, trade shows and the like as deemed necessary by the CRO-D/SBDP Director to promote the State's DBE Program. The State's Civil Rights Division has an 8 x 10 Exhibit Booth that may be used if necessary.

A.11. The Contractor shall attend a monthly staff meeting (at a minimum) at the TDOT's Nashville Headquarters, located at 505 Deaderick Street, Nashville, TN, with the CRO-D/SBDP Director and other pertinent staff. The State and the Contractor will mutually agree upon the date and time. Teleconferences may substitute for in-person meetings as deemed feasible by the CRO-D/SBDP Director.

A.12. The Contractor shall contact at least 25% of the State's in-state certified DBE contacts by phone or in person every ninety (90) days.

A.13. The Contractor shall seek speaking engagements and other public appearances at trade conferences in the state to promote the supportive service effort as directed by the State.

A.14. The Contractor shall make DBEs aware of the following information the State provides

via the Internet, hardcopy or both:

- a. Prime Contractor Listing
 - b. Pre-Qualification application
 - c. Notice to contractors in construction, maintenance/mowing and engineering
 - d. Enhancement Grants
 - e. Other information as required
- A.15. The Contractor shall provide the CRO-D/SBDP Director, in writing, a resume of all potential instructors and consultants including qualifications for training courses prior to entering into any working agreements.
- A.16. The Contractor shall provide specific information, communication and materials pertaining to contracting and subcontracting opportunities available to the DBE. The construction planning responsibilities include the following:
- a. Contractor shall provide one-on-one consultation to DBE firms on cost estimating and bidding, project scheduling, construction management, bonding and contract review as needed. Priority will be given to those DBEs with the most urgent needs and other as well as other factors as determined on a case-by-case basis.
 - b. The contractor shall assist the Director of the SBDP and the engineer from the State's Construction Division with Goal Setting on state and federally funded highway projects prior to each letting.
 - c. The Contractor shall become familiar with highway and/or bridge construction projects across the state of Tennessee. The Contractor is responsible for knowing which projects exist and where these projects are located. This is necessary because the Contractor will be responsible for assisting in the goal setting process for construction projects.
 - d. The Contractor shall ensure the DBEs are aware of the pre-qualification form and that it is required for contractual work on state transportation projects. A pre-qualification questionnaire is required by the Construction Division to bid as a prime or subcontractor. This document shall be filed with the Department prior to 12:00 noon of the day preceding the date of any letting.
 - e. The Contractor shall recruit new DBE firms and work with CRO SBDP staff to clarify work areas of current DBEs. The Contractor will be responsible for seeking out new firms to qualify as DBEs. This will involve marketing the Supportive Services Program at various activities in the business community. Such activities may include, but are not limited to: Vendor Opportunity Days, Trade Shows, Small Business Administration Expositions, Minority Enterprise Development Week (MED week) where small businesses convene for a certain period of time to highlight and showcase what is being done with minority entrepreneurs around the city and the nation, and any other venue or activity of which Contractor may have knowledge.
 - f. The Contractor shall prepare and deliver the "Notice to Contractors" via email to all DBEs prior to every letting. This "Notice to Contractors" shall include estimated goal percentages by project and by county.
 - g. The Contractor shall develop and post a quarterly electronic newsletter publication. This newsletter shall include, but is not limited to, information concerning the Supportive Services Program. The newsletter shall explain issues in the construction industry, define available classes, and describe assistance that is available to DBEs. The primary goal of the newsletter is to keep the DBEs informed regarding issues in the construction industry. The Contractor is responsible for the content and layout of the newsletter. The CRO- D/SBDP Director shall review all preliminary and final proofs

before posting. After final review, the Contractor will email the final finished product to the DBEs at a designated time. Hard copies should also be made available for view at the CRO. The newsletter must conform to State printing standards. Prior newsletters are available on the Small Business Development website for review.

- h. The Contractor shall participate with Tennessee Road Builders Association (TRBA) as deemed necessary by the SBDP for any issues relating to DBEs.
- i. The Contractor shall visit with prime contractors to promote the State's DBE Program. The SBDP will provide the Contractor with a list of the major prime contractors across the state by region. The Contractor should develop a working knowledge of the major prime contractors that bid on State projects.
- j. The Contractor shall provide guidance, assistance and support to DBEs in resolving issues between DBE subcontractors and prime contractors on TDOT contracts as necessary.

A.17. The Contractor shall develop training programs which will assist minority and women-owned contractors and construction suppliers on an individualized, as well as group, basis. The general training coordinator responsibility services will be designed to increase the total number of minority and women businesses active in the highway construction program and contribute to the growth and eventual self-sufficiency of these businesses so that they may achieve proficiency to compete on an equal basis for prime contracts and sub-contracts. The Contractor shall work with Historically Black Colleges and Universities (HBCUs), other state colleges and universities, and/or TDOT to use their facilities for courses. These institutions can be utilized when conducting training seminars, hosting meetings and finding qualified instructors to teach classes. The State's Regional Offices and online courses may also be used to present this training. Prior authorization must be received from the State, the CRO-D/SBDP Director, prior to the Contractor scheduling courses at any venue.

a. Accounting and Small Business Management Planning

The Contractor shall assist DBE firms concerning general management, accounting and marketing, and on understanding the importance of establishing a good accounting and record keeping system. The Contractor shall provide assistance and instruction in processing and submitting certified payrolls, accounts receivable and all other cash flow management techniques.

b. Workshop Training

- 1) In addition to one-on-one training, classroom group training or webinars shall be scheduled and rotated throughout the state in each of TDOT's four regions based on need during the contract year. The Contractor shall determine the need for classes during the monthly staff meetings. The Contractor shall notify all DBEs about class availability electronically to increase attendance at any given class. The Contractor shall develop a proposed training schedule and deliver it to the State for approval prior to beginning any training.
- 2) The Contractor shall determine when and where each workshop will be taught, and shall seek prior approval from the State before finalizing dates, time, and locations for workshops. State colleges or universities shall be given preference for workshop locations, or if feasible, workshops may be held online. The length of each workshop will be dependent on the material covered. The Contractor shall hire qualified instructors (with prior approval from the State) to teach all workshops.
- 3) Classes may also be presented online, so DBEs may participate at their own convenience. Online training is encouraged as many DBEs are

unable to participate in meetings or seminars throughout the day, but may benefit from courses that are accessible through the internet. DBEs may request which classes to take and will then be granted access. Online training should be available to all key members of a business's management staff.

c. The Contractor shall be responsible for offering courses each year of the contract. The list of courses to be taught may include but not be limited to the following:

- 1) How to do Business with TDOT –This workshop will teach the business owners who have not worked on a project with TDOT what to expect in the event that they do land a contract.
- 2) Business and Management Planning Module –This workshop will offer practical “how-to” suggestions on organizing the business and management function, writing a business plan, and keeping financial and marketing efforts on track. Workshops shall cover the following topics:

Business Plan Development

- Who should have one?
- Executive Summary
- Company Overview
- Market Insights
- Marketing Strategy
- Operational Strategy
- Financial Projections

Financial Planning and Budgeting

- What is a budget? Other Considerations
- The Budget Process
- Using the Budget to get More
- Guidelines to an Effective Budget
- How to Cut Costs
- How to Project Sales

Human Resources

- Retirement and benefit planning
- EEOC Employment Laws

- 3) Accounting and Financial Management Module – This workshop will teach the business owner how to read and interpret the income statement, including such components as gross revenue, net revenue, direct and indirect expenses, net profit before taxes, gross profit, and net profit after taxes. The workshop will examine the primary benchmarks of performance: multiplier, utilization rate, direct expense ratios and overhead. In addition, the workshop should examine the balance sheet components of assets (current, fixed and other), liabilities (current and long-term), and stockholders equity. Important benchmarks such as: current ratio, quick ratio, receivables turnover, aging receivable, and debt to equity ratio need to be explored. Workshops shall cover the following topics:

Accounting System Setup

- Understanding & Using the Financial System Quick Books Pro
- Financial Statements
- Income Statements
- Balance Sheets
- Statement of Cash Flow
- Accrual vs. Cash Basis

Financial Statement Analysis

- Analytical Review
- Ratio Analysis
- Industry Standards / Comparison

Using Annual Reports

- Management's Discussion and Analysis
- Generally Accepted Accounting Principles (GAAP) Footnotes
- Audit reports

Banking, Borrowing & Bonding

- The TDOT's Bonding Prep Program
- 4) Pricing and Bidding Module – This workshop will break down the job cost accounting and construction cost process into an easy, straightforward and logical manner. The workshop will demonstrate how to price work based on a firm's actual cost structure. Instructors shall show a step-by-step illustrated procedure on how to obtain the most accurate costs for a firm, including reviewing the strategic balance between cost and time and how they affect profit.
- Job Cost Accounting – The Estimating and Pricing Module
 - General and Administrative Cost
 - Direct Cost (material, labor, equipment and other)
 - Indirect Cost
 - Labor burden and Fringes
 - Overhead
 - Fee/Profit
- 5) Bidding and Contracting Administration – This workshop should prepare the attendee for the complexities of construction contracting.
 - 6) The Meaning of Contract Documents – This workshop shall go over the meaning of contract documents and focus on the following (though other relevant topics may be permitted):
- General Conditions
 - Type of Contracts
 - Estimating and Bidding
 - The Estimating System
 - Work Breakdown Structure (WBS)
 - Estimating Cost to Complete
 - Profit Analysis
 - Project Management
 - Documentation
 - Cases in Construction Law
 - Change Orders
 - Claims
 - Contract Closeout

A.18. In addition to statewide supportive services to TDOT/TNUCP-certified DBEs specializing in the highway construction industry, a select few DBEs shall participate in a Business Development Program (BDP). No less than five (5) and no more than Fifteen (15) TDOT DBEs from across the state shall participate in enhanced developmental training and support through the BDP that conforms with Appendix C to part 26– DBE Business Development Program Guidelines from 49 CFR 26. The Contractor will assist these DBEs to move into non-traditional areas of work and/or to compete in the marketplace outside the DBE program via the provision of training and assistance.

- a. The Contractor will be responsible for providing these services on a statewide basis.
- b. The State Civil Rights Division will work with the Contractor in picking the DBEs for participation in the BDP and every effort should be expended to have DBEs represented from all four regions. DBEs shall be chosen based on factors including, but not limited to, their North American Industry Classification System (NAICS) code(s), past performance and bid activity. A diverse core of businesses, in both specialties and locations throughout TN, should be represented. There will be no timeframe on program participation, but a timeframe will be applied to whether goals and achievements are met. The selected firms will be divided into one of two stages, either a Developmental Stage or a Transitional Stage.
 - i. The Developmental Stage is designed to help participants overcome their social and economic disadvantage. During this stage, Contractor shall provide such assistance as may be necessary and appropriate to enable participants to access relevant markets and strengthen their financial and managerial skills.
 - ii. The Transitional Stage follows the developmental stage and is designed to further assist participants to overcome their social and economic disadvantage and prepare the participant for leaving the program.
- c. Several factors should be considered in regards to transitioning DBEs from the Developmental Stage to the Transitional Stage, as well as in graduating DBEs from the Transitional Stage out of the BDP. Program advancement may be based on whether a DBE has substantially achieved the goals and objectives of its business plan through such measures as, but not limited to, their profitability, net worth, ability to obtain bonding, good management capacity and capability and their access to credit and capital. (See full requirements of Appendix C to part 26 – DBE Business Development Program Guidelines from 49 CFR 26)
- d. The Contractor shall assemble a team skilled in the various disciplines for the BDP. The selected DBE firms will receive services in the areas of bonding, financing and business planning. Other services may be added as needs arise. The following is a list of training and/or individual assistance or services the Contractor will provide; others may be added as needs arise:
 - Joint Venturing/Teaming Assistance
 - Business Planning Assistance
 - Financial Assistance (loan application packaging)
 - Bonding Assistance (bonding application packaging)
 - Marketing Assistance (presentation skills and materials)
 - Bidding/Estimating and Project Management Training
 - Preparation for the General Contractors License or a Specialty License Exam
 - Human Resource Program Development
 - Accounting System and Financing Reporting Assistance
 - Safety and Operations Training
 - Guidance in Diversification and Expansion
 - Information Technology Training
 - Limited Legal Assistance (contracts, legal structure)
- e. Training will consist of one-on-one training that is custom-tailored for the needs of each DBE. Therefore, assistance and training may take place at the DBEs place of business, with the DBE out in the field, or both. A program of this intensity must have ample face-to-face time to promote an effective transformation.
- f. By no later than 6 months of program entry, the Contractor, through working with the DBE, should develop and submit to the State a comprehensive business plan setting forth the participant's business targets, objectives and goals.

- g. The business plan should conform to the specifications outlined in Appendix C to Part 26—DBE Business Development Program Guidelines
 - h. The Contractor should review the business plan annually with each DBE as well as with the State. The DBE should annually forecast in writing its need for contract awards for the current and successive program year during the review of its business plan. The forecast should include at a minimum the types of contracts being sought and aggregate dollar amounts sought for contracts both within the DBE Program as well as those in other areas.
 - i. Participation by a DBE firm in the program may be discontinued prior to expiration of the firm's determined 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, unjustified delinquent performance or other factors deemed as good cause. Full program requirements are available at Appendix C to part 26 – DBE Business Development Program Guidelines.
- A.19. The Contractor shall provide an annual report to the State both in hard copy and in electronic format at least two weeks prior to the end of each calendar year. The report should include the following items:
- a. Success in providing opportunities for DBEs
 - b. Lessons learned from program
 - c. DBE Accomplishments and statistical information
 - d. Suggestions for future advancement of the participating DBEs
- A.20. The Contractor shall provide a final report to the State at least two weeks before the contract ends. This final report should include the same information as in Section A.18 above, but would be for the duration of the entire contract to show the growth over the contract period.
- A.21. The Contractor will make an oral presentation to the State designed to provide a general overview of the DBE program as well as any increases in emerging participation by selected DBEs on State highway projects. This presentation shall be made after the final report, above, has been approved, but no later than the last day of the contract period.

ATTACHMENT D

TNUCP PARTNERS

The following member agencies process DBE applications. Please forward your completed application packet to one of these agencies serving the area where your firm has its principal place of business:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888)370-3647
(615)741-3681
www.tn.gov/tdot/civil-rights/small-business-development-program

Memphis Area Transit Authority
1370 Levee Road
Memphis, TN 38108-1011
(901)722-7138
www.matatransit.com

Chattanooga Area Regional Transportation
Authority/
Authority
[Middle TN]
1617 Wilcox Blvd.
Chattanooga, TN 37406
(423)629-1411
www.gocarta.org

Nashville Metropolitan Transit
Regional Transportation Authority
430 Myatt Drive
Nashville, TN 37115
(615)880-3977
www.nashvillemta.org

If you wish to be considered for ACDBE certification, you will need to complete the Airport Concession DBE certification application package, which can be accessed at:

Memphis/Shelby County Airport Authority
Authority
3505 Tchulahoma Road
Memphis, TN 38118-2718
(901)922-0255
www.flymemphis.com

Metropolitan Nashville Airport
One Terminal Drive, Suite 501
Nashville, TN 37214-4114
(615)275-1620
www.flynashville.com

Chattanooga Metropolitan Airport Authority
Authority
1001 Airport Road, Suite 14
Chattanooga, TN 37421
(423)855-2214
www.chattairport.com

Metropolitan Knoxville Airport
P.O. Box 15600
Knoxville, TN 37901-5600
(865)342-3062
www.flyknoxville.com

The following members are non-certifying agencies that may be accessed for DBE information:

Smyrna Airport Authority – (615)459-2651	www.smyrnaairport.com
Tri-Cities Airport Commission – (423)325-6044	www.triflight.com
Jackson Airport Authority – (731)423-0995	www.mckellarsipes.com
Jackson Transit Authority – (731)423-0200	www.ridejta.com
Clarksville Transit System – (932)553-2430	www.cityofckarksville.com
Knoxville Area Transit – (865)215-7830	www.katbus.com
Johnson City Transit – (423)434-6269	www.johnsoncitytransit.org
Bristol Tennessee Transit – (423)989-5519	www.bristoltn.org
Murfreesboro Rover Public Transit – (615)893-6441	www.murfreesborotn.gov
Kingsport Area Transit Authority – (423)224-2613	www.kingsporttransit.org

TDOT utilizes the **DBE Certification Application** and **DBE Personal Net Worth Statement** found at the *United States Department of Transportation - Departmental Office of Civil Rights* webpage: <https://www.civilrights.dot.gov/disadvantaged-business-enterprise/ready-apply>

Direct DBE Application link:

https://www.transportation.gov/sites/dot.gov/files/docs/New%20DBE%20Certification%20Application%2011-18-2014_0.pdf

Direct PNW Statement link:

<https://www.transportation.gov/sites/dot.gov/files/docs/NewDBEPersNetWorthStmt.pdf>

ATTACHMENT E

By – Laws

of

Tennessee State Certification Program

Third Party Challenge Committee

Article I. Purpose

The purpose of the Third Party Challenge Committee is to provide firms whose DBE certification has been challenged alleging that a currently certified firm may be ineligible, an opportunity for an informal hearing or to present in writing reasons that its certification should not be removed.

Article II. Membership

Members – The committee shall consist of five (5) Tennessee State Certification Program partners with an alternate in the case that one of the partners is the one who is the original certifying partner, in which the partner will reclude himself. Members shall serve a maximum term of three (3) years.

Article III. Officers

Section 1. Elections – The members of the Third Party Challenge Committee shall elect on the first meeting a Chairperson and a Vice-Chairperson.

Section 2. Chairperson – The Chairperson shall be the principal executive officer of the committee and in general shall supervise and control all of the business and affairs of the committee. The chairperson when present shall preside at all meetings of the committee. Whoever is elected will serve for two years from the date of election.

Section 3. Vice Chairperson - The Vice Chairperson in the absence of the chairperson shall perform the duties of the chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the chairperson and shall perform such other duties as from time to time may be assigned by the chairperson.

Article IV. Meeting

Section 1. Place of meetings – The chairperson may designate any place within the headquarters office of the Tennessee Department of Transportation or any other selected location as the place for any committee meeting(s), hearings, special meeting, telecommunication or teleconferencing

Section 2. Notice of Meetings – Written notice stating the place, day and hour of the meeting and, in case of special meeting, the purpose or purposes for which the meeting is called shall be delivered before the date of the meeting either personally or by mail. In the alternative, the chairperson may otherwise advise the members of said meetings.

Section 3. Quorum - Three (3) members of the committee shall constitute a quorum at a committee meeting. If less than a quorum is represented at a meeting, those committee members present must adjourn until a time when a quorum is present. No business may be conducted unless a quorum is present.

Article V. Sub-Committees

The Chairperson may appoint sub-committees from with the TSCP (including consultants) as the need arises.

Article VI. Order of Business

The following order of business shall be observed at all meetings: (a) call the roll; (b) reading corrections, and approval of minutes of previous meeting; (c) report of/from sub-committees; (d) new business relating to DBE Review Committee; and (e) hearing of appeals or reviewing of submitted rebuttal.

Article VII. Rebuttals

Procedure – The office or TSCP member presenting the DBE's removal will be given an opportunity to present their information and reasons for the proposal of removal. The respondent(s) and other interested parties will be given an opportunity to appear in person and/or be appropriately represented and will be given an opportunity to rebut the findings of TSCP member. The Committee shall render a decision when all information has been heard within seven (7) working days from the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time. If the DBE elected to present in writing their rebuttal, the Committee shall review the submitted rebuttal and render a decision within seven (7) working days form the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time.

Third Party Challenge Committee Members

De'Antwaine Moye, TDOT
Joe Claiborne, MSCAA
Alan Jones, MKAA
Kebbyn Connell, MNAA
Annie Powell, CARTA

ATTACHMENT F

**Tennessee
Uniform
Certification
Program**

Member Agencies

Tennessee Department
of Transportation

Metropolitan Knoxville
Airport Authority

Chattanooga Metropolitan
Airport Authority

Memphis Shelby County
Airport Authority

Metropolitan Nashville
Airport Authority

Chattanooga Area Regional
Transportation Authority

Memphis Area
Transit Authority

Jackson Transit Authority

Smyrna Airport Authority

Tri-Cities Airport Commission

Clarksville Transit System

Regional Transportation
Authority [Middle TN]

Nashville Metropolitan
Transit Authority

Knoxville Area Transit

Jackson Airport Authority

Johnson City Transit

Bristol Tennessee Transit

Murfreesboro Rover
Public Transit

Kingsport Area Transit Service

TO: Name of DBE Applicant
Company Name
Address
City, State Zip Code

EMAIL: *****

FROM: TNUCP Recipient (i.e., Tennessee Department of Transportation)
Name of TNUCP Officer
Title of TNUCP Officer

DATE: ******DATE******

RE: Annual No Change Declaration

Our records show that you are due to submit your annual No Change Declaration. To continue your certification as a Disadvantaged Business Enterprise (DBE) Program participant, please read, fill out the necessary information and supply the required documentation as listed on the attached document in order to maintain your certification in accordance with 49 CFR 26.83(j). The items needed by ******DATE****** are as follows:

→DBE Firm's Gross Receipts (**attach a copy for the firm's most recent tax return** and all attachments, if applicable**)

** Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships.

→**Tennessee Uniform Certification Program (TNUCP) No Change Declaration** (This attached document *must* be filled out in its entirety, *signed and dated by the DBE owner{s}*).

The No Change Declaration should be submitted to:

***Recipient
Office
Address
City, State Zip Code
Phone Number direct
Phone Number toll free
Attn: Name of TNUCP Officer
Email: ********

Thank you for your participation in the TNUCP. If you have any questions, please contact our office at your earliest possible convenience.

TENNESSEE UNIFORM CERTIFICATION PROGRAM (TNUCP)

No Change Declaration

I/we, _____ {name(s) of DBE applicant(s)}, declare that there have been no changes in _____ (company name) circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part and 13 CFR Part 121. I/we further declare there have been no material changes in the information provided w _____ (company name) application for certification, except for any changes ab _____ which I/we have provided written notice to the TNUCP pursuant to 49 CFR § 26.83(i).

I/we declare that I am (or we are) socially disadvantaged because I/we have been subjected to racial ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my/our identity member(s) of one or more of the groups identified in 49 CFR § 26.5, without regard to my/our individual qualities. I/we further declare that my/our personal net worth does not exceed \$1,320,000.00, and that I am (or we are) economically disadvantaged because my/our 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.

In addition, I/we specifically declare that _____ (company name) continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipt cap of 49 CFR Part 26. I/we specifically declare that _____ (company name) average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed the SBA size standard pursuant to 49 CFR § 26.65(b). I/we provide the attached size and gross receipt documentation to support this declaration. Number of employees (part-time/full-time) is _____.

I/we declare under penalty of perjury that the foregoing is true and correct.¹

Executed on (date) _____

Signature *Print Name*

Signature *Print Name*

Signature *Print Name*

Signature *Print Name*

If there are changes in the firm's disadvantaged status, ownership, control and/or management or a material changes in the information provided previously in the application form, please submit a letter on the firm's letterhead and describe any changes in disadvantaged status, ownership, control and management of the firm, along with supporting documents.

Please assist us in updating our files by providing the following information:

Name of Firm _____

Mailing Address _____

City, State, Zip Code _____

Telephone# _____ Fax# _____ E-mail Address _____

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both. All owners claiming social and economic disadvantaged status must sign this declaration.

ATTACHMENT G

TENNESSEE UNIFORM ON-SITE INSPECTION AND OWNER INTERVIEW REPORT

Purpose

The purpose of this on-site inspection is to solicit information from the owner(s) of record of the below named company to determine if his/her ownership and control is real, substantial and continuing and is consistent with the day to day control requirement contained in the governing federal regulations of 49 CFR, Part 26.

General Information

Review Conducted by: _____ Date: _____

Firm: _____
(Why do you call it that?)

Location _____ Time: _____

Mailing Address _____

Participants at the Review (List all owners and check the names of any not present):

Name	Title	Race/Sex	Percentage of Ownership
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How long at present location: _____

Telephone: _____

Contact Person: _____ Title: _____

Type of Company

- Corporation Partnership Sole Proprietorship
 Joint Venture Other: _____ (Specify)

Type of Review: New Application Renewal Challenge

Date of Last On-site Review: _____ Interviewer: _____

Company Information (List Board of Directors by name, title, race and sex)

Name	Title	Race/Sex	Percentage of Ownership

1. What is the company's primary line of business? Please be specific.
2. Does/Do any of the owner(s) of the company have any stock, management, or ownership interest in another company? If so identify the company and state the percent of interest.
3. Date company was established and by whom?
4. Detail in specific terms how the company was initially capitalized.
5. Has the company made any changes in ownership since the schedule A (application/affidavit) was submitted? If so, what changes have been made?
6. Is the company a successor of any other company or has it conducted business under any other name? If so, identify that company, and indicate if it is still conducting business, or has it been dissolved.
7. Is the company operating under a license issued to a previous owner? Is so, please describe the circumstances.
8. Describe all real estate owned by the firm and provide proof of ownership.
9. How are stockholders, directors and key personnel of the firm compensated?

Management of Applicant's Company

1. Indicate how each owner received his/her share of ownership in the business.
2. List the current positions held by management and owners of the company. Identify tasks and responsibilities of each. Be specific in defining day to day management activity. Attach an organizational chart if helpful in expressing these activities.

3. How many hours per day do either owner(s) devote to the business?

4. Identify the individual(s) responsible for the following:
 - Who negotiates financing, contracts, bonding, and insurance for the company?

 - Who is authorized to make loans for the firm and sign the loan agreement?

 - Who has the authority to sign payroll and creditor checks?

 - Who actually signs payroll and creditor checks?

 - Who monitors job sites and administrative functions?

 - Who sets salaries for personnel?

 - Who hires and terminates employees?

 - Who signs contracts to perform work and subcontractors work for the company?

 - Who decides and signs notes and leases for equipment?

 - Who estimates work in preparation of submitting a bid or quotation in the firm's name?

 - Who established policy and procedure for the company? Explain.

5. When was the last time an employee was hired and fired and by whom?

6. How does the firm learn of projects to bid?

7. What material suppliers does the firm use? (Include company name (s) and contact name (s).) **[Review Purchase Orders / Invoices and checks for purchases and signatures.]**

8. Is the company being assisted financially or otherwise by anyone other than the owner?

9. If a major problem occurs on a project, who has responsibility for deciding whether the job is

halted and how is the decision made?

10. Does any member of your firm work part time for any other company? If so, what is the name of company, their position and hours per day/week devoted to that position.
11. Is the company currently operating under a license? If so, please specify.
12. What bank or financial institutions does the firm have accounts with as well as loans?
13. Does the company have a financial line of credit? If the applicant is a new firm without a line of credit, what sources have you used to procure equipment and materials?
14. Did the company have any contract on which it had a joint agreement with the prime contractor to provide financial procurement of materials, equipment, manpower, use of office or warehouse space necessary to perform on the job? If yes, please state circumstances and review the contract(s).
15. Do you work primarily as a prime or a subcontractor?
16. Has firm ever subcontracted any of its company's contract (s)? Yes ___ No ___
If yes, provide the name of subcontractor (s), dollar value of contract (s) and reason (s).

Reviewer's Comments on Physical Environment of Company

1. Is the firm identified by name on a sign at its location and listed in the phone book and/or yellow pages? ___ Yes ___ No
2. Does the firm conduct business from any other office location or share any facilities with a non-disadvantaged firm? ___ Yes ___ No
3. Is the owner(s) office distinct? ___ Yes ___ No
4. Are persons working in the office during the on-site interview employed by the firm?
 ___ Yes ___ No
5. Was a job site visited and employees interviewed on the job site? ___ Yes ___ No
6. Where does the firm store its equipment?
(Attach List)
7. Is office space owned or leased? By whom? **(Obtain copy)**

8. Identify any other structures or other businesses that share the premise or facility and give address.
9. What items of equipment have been purchased during the last year?
10. Does the company lease equipment? If so state the nature of the lease agreement and whose signature(s) appears on the lease.
11. What equipment was seen on premises and did it have the firm's logo?
12. Review a sample of W2's and W4's of current and past employees and record findings.
13. Does the firm maintain a life insurance on the principal(s) of the firm?
14. What type of insurance does the company have and who is the agent? (**Obtain copy**)
15. Who obtained the insurance for the company?
16. Does the company have a bond? Is so, specify the bond limit, name of company holding bond, name of the agent and the name of the individual(s) that obtained the bond?
(Obtain copy)
17. Review cancelled checks - check for signatures and to whom those checks are addressed.
18. List the amounts paid to owners.
19. Who approves the rate of pay for new employees?

Job Estimates and Contracts

1. Explain and describe the negotiation process.
2. Review contracts, list the following information for each:

Firm
Location
Signature and Title on Contract
Date

3. Has your firm or any principal of your firm ever failed to complete any contract awarded to your company? Describe the circumstances.
4. Is the firm certified in any other state, jurisdiction or is it an SBA 8(A)?
5. Who negotiates disputed billings with prime contractors?
6. How many supervisors does the company employ? Explain their duties and responsibilities.

Materials

1. Are materials stored on premises? Yes No If not, then where?
2. What materials were viewed?
3. Who owns office equipment used by firm?
4. Who orders and purchases materials?
5. If the firm is a supplier, indicate the lines of products supplied.
6. Does the firm keep the goods supplied to its customers on property that is owned or leased?
 owned Yes No
 leased Yes No
7. Does the firm take ownership title to the goods supplied? Yes No

Additional Information

8. If the firm is a corporation, how many shares of stock does each owner hold?
 (Number of outstanding shares)
9. Who performs accounting functions for the firm?

10. Does the firm have a CPA? Who?

11. Who prepares the payroll?

12. What is the background of the related business and educational experience of the principal owner?

13. Explain the daily business operations of the firm and the responsibility of the principal owner(s).

14. Number of employees: _____
Number of minority employees: _____
Number of female employees: _____

15. Please provide the names of all permanent employees in this company.

15. Why do you want to be a DBE with the TN Uniform Certification Program?

16. What areas within the State of TN are you willing to work?

Comments/Notes Section

To be signed upon completion of on-site inspection by:

Certification Specialist _____

Applicant/Representative _____

ATTACHMENT H

COMMERCIALLY USEFUL FUNCTION CHECKLIST

Checklist Instructions:

1. To be completed by the Project Inspector for each DBE on *every* project.
2. **If at any time a DBE is observed not performing a CUF or if there are any items that are suspicious, red flags or warrant further attention, this must be reported to the Regional Construction Supervisor and HQ Civil Rights Office Small Business Development Program Director immediately.**
3. Submit the completed form to the HQ Civil Rights Office Small Business Development Program.

Date of Review: _____ Reviewer's Name: _____

Contract No.: _____ Project No.: _____ County: _____

Contract Description: _____

Prime Contractor: _____

DBE Firm: _____

Start Date(s) of DBE Work: _____

Describe the type of work observed: _____

A. Management

1. Who does the DBE on-site representative contact for hiring, firing, or modifying the contract?

2. Name of on-site representative: _____

3. On-site representative reports to: _____

4. Has the on-site representative been identified as an employee of the DBE?

YES _____ NO _____

If not, then by whom? _____

(If no, this could be a red flag.)

Action taken: _____

5. Did the DBE sublet any items or portions of work to any other firm?

YES _____ NO _____

If yes, what percent was sublet/what items were sublet? _____

Name of the firm: _____ DBE? _____ Non-DBE? _____

(If yes, this could be a red flag.)

6. Does the DBE on-site representative effectively manage the job site without interference from any other non-DBE contractor/subcontractor?

YES _____ NO _____

(If no, this could be a red flag.)

If no, explain: _____

7. Has the DBE owner been present on the jobsite?

YES _____ NO _____

8. Is the DBE submitting its own payroll?

YES _____ NO _____

(If no, this could be a red flag. This question may be better answered by the Construction Field Office)

Action taken: _____

9. Who makes arrangement and schedule for delivery of materials?

(If not the DBE, this is a red flag.)

Action taken: _____

10. Does the prime contractor direct who the DBE is to obtain the material from and at what price?

YES _____ NO _____

(If yes, this could be a red flag.)

Action taken: _____

B. Equipment including Trucks

Major Equipment Used	Serial Number	DBE's Markings?		DBE's Operator?		Leased?	
		Yes or No	If no, list other company's markings if seen	Yes or No	If no, list company operator works for	Yes or No	If yes, list company leased from

Attach additional sheets if necessary

1. If equipment was leased, were copies of lease agreements provided?

YES _____ NO _____

If not, action taken: _____

C. Workforce

1. List the name and position of each DBE employee observed during today's operation.

(If names do not match attached list, this is a red flag.)

If not, explain: _____

2. Has any of this crew ever appeared on any other contractor's payroll?

YES _____ NO _____

(If yes, this could warrant more attention or be a red flag. This question may be better answered by the Construction Field Office.)

If yes, list crew member(s): _____

Name of contractor: _____

Action taken: _____

D. Materials

1. Did the DBE order and pay for materials? In order to verify the DBE contractor ordered and paid for the materials they have agreed to purchase in their subcontract, the DBE must submit copies of all invoices from each of their suppliers to the Project Inspector.

YES _____ NO _____

(If no, this could warrant more attention or be a red flag. Two party checks are a red flag.)

If yes, have material invoices been submitted: YES _____ NO _____

If no, action taken: _____

E. Performance

1. Does the DBE appear to be executing the work of the contract by actually performing, managing, and supervising the work involved? YES _____ NO _____

(If no, this could be a red flag.)

If no, explain: _____

2. Has any other contractor performed any amount of work specified in the DBE's contract?
YES _____ NO _____
(If yes, this could be a red flag.)
If yes, who performed this work and why?

F. Complete this section only if DBE is a regular dealer or manufacturer

_____ Check here if this section does *not* apply (DBE is *not* a regular dealer or manufacturer).

1. Does the dealer have a business that sells to the public on a routine basis on the product being supplied?
YES _____ NO _____
(If no, this is a red flag.)
If no, explain: _____

2. Does the business stock the product for the use on the project as a normal stock item?
YES _____ NO _____

3. Who is delivering and unloading the material?

4. Who are the material invoices made out to?

5. In whose name are materials shipped?
(If material is not shipped to the DBE, this is a red flag.)
If not, explain: _____

Construction Staff (Field and Office) Comments (including red flags noted):

Actions Taken:

Reviewer's Signature: _____

ATTACHMENT I

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Nashville, Tennessee**



**PREQUALIFICATION
QUESTIONNAIRE**

(Begin Date Last Fiscal Year)

(End Date Last Fiscal Year)

By

Legal Business Name as Registered with Tennessee Secretary of State (if applicable)

- An Individual A Corporation A Limited Liability Company
 A General Partnership A Limited Liability Partnership A Limited Partnership

Street Address _____

City _____ State _____ Zip Code _____

Telephone _____ Fax Number _____

E-mail Address _____

Tennessee Contractors License No. _____

Tennessee Secretary of State
Registration Control No. _____

**NOTE: INFORMATION PROVIDED IN THIS QUESTIONNAIRE IS NOT CONFIDENTIAL
THE QUESTIONNAIRE MUST BE COMPLETED IN FULL
DO NOT OMIT ANY PAGES FROM THE QUESTIONNAIRE**

Submitted as required by the State of Tennessee, Department of Transportation, under the provisions of Section 54-5-117, Tennessee Code Annotated, and Tennessee Department of Transportation Rule 1680-5-3, Prequalification of Contractors.

INSTRUCTIONS TO APPLICANTS FOR PREQUALIFICATION

1. Any individual or organization that wishes to bid on a Department contract or to be approved as a subcontractor under any contract awarded by the Department must be prequalified by the Department.
2. As a prospective bidder or subcontractor you shall make yourself familiar with the Department's rules for the prequalification of contractors (Chapter 1680-5-3), which may be obtained from the TDOT Construction Division by calling (615) 741-2414 or reviewed online at www.tdot.state.tn.us/construction/.
3. An application for prequalification must be filed on the Department's Prequalification Questionnaire form. The Prequalification Questionnaire must be completed and submitted annually. Supplemental information may be required at the discretion of the Department.
4. This Prequalification Questionnaire must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant.
5. The Prequalification Questionnaire must be filed with the Department at least fourteen (14) days prior to the date of any letting in which the applicant wishes to submit a bid to the Department, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the Department.
6. You are required to notify the Department if there is any subsequent change in the name, organization or contact information provided on the front page of this Questionnaire or if there is a subsequent change in the information provided in response to Questions 7 through 10 of this Questionnaire. (See TDOT Rule 1680-5-3-.04(4) for additional information on this requirement.)
7. Prequalification with the Department, if approved, is effective for a period of one year, plus a three-month grace period, beginning with the Fiscal Year End date shown on the front page of this Questionnaire. A new Prequalification Questionnaire may be filed at any time.
8. All questions in this Prequalification Questionnaire must be answered. Attachments are permissible to any page where there is not enough space provided.
9. To avoid delay, be sure that all information is provided and that all signatures are affixed and notarized where indicated. No questionnaire will be approved if any required signature or notary seal is omitted.
10. Upon completion of this Prequalification Questionnaire, send the completed form and all attachments to:

Tennessee Department of Transportation
Construction Division, Prequalification Office
505 Deaderick Street
Suite 700, James K. Polk Building
Nashville, TN 37243-1402
11. It is recommended that you keep a copy of this completed form for your records.

T-0656

PLEASE NOTE: The Board for Licensing Contractors is not a part of this Department and its licensing requirements are separate from this Department's prequalification requirements.

ADDITIONAL INFORMATION

1. The Department reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.
2. The applicant may submit an audited financial statement, documentation of its maximum bonding capacity, or other financial information for the Department's Prequalification Office to consider.
3. Additional information and/or documents requested by the Department or offered by the applicant will not be considered confidential except to the extent authorized or required by law.

GENERAL QUESTIONNAIRE

1. How many years has your organization been in business as a contractor under your present business name? _____
2. How many years of experience in construction work has your organization had?
A. As a Prime Contractor _____ B. As a Subcontractor _____

(Question 3 is voluntary)

3. a. Is your organization a minority owned or minority controlled business?
 yes no
- b. What is the race of the majority owner?
 Caucasian African American Hispanic
 Other (please specify) _____
- c. What is the gender of the majority owner?
 male female
4. Identify your firm's gross annual receipts for most recent fiscal year (check appropriate range) :
 \$0 - \$500,000 \$5,000,000 - \$10,000,000
 \$500,000 - \$1,000,000 \$10,000,000 - \$20,000,000
 \$1,000,000 - \$2,000,000 \$20,000,000 - \$50,000,000
 \$2,000,000 - \$5,000,000 \$50,000,000 and greater
5. Give the names and addresses of all surety bonding companies and agencies which have written surety bonds for you covering construction contracts during the last three (3) years.

Name of Bonding Company _____
Name of Agent _____
Agent Street Address _____
Agent City, State and Zip _____
Name of Bonding Company _____
Names of Agent _____
Agent Street Address _____
Agent City, State and Zip _____

6. Give the name, address and phone number of the person responsible for completing this Questionnaire.

AUTHORIZED SIGNATURES

7. Please provide the names and addresses of all individuals within your organization who are authorized to sign bid proposals and contracts on behalf of your firm. In the event any of these individuals is an officer, general partner or authorized representative of, or owns 10% or more of any other firm that is prequalified, or which has applied for prequalification, with the Department, please identify the affiliation or involvement with these other firms. The executed signature must be identical to signatures on future bid proposals submitted to the Department.

A.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involvement in Another Firm?		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

B.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involvement in Another Firm?		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

C.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involvement in Another Firm?		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

D.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

E.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

F.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

G.

Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

If additional space is needed, please make attachments to this page.

OFFICERS, PARTNERS AND OWNERS

8. In the table below, please provide the names and addresses of all officers of your firm (if any), all individuals or organizations that are general partners in your firm (if any), and all individuals or organizations that own 10% or more of your firm.

NAME	ADDRESS *	POSITION/OFFICE	% OWNERSHIP

* Only if different from the address of the Applicant.

If additional space is needed, please make attachments to this page.

AFFILIATES

9. Use the table below to identify all affiliates of your firm.

Affiliate's Name	Address	Percent Ownership	Affiliate's Type of Work	Affiliate's Relationship to Applicant

If additional space is needed, please make attachments to this page.

BUSINESS RELATIONSHIPS OF IMMEDIATE FAMILY MEMBERS

11. For each officer, general partner, owner, and authorized representative of your firm identified in response to Questions 7 and 8 of this Questionnaire, use the table below to identify whether such officer, general partner, owner, or authorized representative has an immediate family member (a spouse, mother, father, son, daughter, brother, or sister – including step, half and adoptive relationships) who is an officer, general partner, authorized representative, or owner of 10% or more of any other firm that is prequalified with or has applied for prequalification with the Department.

Name of Officer, Partner, Owner or Authorized Rep.	Relative's Name	Relationship	Name of Other Prequalified Firm in Which Relative Has an Interest	Relative's % Ownership in Other Firm	Relative's Position in other Firm	Type of Work That Other Firm Performs

If additional space is needed, please make attachments to this page.

WORK CLASSIFICATIONS

12. Check all work classifications in which your company has prior experience and wishes to be given consideration for prequalification.

<input type="checkbox"/>	ASPHALT PAVING	<input type="checkbox"/>	NON-ROADWAY CONSTRUCTION – BUILDINGS, REST AREAS, ETC.
<input type="checkbox"/>	BARRIERS-PARAPETS, CONCRETE BARRIERS, ETC.	<input type="checkbox"/>	PAVEMENT MARKING
<input type="checkbox"/>	BASE – AGGREGATE BASES OR AGGREGATES	<input type="checkbox"/>	RIPRAP
<input type="checkbox"/>	BRIDGE PAINTING	<input type="checkbox"/>	REMOVAL – BUILDINGS, STRUCTURES, ETC.
<input type="checkbox"/>	CONCRETE PAVING	<input type="checkbox"/>	RAILROAD
<input type="checkbox"/>	DRAINAGE – PIPE CULVERTS AND PRECAST BOXES	<input type="checkbox"/>	SALT BINS
<input type="checkbox"/>	ENGINEERING	<input type="checkbox"/>	SCALES AND WEIGHING
<input type="checkbox"/>	EROSION CONTROL	<input type="checkbox"/>	SLOPE PIPE
<input type="checkbox"/>	EARTHWORK	<input type="checkbox"/>	SNOW AND ICE REMOVAL
<input type="checkbox"/>	CONCRETE FLATWORK	<input type="checkbox"/>	STRUCTURES – BRIDGE
<input type="checkbox"/>	FENCE	<input type="checkbox"/>	STRUCTURES – DRAINAGE
<input type="checkbox"/>	GUARDRAIL/ATTENUATORS	<input type="checkbox"/>	SWEEPING AND DRAINAGE CLEANING
<input type="checkbox"/>	INCIDENTAL OR MISCELLANEOUS ITEMS	<input type="checkbox"/>	TRAFFIC CONTROL – PERMANENT
<input type="checkbox"/>	INTELLIGENT TRAFFIC SYSTEMS	<input type="checkbox"/>	TRAFFIC CONTROL – TEMPORARY
<input type="checkbox"/>	LANDSCAPING – SEEDING, SODDING, TREES, ETC.	<input type="checkbox"/>	TUNNELS
<input type="checkbox"/>	LIGHTING – ELECTRICAL, ETC.	<input type="checkbox"/>	UTILITIES
<input type="checkbox"/>	MOWING AND LITTER REMOVAL	<input type="checkbox"/>	WALL – RETAINING WALLS

TYPE OF PREQUALIFICATION STATUS REQUESTED

13. Please indicate whether you are seeking a general or limited prequalification within the work classifications indicated in response to Question 12.
(See TDOT Rule 1680-5-3-.05(2)(b) for additional information regarding the difference between general and limited prequalification status.)

General Limited

(If limited please indicate the total number of contracts and/or aggregate amount of contracts that you would seek to perform at any given time.)

EXPERIENCE QUESTIONNAIRE

14. Current and recently completed contracts: Give adequate information to permit inquiry for references. Include all private and public projects.

Contract Number or Project Number	Project Owner	Sub/Prime	Classifications of Work Performed (List as many as possible)	Contract Amount	Completed on Time?	Status (% Complete or Date Completed)	Liquidated Damages or Disincentives Assessed?
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no

If additional space is needed, please make attachments to this page.

15. What is the construction experience of the principal individuals of your organization?

Name	Present Position/ Office	Years Construction. Exp.	Magnitude/ Type of Work	In What Capacity?

If additional space is needed, please make attachments to this page.

CONTRACTOR RESPONSIBILITY

17. In the last five years has any of the following occurred?

A. The applicant or an affiliate associated with the applicant filed for bankruptcy.

yes no (If yes, explain below) ^c

B. The applicant or an affiliate associated with the applicant defaulted on or failed to complete a public contract or had a public contract terminated for cause.

yes no (If yes, explain below)

C. The applicant or an affiliate associated with the applicant had a surety take over the payment or performance obligations of a public contract.

yes no (If yes, explain below)

D. The applicant or an affiliate associated with the applicant had liens, claims or stop work orders filed against it on a public contract.

yes no (If yes, explain below)

18. In the last five years has any of the following occurred?

A. The applicant, an affiliate of the applicant, or a general partner, owner, officer or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been denied prequalification or has been suspended, debarred or otherwise excluded from bidding on or participating in any public contract by the Department or any other state, federal or local government agency.

yes no (If yes, explain below)

B. The applicant, an affiliate of the applicant, or a general partner, officer, owner, or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been convicted of, is currently under indictment for, or has been held liable in a civil judgment for any of the following:

(i) The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.

yes no (If yes, explain below)

(ii) A violation of Federal or State antitrust statutes, including those prohibiting price fixing between competitors, allocation of customers between competitors, and bid rigging.

yes no (If yes, explain below)

(iii) The commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.

yes no (If yes, explain below)

(iv) The commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects such person's or organization's present responsibility.

yes no (If yes, explain below)

C. The applicant, an affiliate of the applicant, or a general partner, officer, owner, or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been convicted of or is currently under indictment for any criminal violation of the Federal Water Pollution Control Act; has been convicted of any criminal violation of the Tennessee Water Quality Control Act; or has been convicted of any criminal violation of any other state's water quality or water pollution control act.

yes no (If yes, explain below)

D. The applicant, an affiliate of the applicant, or a general partner, officer, owner, authorized representative of the applicant (as identified in response to Questions 7 and 8 above) received an enforcement order finding a violation of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other state's water quality or water pollution control act.

yes no (If yes, explain below)

CONTRACTOR SAFETY HISTORY

19. Complete the required safety information (If requested Contractor must provide supporting information).

A. Provide the information submitted on your OSHA Form 300A (Summary of Work-Related Injuries and Illnesses) and your calculated "Total Recordable Case Rate" and "DART Incidence Rate" for the most recent three (3) years. (Please refer to the USDOL Forms for Recording Work-Related Injuries and Illnesses for additional information)

YEAR	Total Number (#) of deaths	Total #of cases with days away from work	Total # of cases with job transfer or restriction	Total # of other recordable cases	# of hours worked by all employees	Total Recordable Case Rate	DART Incidence Rate

Explanation required if not applicable

B. Identify the number of TOSHA/OSHA inspections, the number of citations issued, and the total dollar amount of citations for the most recent year.

YEAR	Number (#) of TOSHA/OSHA Inspections	Total # of Citations issued	Total dollar amount of citations (\$)

AFFIDAVIT

_____, being duly sworn, deposes

and says that he/she is _____ of
(Title)

_____,
(Name of Applicant's Organization)

and he/she further states that the answers to the foregoing questions and all statements therein contained are true and correct. A person who makes a false statement in this prequalification is subject to penalties of perjury.

By _____
Signature of Authorized Employee

The authorized employee, whose signature appears on this document, having personally appeared before me, and being sworn, deposes and says that the above statements are true and correct.

Sworn to and subscribed before me this _____ day of _____, _____

(Notary Public)

My commission expires _____ day of _____, _____

(Seal)

ATTACHMENT J

In accordance with T.C.A. § 12-4-707, a prime contractor agrees to pay each subcontractor for work under its subcontract no later than thirty (30) days from receipt of each payment the prime contractor receives from the Department.



Release of payment from TDOT for any work is confirmation that the department has determined the work to have met the standards of satisfactory completion as defined in this brochure. If the prime contractor has concerns about the satisfactory completion of subcontractor work items, bring to the engineer's attention in advance of payment to the prime contractor. This notice may give the prime contractor the option to not release all subcontractor funds within the thirty (30) days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.

In the event of non-payment or incomplete payments, please contact TDOT immediately

DBEs, please contact:

TN Department of Transportation
Civil Rights Office
Small Business Development Program
505 Deaderick St., Suite 1800
James K. Polk Building
Nashville, TN 37243

1-888-370-3647

Non-DBEs/All other subcontractors, please contact:

TN Department of Transportation
Construction Division
505 Deaderick St., Suite 700
James K. Polk Building
Nashville, TN 37243

615-741-2414



Affirmative Action
Small Business Development
Title VI



**PROMPT
PAYMENT**
PROVISION FOR
SUBCONTRACTORS



Tennessee Department of Transportation
John C. Schroer, Commissioner

www.tn.gov/tdot/civil-rights

The prompt payment provision, required by 49 CFR 26, was established so that subcontractors would receive payment in a timely manner for satisfactorily completed work. This regulation is mandatory for any Disadvantaged Business Enterprise (DBE) Program. There is a clause written into the contract to require prime contractors to pay subcontractors for satisfactory performance of their contracts, and this payment must be made no later than 30 days from receipt of each payment made to the prime contractor.

In order to comply with this requirement, TDOT no longer holds retainage from prime contractors, and prohibits prime contractors from holding retainage from its subcontractors. (Effective August 2005)

TDOT added supplemental specifications to the Standard Specifications for Road and Bridge Construction (Subsection 109.02- Scope of Payment) to detail the specifics on Prompt Payment between a prime and subcontractor. This can be accessed from TDOT's website at www.tn.gov/tdot/construction/pees.htm. These specs are included in every contract with subcontracting and is reprinted in full below:

In accordance with TCA, Section 12-4-707, the prime Contractor agrees to pay each subcontractor under this contract for work under its subcontract no later than 30 days from receipt of each payment the prime Contractor receives from the Department. The Contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form." An officer of the contractor shall sign the "Prompt Payment Certification Form." TDOT will hold estimate payments if information is not submitted. Also, all required certifications must be in the field office and accepted before such work is deemed satisfactorily completed. Any delay or postponement of payment from the above

referenced time frame will result in accrual of interest as provided in TCA, 12-4-707 (b).

The Contractor shall not withhold any retainage from progress payments to their subcontractors.

The Tennessee Code allows interest to accrue for late payments to subcontractors

T.C.A. § 12-4-707. Payments to subcontractors—Interest. —

- Upon payment by an agency, a business which has acquired under contract, property or services in connection with its contract with such agency from a subcontractor or supplier shall pay the subcontractor or supplier within thirty (30) days after receiving payment from the agency.
- Interest at the rate of one and one-half percent (1½%) per month shall accrue and is due any subcontractor or supplier who is not paid within thirty (30) days after the business receives payment from the agency, unless otherwise provided by contract between the agency and the business, or by contract between the business and the subcontractor or supplier. Interest begins to accrue on the thirty-first day at the rate specified in this subsection.

Monthly Progress Payments by Contract

NOTE: You can view payments made each month to contracts currently in progress on TDOT's website. Each contract lists when the prime contractor was paid along with payment information. This can be accessed here: https://www.tdot.tn.gov/APPLICATIONS/Documents/pathName=%5CConstruction%5CProgress_Payments

Each TDOT Contract with a DBE Goal contains SP1247 - Special Provision Regarding DBE Contract Goal. This includes the following information:

The Contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide Contractor with the Prompt Payment Certification Form. An officer of the contractor shall sign the Prompt Payment Certification Form. TDOT will hold estimate payments if information is not submitted. Reasons for non payment to a DBE could include the following:

- Whether the DBE is performing satisfactorily;
- Whether Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps Contractor is taking to rectify the situation.

In the event the Contractor promptly reports questions on the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering contractor compliance measures.

This provision is found at: www.tn.gov/tdot/construction/Special%20Provisions/1247.pdf

See also construction circular letter 108.02-05 at: www.tn.gov/tdot/construction/Circular_Letters/circlr.pdf

RECOURSE

A subcontractor may file a claim against a Prime Contractor if they believe they were not paid in accordance to the Prompt Payment regulations. A claim form, with instructions, may be downloaded from [www.tn.gov/content/dam/tn/tdot/construction/old_web_page/claimform\(1\).pdf](http://www.tn.gov/content/dam/tn/tdot/construction/old_web_page/claimform(1).pdf)

ATTACHMENT K

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
CIVIL RIGHTS OFFICE
TDOT.DBE.Program@TN.gov

TDOT DBE Federal-aid Project Bid DBE Written Commitment Form
Small Business Development Program
Telephone No. 615 741-3681, Fax No. 615-741-3169

YOUR FAILURE TO COMPLETE & RETURN THIS FORM
MAY JEOPARDIZE THE AWARD OF THIS PROJECT

Prime Contractor :	
Bid Letting Date:	
Contract # & County :	
Required DBE Percentage:	% \$
Proposed DBE Percentage:	% \$
Bid Dollar Amount :	

Directions: This section is to be completed by the DBE then emailed or faxed back to the TDOT DBE Program Office within 3 business days. Thank you (Fax No. 615-741-3169 TDOT.DBE.Program@TN.gov)

I, _____ certify that

A. Name of DBE Owner/Authorized Representative _____ B. Name of DBE Contractor _____

Submitted a bid to the above identified Prime Contractor in the amount of: \$ _____.

The DBE certified work type to be performed for this project includes:

On Contract No.: _____; In County: _____.

I further certify that I am duly authorized to make this certification to the **TDOT DISADVANTAGED BUSINESS ENTERPRISE Program** on behalf of the above named contractor.

SIGNATURE: _____ **DATE:** _____

TITLE: _____

Small Business Development Program
Revised 2/28/2013

email address: TDOT.DBE.Program@TN.gov

ATTACHMENT L

SP1230

SP1230

Sheet 1 of 6

STATE

OF

TENNESSEE

January 1, 2015 |

SPECIAL PROVISION

REGARDING

EQUAL EMPLOYMENT OPPORTUNITY

Reference:

Federal-Aid Highway Program Manual

Transmittal 147, June 26, 1975

Replaces FHWA Order Interim 7-2(1)

Specific Equal Employment Opportunity Responsibilities

GENERAL

- a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA-1273 or PR-1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
- b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, exceeding \$10,000, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors). The contractor will include these requirements in every subcontract exceeding \$10,000 with such modification of language as is necessary to make them binding on the subcontractor.

Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, sex, national origin or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Equal Employment Opportunity Officer

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy

- (a) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
 - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

- (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.
- (b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:
 - (1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

- (a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- (b) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- (c) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).
- (d) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to age, race, color, religion, sex, national origin or disability. The following procedures shall be followed:

- (a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- (c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- (d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion

- (a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- (b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.
- (c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

- (d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- (a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- (b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, religion, sex, national origin or disability .
- (c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the Tennessee Department of Transportation and shall set forth what efforts have been made to obtain such information.
- (d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to age, race, color, religion, sex, national origin or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the Tennessee Department of Transportation.

Subcontracting

- (a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

- (b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

Records and Reports

- (a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
 - (1) The number of minority and non-minority group members and women employed in each work classification on the project.
 - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.
- (c) Each contractor and subcontractor shall submit to the Tennessee Department of Transportation an annual report for every July during which work is performed indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391 and is to be received by the Department not later than the 20th of the month following the reporting period.
- (d) The contractor and/or sub-contractor will be required to complete other reports as instructed by the Engineer.
- (e) Current estimates may be withheld by the Project Engineer when reports are not received within the above specified time limits.

STATE

OF

TENNESSEE

January 1, 2015 |

SPECIAL PROVISION

REGARDING

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

- 1) As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941
 - d. "Minority" includes:
 - I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);
 - III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals (including goals and time tables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goal set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and the trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the

Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.
- (c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7b above.
- (f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.
- (m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of age, race, color, religion, sex, national origin or disability.
- 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13) The Contractor, in fulfilling its obligations under these specifications, shall implement' specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

STATE

OF

TENNESSEE

Revised 10-19-2012

January 1, 2015

SPECIAL PROVISION

REGARDING

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

<u>County</u>	<u>Goals for Female Participation in each Trade</u>
All Counties	6.9

<u>County</u>	<u>Goals for Minority Participation for each Trade</u>
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5

<u>County</u>	<u>Goals for Minority Participation for each Trade</u>
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, DeKalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work whether or not it is Federal or federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through- out the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs at the following address within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation:

U.S. Department of Labor – Regional Office
Office of Federal Contract Compliance Program
61 Forsyth Street, Room 7B75
Atlanta, GA 30303

The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE

OF

TENNESSEE

(Rev. 03-23-09)
(Rev. 05-11-09)

January 1, 2015 |

SPECIAL PROVISION

REGARDING

TRAINING PROGRAM REQUIREMENTS

Reference:

Federal-Aid Highway Program
Transmittal 147, June 26, 1975
Replaces FHWA Order Interim 7-2(2)

This Training Special Provision supersedes subparagraph 7b of the Special Provision Regarding Equal Employment Opportunity, and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of training hours under this Special Provision will be indicated in the Proposal.

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, however, the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to pre-construction conference, the contractor shall submit to the Tennessee Department of Transportation OJT Program Coordinator for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort

to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision.

This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the Tennessee Department of Transportation and the Federal Highway Administration. The Tennessee Department of Transportation and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, or with a State apprenticeship agency recognized by the Department of Labor and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Office of Apprenticeship, Employment and Training Administration, shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-Aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by Change Order and the AAPO, reimbursement will be made for training persons in excess of the number specified herein.

This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. Failure of the contractor to employ a trainee in the classification he has requested by the time 15 percent of that type work has been performed will be just cause for withholding progress estimates unless the contractor has furnished the AAPO a satisfactory explanation in writing of his failure to do so. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision. However, in no case will the trainee be paid less than the minimum wage shown in the contract for the classification of laborer.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

Payment is to be made under item 109-10.01, Trainee, at the unit price of \$0.80 per hour, for each hour of approved training provided. In any case the number of training hours for which payment is made will not exceed number of hours specified for the approved classification by the approved Training program.

The contractor shall not be permitted to commence construction without an approved training program. Failure of the contractor to provide an approved training program shall not be considered "As a condition not under the control of the contractor" in regards to Contract Time.

STATE

OF

TENNESSEE

(Rev. 06-01-03)
(Rev. 06-23-08)
(Rev. 11-10-08)
(Rev. 02-12-18)

January 1, 2015

SPECIAL PROVISION

REGARDING

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The disadvantaged business enterprise (DBE) requirements of 49 CFR Part 26 apply to this contract. Accordingly, Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum appropriate opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of age, race, color, religion, national origin, sex, or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Division Small Business Development Program (CRD-SBDP) copies of any subcontract agreements with DBEs upon execution. The Contractor shall identify all DBE subcontractors at the Preconstruction Conference and indicate the approximate date for each DBE subcontractor's appearance on the project. Before terminating and/or substituting a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's CRD-SBDP, of its intent to terminate and/or substitute including the reason for the request.

The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. The project supervisor or Inspector must complete a "Commercially Useful Function Checklist" to document the first date of work, work items, equipment, and forces of each DBE. The Contractor shall take full responsibility for the performance of a commercially useful function (CUF) by all DBE subcontractors, manufacturers, and materials suppliers who work on or provide materials for the project.

The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with the Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return in Excel format via email to DBE.Runningtally@tn.gov and to the Project Supervisor concurrently. The Prompt Payment Certification Form shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate. Payments must abide by the conditions set in T.C.A. § 12-4-707.

Prior to receiving final payment, the Contractor shall provide to the project supervisor and CRD-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the Contractor and by a responsible officer of the DBE. Falsification of this certification may

result in formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications.

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy deemed appropriate by the Department.

STATEOFTENNESSEE

(Rev. 04-17-15)

(Rev. 10-19-15)

(Rev. 02-12-18)

January 1, 2015

SPECIAL PROVISIONREGARDINGDBE CONTRACT GOAL

All contractors shall pursue affirmative action requirements to encourage and increase participation of firms certified as a Disadvantaged Business Enterprise (DBE) as set forth in this special provision and in accordance with 49 CFR Part 26. The bidder shall arrange for the percentage of the work specified on the cover of the Proposal Contract to be performed by Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprises (DBEs) or otherwise clearly demonstrate adequate good faith efforts as described herein. All payments must follow the conditions set by the most current T.C.A. § 12-4-707.

The Contractor shall take full responsibility for ensuring the performance of a “commercially useful function” (CUF), as defined in 49 CFR Part 26, by all DBE subcontractors, manufacturers, and materials suppliers who work on the project or provide materials for the project.

A. Disadvantaged Business Enterprise Policy

The Contractor shall abide by the following provision and include in all subcontract agreements the following provision, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

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 U.S. Department of Transportation-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 Department deems appropriate.

B. Counting DBE Participation toward Meeting Goals

The Contractor shall count DBE participation toward goals in accordance with 49 CFR Part 26. If the DBE performs a CUF on the contract including those functions as a subcontractor, expenditures to a DBE contractor count toward DBE goals. A DBE

performs a CUF when it is responsible for execution of some portion of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, 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, installing (where applicable), and paying for the material itself. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a CUF. The determination is verified by the "Commercially Useful Function Checklist" and the requirements of 49 CFR Part 26.

Note: In accordance with 49 CFR 26.55(c), to determine whether a DBE is performing a CUF, the Department 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. 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, the Department must examine similar transactions, particularly those in which DBEs do not participate.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Department may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The bidder may count the following DBE expenditures involving a CUF towards the DBE goal:

1. **Projects where the DBE is the Prime Contractor** – The entire portion(s) of the contract to be completed by certified DBE firm's own forces will be counted toward meeting the goal. This will also 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. Items of the contract subcontracted to non-DBE firms will not be counted toward the goal.

Note: 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, the Department must presume that it is not performing a commercially useful function.

2. **Portions of a Bid from a Joint Venture** – When a DBE performs as a participant

in a joint venture, only 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 will count toward DBE goals. A bid from a joint venture between a DBE and a non-DBE Contractor shall include an explanation of DBE commitments on DBE Form 1247A, which must be approved by the Civil Rights Division - Small Business Development Program (CRD-SBDP) prior to the letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to the awarding of the contract.

3. **DBE Subcontractors** – The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. 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 DBE's subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. Cost of materials purchased from or the cost of equipment leased from the non-DBE Contractor will not count toward the project DBE commitment. Prior written approval must be obtained from the CRD-SBDP for any DBE use of the Contractor's personnel or equipment.
4. **DBE Manufacturers** – The Contractor may count toward the DBE goal 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE 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.
5. **DBE Regular Dealers (Material Suppliers)** – The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer. 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. 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. A firm 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 where such products are bought, kept in stock, and regularly sold to the public if the firm owns and operates the distribution equipment for the products. Any supplementing of the regular dealer's own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis. Any lease containing the terms of the agreement shall be made available to and must be approved in writing by CRD-SBDP

6. **Other DBE Suppliers** – 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, the Department finds the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves shall not count toward DBE goals.
7. **Transportation or Hauling of Materials** – The Contractor may count towards the DBE goal hauling in either DBE-owned trucks or in trucks leased to or by DBE firms. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations. Use the following factors in determining whether a DBE trucking company is performing a CUF:
 - a. 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.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. 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.
 - d. 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 that the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If the DBE chooses this approach, it must obtain written consent from the Department [CRD-SBDP].
 - f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the value of these hauling services.
 - g. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. Leases cannot be Department contract-specific, must be long term, and must be approved by CRD-SBDP.

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.

- h. Prior to hauling, the Contractor and DBE shall provide the project supervisor a complete list of trucks that will be used on the project for DBE goal participation. The Department will provide a form that shall be used by the Contractor and the DBE to identify the trucks. A revised list will be required any time the trucks used changes. The Contractor and DBE must be able to adequately document the actual amount of hauling eligible for DBE goal participation.
8. **Contracted Labor / Temporary Employment Agencies** – The Department will 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 the contract; provided, however, the Department must find the fee to be reasonable and not excessive as compared to the fees customarily allowed for similar services.

C. Contract Award Procedures

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage participation goal set by the Department, the bidder shall, within three (3) business days from the bid openings, either propose sufficient additional DBE participation to meet the goal or clearly demonstrate by documentation that good faith efforts were made to meet the goal.

1. Bidder's Responsibility

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

The Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

2. DBE's Responsibility

Before bidding and subsequently entering into a contract (as a contractor or

subcontractor), the DBE should consider the scope and size of the project, as well as whether it is certified to receive credit for the type of work performed. As with any contract, this is a legally binding document and should be performed to the best of one's ability. However, should a DBE ever have to withdraw from a contract, it shall provide the CRD-SBDP and Contractor with written documentation. A DBE should only withdraw when there is no other option, as non-completion of its duties may result in temporary disqualification of a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or becoming an approved subcontractor, as outlined in Chapter 1680-05-03 of the Rules of the Department.

3. Proposals with Established Project DBE Goals

For proposals with established project goals, the bidder will be required to complete DBE Form 1247A. The bidder shall list the following information on each DBE Form 1247A that is submitted:

- a. The names and addresses of all DBE firms being used or being considered for use under the contract as part of the bidder's DBE commitment;
- b. The work classification(s) for each DBE on the contract;
- c. The "Amount to DBE" which has been committed to each DBE firm for use on the contract;
- d. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
- e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the Contractor's commitment.

The completed DBE Form 1247A shall be submitted within three (3) business days after the Letting. Failure to provide a completed form or documentation clearly evidencing a good faith effort, as detailed in Section 4 below, within three (3) business days after the Letting may cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access certification information by viewing the [TNUCP DBE Directory website](#).

When DBE goal projects are involved and the Contractor subcontracts to a non-DBE, and the non-DBE subcontractor in turn subcontracts to a DBE as a second tier subcontractor, the Contractor must affirm in writing his/her knowledge and approval of such an arrangement. Recognition of a second tier arrangement with a DBE subcontractor for goal work must be forwarded to the CRD-SBDP Director for verification, in writing, prior to any work being performed by the DBE which is intended to be counted toward the goal.

4. Bidder Selection and Good Faith Efforts

- a. Bidders shall submit proposals that meet the DBE goal or shall submit

documentation clearly evidencing that they made a good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as Prime Contractors will be considered to have met the goal.

- b. In making a fair and reasonable judgment as to whether the bidder has made adequate good faith efforts, the Department shall consider quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The following list of factors 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. In any event, the Department may consider whether the bidder:
 - 1) Selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.
 - 2) Provided notice to a reasonable number of specific DBEs, including those not regularly used by the bidder, that their participation in the contract is being solicited in sufficient time to allow them to participate effectively.
 - 3) Provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
 - 4) Advertised in trade association publications or minority-focused media concerning participation opportunities.
 - 5) Effectively used the services of available minority community organizations, minority contractors groups, local, state, or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.
 - 6) Negotiated in good faith with interested DBEs, including not rejecting DBEs as unqualified lacking sound reasons based on a thorough investigation of their capabilities.
 - 7) Made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.
 - 8) Submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet the

contract goal.

9) Has adequate records of its contacts and negotiations with DBEs.

- c. If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but as liquidated damages. The Department then may consider the next lowest responsive bid for award.

As soon as practical after contract award, the Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the respective Project Supervisor and to CRD-SBDP.

No progress estimate shall be processed until copies of all binding subcontracts and purchase orders with DBEs have been received.

5. Joint Checking Allowance for DBE

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted by the DBE to CRD-SBDP prior to the subcontract agreement.

The following are some general conditions that must be met regarding joint check use:

- a. The second party (typically the Contractor) acts solely as a guarantor.
- b. The DBE must release the check to the supplier.
- c. The use of joint checks must be a commonly recognized business practice in the industry.
- d. The DBE remains responsible for all other elements of 49 CFR Part 26.55(c)(1)
- e. The DBE is not required to use a specific supplier nor the Contractor's negotiated unit price.
- f. The DBE shall submit receipt/copy of cancelled checks to CRD-SBDP.

D. Construction Requirements

1. Preconstruction Conference

The Contractor shall identify all DBE subcontractors and indicate the approximate dates for their appearance on the project. The Department will review the contract information to verify the actual work to be performed by the DBE contractors and will review any lease agreements allowed as part of the DBE commitment. Information submitted shall match Form 1247A.

2. Process for Removal of a DBE

At no time shall a DBE be terminated or substituted without prior written consent from CRD-SBDP. This includes, but is not limited to, instances in which the 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. 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 the CRD-SBDP's written consent as provided herein. Absent such written consent, the Contractor shall not be entitled to any payment for work or material unless it is by the listed DBE. The CRD-SBDP may provide such written consent only if it agrees that the Contractor has good cause to terminate the DBE firm, as further described below.

Before terminating and/or substituting a DBE subcontractor on a project that includes SP1247 in the Contract Proposal, the Contractor must give notice in writing to the DBE subcontractor, with a copy to the CRD-SBDP, of its intent to request to terminate and/or substitute including the reason for the request.

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

If approval is granted for removal, CRD-SBDP will submit a letter to the Contractor and the DBE. Good faith efforts shall then 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 established. The good faith efforts shall be documented by the Contractor. If requested by the CRD-SBDP, the Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the Contractor, and the CRD-SBDP shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

The Contractor has the responsibility to comply with 49 CFR Part 26.53(f) and all applicable policies and regulations.

Reasons for termination and/or substitution of a DBE subcontractor must meet the reasons for good cause as outlined in the current 49 CFR Part 26.53(f), which include, but are not limited to, circumstances in which the listed DBE subcontractor:

- a. Fails or refuses to execute a written contract;
 - b. 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 Contractor;
 - c. Fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
 - d. Becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e. Becomes 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;
 - f. Is not a responsible contractor, as determined by the Department;
 - g. Voluntarily withdraws from the project and provides written notice to the Contractor of its withdrawal;
 - h. Is ineligible to receive DBE credit for the type of work required;
 - i. Is unable to complete its work on the contract as a result of death or disability of an owner; and/or
 - j. For other documented good cause, the Department may elect to compel the termination of the DBE subcontractor; provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged, or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.
3. Brokering of work by DBEs is not allowed and is a material breach of contract. A DBE firm involved in brokering of work may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 641. Contractor shall place this provision in all subcontracts with DBEs.
4. The Contractor shall providenotification to the Project Supervisor at least 24 hours prior to each DBE beginning work. A Department Project Supervisor/Inspector must complete a Commercially Useful Function (CUF) Checklist to document the first date of work, work items, equipment, and forces of each DBE.
5. The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with the Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return in Excel format via email to DBE.Runningtally@tn.gov and Project

Supervisor concurrently.

The Prompt Payment Certification Form shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate.

6. The Department will hold estimate payments if previously listed information is not submitted. Reasons for non-payment to a DBE could include the following:
 - a) Whether the DBE is performing satisfactorily;
 - b) Whether the Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps the Contractor is taking to rectify the situation.

In the event the Contractor promptly reports questions in relation to the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering Contractor compliance measures as described below. Payments must abide by the conditions set in TCA 12-4-707.

E. Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Project Engineer and CRD-SBDP certification of the dollars paid to each DBE firm, using Form CC-3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the contractor and by a responsible officer of the DBE. Falsification of this certification may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications. The final estimate will not be paid to the Contractor until proper certifications including CC-3 have been made.

F. Required Records

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies. Copies shall be provided to the Department if requested.

G. Contractor Compliance

1. If the Contractor fails to comply with Special Provision 1247 and/or 49 CFR Part 26, resulting in failure to obtain goal where a good faith effort was not accepted, the Department shall take one or a combination of the following steps:

- 1) The Department may withhold from the Contractor the monetary value of the unattained goal percentage plus an additional 10% for engineering costs, not as penalty but as liquidated damages.
- 2) Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.
- 3) For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.
- 4) Invoke other remedies available by law and/or in the contract.
- 5) Invoke any other lawful remedy agreed upon by the Commissioner and the Contractor in writing.

FHWA 1273- Required Contract Provisions for Federal-Aid Construction Contracts

These provisions are included in all TDOT contracts utilizing Federal Funding

(Page 1 of 12 included below)

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60.29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

ATTACHMENT M
Title VI Assurances

Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (US DOT) and the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.[include Modal Operating Administration specific program requirements.]
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. [Include Modal Operating Administration specific program requirements.]
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA/USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the (FHWA/USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA/USDOT may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or,
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA/USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ATTACHMENT N

Page 1 of 2

CIRCULAR LETTER

SECTION: 109.02 SCOPE OF PAYMENT
NUMBER: 109.02-05
SUBJECT: CERTIFICATION OF PROMPT PAYMENT AND DBE/SBE SUMMARY
DATE: JUNE 27, 2016

The Standard Specifications, in accordance with TCA, Section 12-4-707, and 49 CFR 26.29 requires the Prime Contractor to pay each subcontractor and material supplier no later than 30 days from receipt of each payment the Prime Contractor receives from the Department. In addition, all subcontractors, at all tiers, must make payment no later than 30 days to each subcontractor and material supplier for work and/or material provided for the project once they receive payment from the prime contractor or subcontractor.

In order to validate this payment, the Prime Contractor shall certify each month that these payments have been made. The certification shall run no more than 2 months in arrears. If circumstances arise where payment to the subcontractors has not been made, the Prime Contractor shall list reasons for nonpayment and note whether or not the subcontractors are Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE)* in the exception block. Also, the Prime Contractor shall be required to list all subcontractors or material suppliers where joint checks are utilized and note whether or not the subcontractors or material suppliers are DBEs/SBEs in the joint checks box.

Once completed by the contractor, the Certification Regarding Prompt Payment to Subcontractors and Material Suppliers and DBE/SBE Payment Summary shall be submitted electronically in excel to both the Project Supervisor and the Small Business Development / DBE Office via: DBE.runningtally@tn.gov within one email submission. This form can be found on the Headquarters Construction Website. Copies of joint checks for DBEs/SBEs shall be attached to the email.

When exceptions or joint check subcontractors are listed, the Project Supervisor shall forward copies of the Certification to the Director of Construction and the Regional Construction office.

Monthly progress payments shall not be processed without this certification.

Use of the form Certification Regarding Prompt Payment to Subcontractors and Material Suppliers and DBE/SBE Payment Summary is required for contracts beginning with the September 14, 2012 Letting.

* Small Business Enterprise (SBE) as certified with the Governor's Office of Diversity Business Enterprise's Go-DBE System. All small businesses are encouraged to apply for certification with the Go-DBE System. More information is available at www.tennessee.gov/diversity.

ATTACHMENT O

Newsletter archive: www.tn.gov/tdot/civil-rights/small-business-development-program/small-business-development-program-newsletters



TENNESSEE DEPARTMENT OF TRANSPORTATION CIVIL RIGHTS DIVISION

1st Quarter | 2018



In This Issue

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- 5 Who Am I? Complimentary Stealing
- 6 Could Your Business Survive a Disaster?
- 7 TDOT Supportive Services Upcoming Seminars & Workshops For 2018
- 8 New DBEs & Recently Renewed Firms
- 9 Letting Dates

TDOT CIVIL RIGHTS DIVISION
Small Business Development Program
505 Deaderick Street, Suite 1800
James K. Polk Building
Nashville, Tennessee 37243
(615) 741-3681 or 888-370-3647

John C. Schroer
Commissioner of Transportation

Deborah Luter
Director, Civil Rights Division

David Neese
Director of the Small Business Development Program

DBE Supportive Services
Tyler Construction Engineers, P.C.
1-888-385-9022
DBE Supportive Services

New Year, Less Stress, No Worries!

David Neese
Director of the Small Business Development Program

Hello to everyone out there in DBE Access Land. To all that are reading this (and I like to think that everyone that gets the newsletter is hanging onto my every word) I want to wish you a Happy New Year and hope you were able to spend time with friends and family over the holidays. I know a lot of people are making (and many will soon be breaking) their New Year resolutions. So what I want to deal with in this short space has to do with something we all do to some degree and can probably make a resolution to do less of – WORRY! I received some good advice the other day concerning worry from my friend Tommy who used to work in management at TEMA.

TEMA, for those that may not know, is the Tennessee Emergency Management Agency. Part of their mission statement is to "coordinate preparedness, response and recovery from man-made, natural and technological hazards." So basically, they deal with some heavy stuff, so who could blame them if they were stressed out and worried 24/7, right? Well, Tommy stated that whenever he saw staff worrying about something, he would ask them two questions: **1) What are you doing about it?** What are you, personally, doing to help bring change and thus (hopefully) changing the outcome? And **2) if there is nothing you can do about it, then WHY ARE YOU EVEN WORRYING ABOUT IT?** As simple and commonsensical as these questions are, I have really been thinking about them a lot.

How many times do I complain or worry over things at home or work and I don't make any effort to resolve? And how many of those things will I never be able to change and am worrying for nothing?

I hope you are not a worrier and are feeling a lot of stress on the job or at home. If so, I hope you start the New Year off thinking about what I stated above. To recap: "If you can change it, change it. If you can't, quit worrying about it." May we all strive to adopt the philosophy of revered intellectual Alfred E. Neuman, who so eloquently states in Mad Magazine:

What, Me Worry?



...and as always, if we can help you with anything work related, please give myself or our Supportive Services Consultants a call.

CIVIL RIGHTS MISSION STATEMENT: The Mission of the Civil Rights Division is to ensure adherence to Equal Employment Opportunity, Title VI and Small and Disadvantaged Business Initiatives.



www.tn.gov/tdot/civil-rights/small-business-development-program

2

Plan For Success In 2018:

Benefits of Participation in TDOT Supportive Services Program

The Tennessee Department of Transportation Small Business Development Program's primary goal is to increase the number of minority and female businesses in the highway and bridge construction industry. To reach this goal, TDOT made available the Supportive Services Program to provide quality management assistance, technical training resources, guidance, and other information to TNUCP-certified DBE firms.

Victor C. Tyler, P.E., M.ASCE, NSPE
Construction Business Management Expert



The Tyler Group & The Owners of Panther Construction, Inc. a Nashville, TN based firm, doing their monthly one-on-one business development review & planning session.

TDOT Supportive Services has been a valuable and necessary tool to ensure the improved growth of Tennessee DBEs and small business firms who are engaged in, or interested in performing, transportation construction and related work.

Since 2010, Tyler Construction Engineers, P.C. (Tyler) of Nashville, Tennessee has been the statewide program manager and service provider for TDOT's Supportive Services Program. Tyler works with DBE firms in a variety of ways - bringing together vast construction industry experience, utilizing proven systems and processes that focus on business improvement, improving cash flow, and increasing competitive capacity and profitability.

About TDOT Supportive Services

TDOT Supportive Services empowers TNUCP-certified DBE firms with the opportunity to obtain the systems and processes necessary to improve business performance in the key areas of business management, marketing, accounting, and human resources. TNUCP-certified DBE firms have access to training and other resources that can help transform a DBE company and their employee's work life, such as:

Business Assistance:

- Business Assessments
- Business Action Planning
- Strategic Marketing Plan
- Business/Leadership Coaching
- Loan/Bond Credit Reviews
- Invaluable Networking opportunities
- Excel Templates for Success

Professional Classroom Education:

- Construction Plans Reading & Estimating
- Bidding & Pricing Strategy
- Financial Analysis for Non-Accountants
- How To Develop An Employee Handbook
- Why Job Costing Is Important in Contracting
- Understanding & Customizing QuickBooks
- How To Communicate with Difficult Employees

The Supportive Services consultants at Tyler are passionate about the Engineering & Construction (E&C) Industry. They take pride in being part this E&C community and value long-term relationships with small businesses,

Can't on page 3

ATTACHMENT Q

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
Please refer to the instruction sheet for directions on filling out this form										
1	Submitted to (check only one)	<input checked="" type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA - Recipient ID Number								
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):									
3	Federal Fiscal year in which reporting period falls	FY 2015			4. Date This Report Submitted:					
5	Reporting Period	<input checked="" type="checkbox"/> Report due June 2 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)		<input type="checkbox"/> FAA annual report due Dec 1			
6	Name and address of Recipient:									
7	Annual DBE Goal(s):	Race Conscious Projection:			Race Neutral Projection:			OVERALL Goal:		
Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(Total contracts and subcontracts committed during this reporting period)</small>	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period	\$ -	0	\$ -	0		\$ -	0	#DIV/0!	
9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0	
10	TOTAL			\$ -	0	\$ -	0	\$ -	0	
B	BREAKDOWN BY ETHNICITY & GENDER	Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11	Black American	\$ -	\$ -	\$ -	0	0	0			
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13	Native American	\$ -	\$ -	\$ -	0	0	0			
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0			
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0			
17	TOTAL	\$ -	\$ -	\$ -	0	0	0			
Payments Made this Period										
C	PAYMENTS ON ONGOING CONTRACTS	A	B	C	D	E	F			
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs			
18	Prime and subcontracts currently in pro	0	\$ -	-	0	\$ -	0			
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E				
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs				
19	Race Conscious	0	\$ -	-	\$ -	-				
20	Race Neutral	0	\$ -	-		\$ -				
21	Totals	0	\$ -	-		\$ -				
22	Submitted by:				23. Signature:			24. Phone Number:		

Attachment R

DBE MATERIAL SUPPLIER/TRUCKER CONTRACT CERTIFICATION

1. To be completed by the Prime Contractor, Subcontractor (if 2nd Tier agreement), and DBE Material Supplier/Trucker **immediately following the award of project**
2. Submit the completed form to the HQ Civil Rights Office (CRO) Small Business Development Program (SBDP) with actual Subcontract Agreement and/or purchase order **prior to pre-construction conference for project.**

Contract No.: _____ Project No.: _____ County: _____

Contract Description: _____

Prime Contractor: _____

Sub Contractor (if 2nd Tier agreement): _____

DBE Firm: _____

Describe the type of work to be completed: _____

Regular Dealers/Suppliers

- ❖ The DBE dealer shall be an established, regular business that engages, as its principle business and under its own name, in the purchase and sale or lease of the products being supplied
- ❖ The DBE dealer shall maintain a store, warehouse, or other establishment, where the products are brought, kept in stock, or sold or leased to the public in the usual course of business (A firm may be a dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning or operating a place of business, if the firm owns and operates the distribution equipment for the products)
- ❖ 60% of the cost of materials supplied will be counted towards DBE Goal credit only

Transportation or Hauling of Materials

- ❖ As allowed by 49 CFR Part 26 as interpreted by the SBDP. This regulation allows for DBE goal hauling-credit in either DBE trucks or in trucks leased to DBE firms. Leases cannot be TDOT contract-specific and must be approved by the SBDP Staff. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations.
- ❖ 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.
- ❖ 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 DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- ❖ 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 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. The DBE is entitled to credit only the fees or commission it receives for all other non-DBE trucks used..

DBE Responsibilities:

- ❖ Does the DBE supply materials to non-DBE goal projects: Yes _____ No _____
- ❖ Does the DBE supply materials to other contractors not working on TDOT contracts:
Yes _____ No _____
- ❖ Does the DBE own and operate distribution equipment for the materials supplied:
Yes _____ No _____
- ❖ The DBE will be responsible for:
 1. Obtaining materials/supplies Yes _____ No _____
 2. Negotiating the price Yes _____ No _____
 3. Ensure that quality and quantity of materials are per TDOT requirements Yes _____ No _____
 4. Purchasing & making payment for the materials Yes _____ No _____
 5. Make arrangement and schedule for delivery of materials Yes _____ No _____
 6. Supplying invoices & cancelled checks verifying purchase of materials Yes _____ No _____
 7. Control over methods of work on their contract items Yes _____ No _____

By completing and signing this certification, the Prime Contractor, Subcontractor (if 2nd Tier agreement), and DBE firm agree to and acknowledge the responsibilities of the DBE as stated herein and in accordance with SP1247 of the Contract Proposal. The individual signing this certification must be an authorized company representative.

Prime Contractor Authorized Representative:

Print Name: _____ Title: _____

Signature: _____ Date: _____

Subcontractor Authorized Representative (if 2nd Tier agreement):

Print Name: _____ Title: _____

Signature: _____ Date: _____

DBE Material Supplier/Trucker Authorized Representative:

Print Name: _____ Title: _____

Signature: _____ Date: _____

Attachment S



TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT)

BUSINESS DEVELOPMENT PROGRAM

TDOT's Civil Rights Division Small Business Development Program is currently accepting applications from TDOT and TNUCP-certified Disadvantaged Business Enterprise (DBE) firms for the Business Development Program. This program will provide extended business development and supportive services to approximately eight DBE firms (two per region) looking to develop their self-sufficiency and enhance their competitiveness.

DBEs selected to participate in this specialized program will receive the highest levels of technical assistance possible through expert one-on-one support and development services. Targeted technical assistance is available to help under-utilized DBEs who are ready, willing, and able to compete for, and perform on state highway contracts. Marketing, Financial, Accounting, Information Technology, Human Resources and Business Planning are a few of the many types of assistance offered through this program.

Enrolled DBEs will receive a comprehensive assessment to determine the strengths and weaknesses in their company, as well as to evaluate the DBE owner's business knowledge as it pertains to daily operations and growth of their business. The results will then be compiled into a Plan of Action which will outline steps to help DBE owners grow their business throughout the contract period. All DBEs enrolled in the program will be required to set aside pre-designated times to engage in specialized one-on-one technical assistance services. These services will be reviewed periodically to determine DBE performance in reaching set goals.

Any DBE interested in enrolling in this year-long program should complete the attached application and e-mail (preferred), fax or mail to the address at the bottom of this page. If there are any questions, please e-mail David.Neese@tn.gov, or call 615-741-3681 or toll free at 1-888-370-3647.

*****Note: This is an ongoing program. The program is open to a maximum of eight DBEs at any one time. Applications will be reviewed for consideration as space allows*****

Please e-mail all applications to: David.Neese@tn.gov or Fax to: 615-741-3169

Tennessee Department of Transportation (TDOT)
Attn: David Neese
Civil Rights Division, Suite 1800
505 Deaderick Street
Nashville, TN 37243



TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT)
SMALL BUSINESS DEVELOPMENT OFFICE
BUSINESS DEVELOPMENT PROGRAM APPLICATION

Date: _____

Name of Firm:		
Address of Firm:		
City:	State:	Zip:
Mailing Address:		
City:	State:	Zip:
Business Phone Number(s):		
Contact Person:		
E-mail Address:	Website:	

1. Description of DBE-certified work categories: _____
2. Geographical Location Served: List the states, counties, etc. which the firm serves or is capable of serving: _____
3. Please check all that apply to your business (double-click gray box and change section labeled "default value" from "not checked" to "checked" if needed):
 - Demonstrated interest in working on State contracts as evidenced by consistently bidding on State work.
 - A member of an under-utilized group related to the State's DBE participation.
 - An established business structure including an internal bookkeeping system, marketing materials and office administration structure.
 - Capable of providing annual financial statements.
 - In good standing on all tax obligations.
 - Pre-qualified for bonding. Amount: _____

Please provide information on any of the above items that does not apply to your business (or any additional comments) as necessary:

4. Has your firm been enrolled in one of TDOT's Business Assistance Programs in the past?
 YES NO
If so, when: _____

5. In which of the following categories does your business need assistance (check all that apply):

- Joint Venturing/Teaming Assistance
- Business Planning Assistance
- Financial Assistance (loan application packaging)
- Bonding Assistance (bonding application packaging)
- Marketing Assistance (presentation skills and materials)
- Bidding/Estimating and Project Management Training
- Preparation for the General Contractors License or a Specialty License Exam
- Human Resources Program Development
- Accounting System and Financing Reporting Assistance
- Safety and Operations Training
- Guidance in Diversification and Expansion
- Information Technology (Computer Training)
- Limited Legal Assistance (contracts, legal structure)
- Other _____
- Other _____

6. Would you be available to have a Supportive Services consultant for TDOT conduct an assessment of your business, provide a written plan of action for your business *and* work with you throughout the year on strengthening and improving your business?
 Yes No

Please explain how you will make yourself available for these services: _____

7. Please provide any additional information regarding your business that may help TDOT consider you for the specialized assistance offered through this program:

TDOT Civil Rights Division

Internal Good Faith Effort Compliance Controls

Submitting a Responsible Bid/Good Faith Effort

If a Prime Contractor (Contractor) cannot obtain enough DBE participation to meet the contract goal, an evaluation of a Good Faith Effort (GFE) is necessary. A GFE evaluation is necessary when a prime contractor is unable to secure the minimum amount of DBE goal participation required within the three (3) business days following a let goal project.

If the Contractor has neither met the DBE goal nor submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award. However, if the Contractor cannot meet the goal but provides notice they made a Good Faith Effort and can provide adequate documentation of such, the below GFE process begins.

Pre-Award Good Faith Effort Process:

1. Contractor must submit sufficient DBE participation to meet goals within 3 business days after the Letting (Wednesday by 4:00 pm).
2. If the prime is unable to reach the DBE goal, the Contractor must inform the Civil Rights Division (CRD) before the end of the third day they wish to begin the GFE review process.
3. A GFE Panel meets/confers on day 4 after the Letting once GFE notification is received. This panel will review the efforts/documentation by the Contractor. [The GFE checklist will be used by the GFE panel to assist in seeing if the Prime has been "*actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.*"]
4. Day 5 (after Letting) a determination is made by the DBE (GFE?) Panel and a letter is submitted to the potential Contractor (apparent low bidder) regarding acceptance of GFE or denial of GFE. Construction Division is also notified at this time.
5. If the GFE panel rejects the Contractor's GFE, the Contractor has the opportunity to present their case in person (via written documentation and/or through an in-person meeting) to a Reconsideration Official on whether they felt they made adequate Good Faith Effort in trying to meet the goal.
6. Recommendations by the Reconsideration Official/CRD Director are made to the Construction Director. The Construction Department accepts or rejects the Recommendations by the Reconsideration Official/CRD Director. The Contractor is then notified in writing.

7. If the GFE is accepted, the Contractor is awarded the contract with a modified goal. If the GFE is rejected, the contract may then be awarded to the second lowest bid or all bids may be rejected.

Post Award Good Faith Efforts

When a DBE subcontractor is terminated as provided in 49 CFR 26.53 (f) or fails to complete its work on the contract for any reason, the Contractor must 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 established for the procurement

Example: There is a DBE Goal of \$200,000 and DBE X, one of four DBEs being used for goal credit, is performing unsatisfactorily and a letter is sent to DBE X and TDOT for their removal. DBE X was to perform \$50,000 but only performed \$10,000 when the prime requested they be removed. The other DBE's performed \$190,000 towards DBE credit when TDOT approved the termination. Any replacement DBE needs to perform at least \$10,000 to reach the goal [$\$190,000 + \$10,000 = \$200,000$ goal]. Alternatively, one of the other three DBEs could perform \$10,000 in additional work so long as they were certified for goal credit in that area (Contractor should check with TDOT's CRD Small Business Development Program first for DBE approval).

The Contractor may utilize DBE participation in any work item code to reach their DBE goal so long as DBE has been certified by TDOT's Tennessee Uniform Certification Program to perform the work item for goal credit. Contact the SBDP Office for prior approval for any potential replacement DBE and you may search for DBEs by work type and other parameters through the DBE database at: www.tdot.tn.gov/Applications/DBEDirect/Search. The good faith efforts shall be documented by the Contractor. 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 a written determination to the Contractor will be provided stating whether or not good faith efforts have been demonstrated. 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.

The original goal approved at the time of the Letting would remain in place and must be met by the prime contractor.

The Prime Contractor has the responsibility to comply with 49 CFR §26.53 and all applicable policies and regulation.

Good Faith Effort processes are found in 49 CFR 26.53 and Appendix A to Part 26.

Attachment U

TDOT ORGANIZATIONAL CHART

