

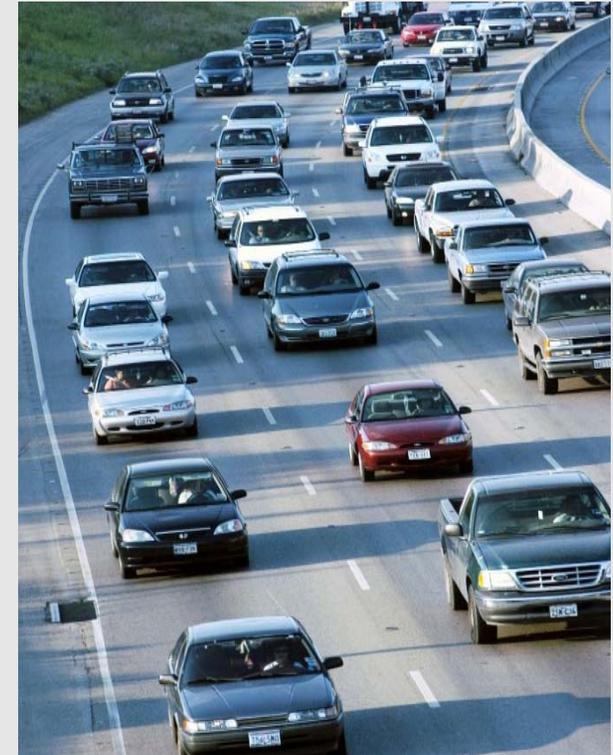


TEXAS DEPARTMENT OF TRANSPORTATION

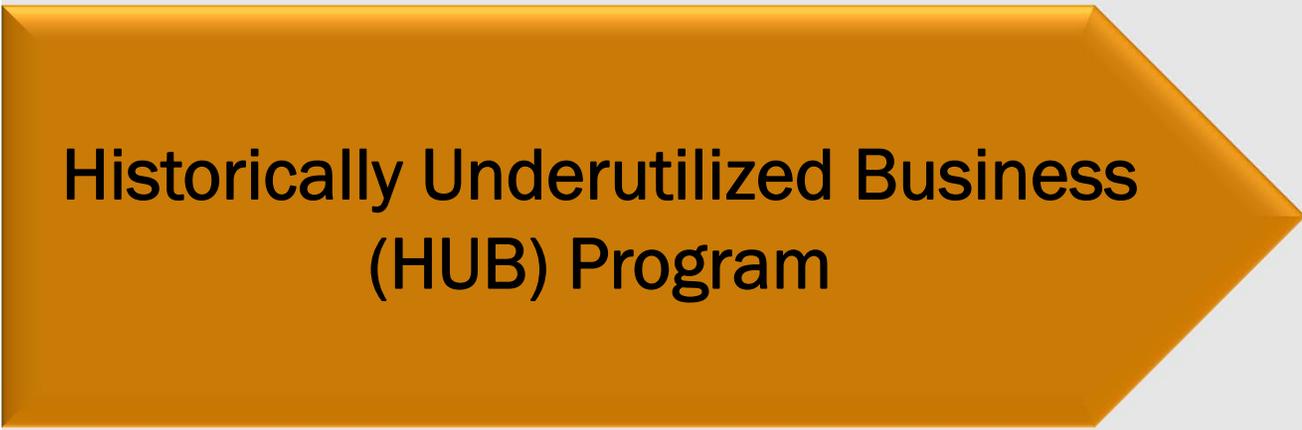


HUB AND DBE PROFESSIONAL SERVICES

Houston District Professional Services Event
Michael D. Bryant, Director, Civil Rights Division



April 19, 2018



Historically Underutilized Business (HUB) Program

HUB Program

HUB Rules

Texas Government Code
Chapter 2161

Texas Administrative
Code
Title 34, Part, 1, Chapter
20, Subchapter D,
Division 1

Policy and Purpose

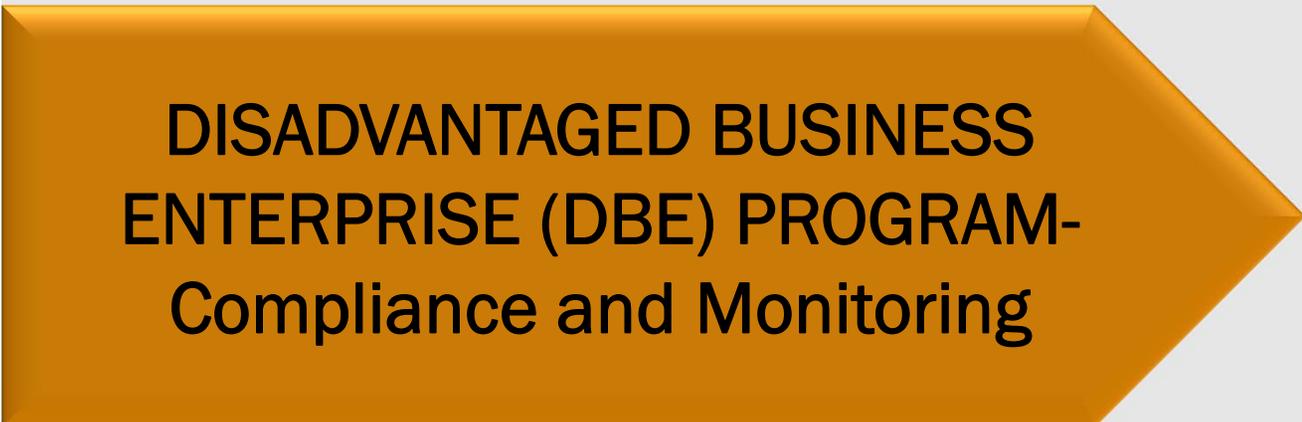
34TAC, Rule 20.10.

It is policy to encourage the use of Historically Underutilized Businesses (HUBs) and implement this policy through race, ethnic, and gender-neutral means.

The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study.

HUB Program Goals – Professional Services

23.7%



**DISADVANTAGED BUSINESS
ENTERPRISE (DBE) PROGRAM-
Compliance and Monitoring**

DBE Program

Legislatively mandated by the U.S. Department of Transportation (USDOT)

Applies to federal-aid highway dollars expended on federally-assisted contracts issued by USDOT

Administered by USDOT's three modal administrations:

- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)

Implementation guided by 49 CFR, Part 26

DBE Program Authorities

Regulations and provisions consultants must comply with:

USDOT DBE Regulations (49 CFR, Part 26)

Prompt Payment (49 CFR, Part 26.29)

Contract Provisions

Professional Services Contracts

- Architectural
- Engineering
- Surveying

DBE Program Responsibilities

- TxDOT is:
 - Recipient of federal funds from FHWA, FAA, and FTA
 - Responsible for administering its DBE Program
 - Legally accountable for expenditures of USDOT financial assistance
- TxDOT assures it will comply with 49 CFR, Part 26 within its DBE Program Plan
- Breach could result in loss of federal funds
- Sub recipients include providers and subprovider
- All sub recipients must comply with 49 CFR, Part 26 requirements, and contract provisions

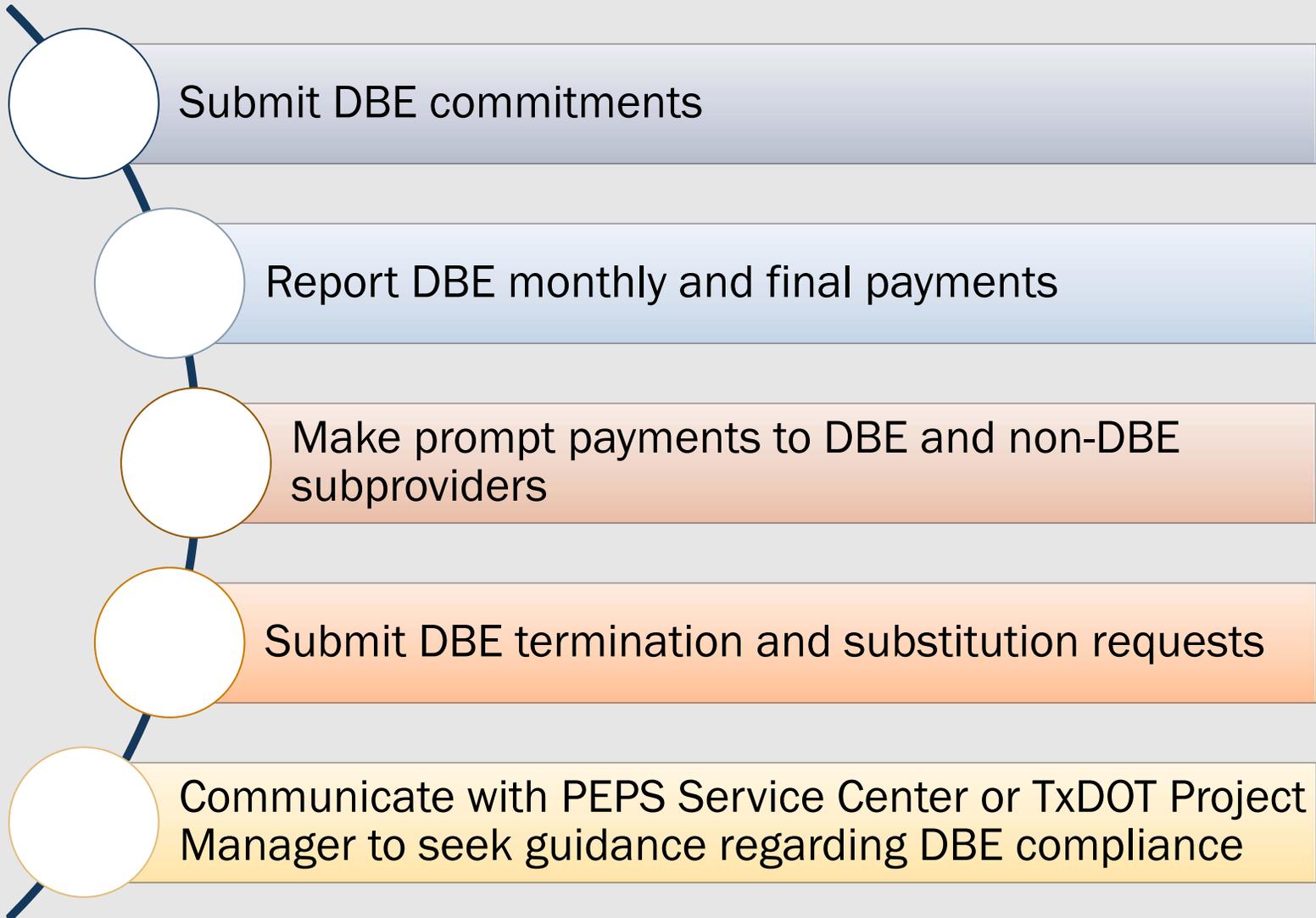
12.6%

Good faith efforts to meet the DBE Goal

When a contract has a goal, only a bidder that demonstrates adequate good faith efforts to meet the goal qualifies to be awarded a federally funded contract.

It is important for the provider to meet the assigned DBE goal for the contract by utilizing subprovider services identified in Exhibit H-1 of the contract, and when issuing a Work Authorization for the services to be performed.

Provider Responsibilities



Monitoring DBE Activity

Provider is responsible for monitoring progress towards meeting the goal

Monitoring can include DBE commitment amount vs payments to subcontractors and termination/substitution impact to overall goal

Provider must contact TxDOT should a concern arise that it will not meet the contract DBE goal and seek options available to meet the goal

TxDOT district staff also monitor goal attainment during the course of the project

There should be no surprises at the end of the project

Provider Responsibilities

- Make a good faith effort to meet the DBE contract goal by:
 - Meeting the goal
 - Documenting GFE to meet the goal
- If a provider does not meet the DBE goal, it must provide the PEPS Service Center with documentation to show that it used GFE to do so.
- Must understand the types of GFE found in 49 CFR, Part 26, Appendix A.
- TxDOT will not penalize provider if it fails to meet contract DBE goals as long as it follows the GFE guidelines in Appendix A.

Race-Neutral Participation

Federal DBE Program requires TxDOT to meet the maximum feasible portion of the overall DBE goal by using race-neutral measures.

- TxDOT uses a combination of race-neutral and race-conscious measures to meet its overall DBE goals.
- Providers must report race-neutral participation on federal-aid contracts with and without a DBE goal.
- Any work done by a race-neutral DBE regardless of NAICS codes may be counted provided they are performing a CUF.
- Termination and substitution policies and procedures do not apply.
- CUF reviews must be performed on projects with and without DBE goals.

Commercially Useful Function (CUF) Reviews

A DBE firm performs a CUF when it is responsible for execution of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved.

49 CFR Part 26.55 states a DBE firm does not perform a CUF if its role is limited to an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation.

If the DBE firm serves only to provide the appearance of DBE participation, the work cannot count toward the DBE goal.

CUF reviews must be conducted on all DBEs, including race-neutral DBEs with and without DBE goals.

Termination and Substitution Requests

Policy

- The provider cannot terminate a committed DBE (in whole or part) without the written approval of TxDOT.
- Written consent is only for good cause, such as.
 - DBE fails or refuses to execute contract.
 - DBE becomes bankrupt.
 - The provider has determined the DBE is not a responsible contractor.

Commitment Reduction

- A provider cannot reduce the amount of work committed to a DBE without good cause.

Termination and Substitution Request Steps

The provider must give the DBE subprovider notice and give the DBE five days to respond

The provider submits written request to terminate and provide justification for the DBE termination to TxDOT

TxDOT reviews the termination request and related information and if necessary seeks additional information to formulate its response

TxDOT provides written consent to the termination request only if TxDOT agrees there is good cause

If TxDOT does not approve the request, the provider shall continue to use the committed DBE

Enforcement

- Failure by the provider to carry out their requirements is a material breach of the contract.
- May result in termination of the contract or other remedies as TxDOT deems appropriate, which may include:
 - Withholding all or a percentage of monthly partial payments
 - Liquidated damages
 - Initiate appropriate suspension, disbarment, or decertification proceedings
 - Termination of the contract
 - Referral of any unlawful actions to the appropriate enforcement agencies
 - Other actions as appropriate

Questions?

Contact Information

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