

## Process to Administer DBE Contract Goals

Step:	Description:	When:	Who:	What:	What Else:
<b>Grant Application and Execution Phase</b>					
1	PTN determines DBE goal and includes goal within sub-recipient grant award.	Grant Application Phase	PTN HQ	PGA will state required DBE goal.	PTN technical assistance available, if needed.
<b>Procurement Preparation Phase:</b>					
2	Solicitation Development	During the Preparation, Review, and Approval of Solicitation	Grantee	Grantee will develop Project Solicitation	All req. DBE terms & cond. must be in the solicitation. PTN assistance available, including example RFP language, DBE commitment and Good Faith Effort forms.
3	PTN Solicitation Review and Approval		PTN PTC	Grantee must submit Solicitation to PTC for review and approval.	Solicitations must be reviewed and approved by PTC before procurement can begin.
<b>Procurement Phase</b>					
4	Evaluate Responses, including a review of bidders DBE Commitments and Good Faith Efforts documentation.	After bid close date.	Grantee	Grantee reviews responses to determine if bidders are considered responsive bidders.	Only responsible bids should be accepted. (meet goal or GFE) GFE documentation must be submitted at time of bid or within 7 days.
5	Determine best proposal	After bids evaluated	Grantee	Determine bidder to receive award.	Document bidder evaluation process for grant files.
6	PTN reviews proposed award.	After winning bid selected.	PTN PTC	PTN reviews proposed award to ensure compliance with requirements	PTC approval needed to award contract.
<b>Contract Phase</b>					
7	Construction contract execution	After winner bidder selected and notified.	Contractor Grantee	Contract will specify all req. DBE terms, conditions, forms, process, etc	PTN available for guidance, as needed.
8	Monthly DBE Progress Report (using monthly DBE Progress Report)	During Project	Contractor Grantee	Contractor completes monthly DBE progress reports and submits to the grantee. Grantee submits them to PTC.	PTC will monitor compliance.
9	Comm. Useful Funct. Review (using CUF review form)	Periodic	Grantee	Grantee will review prime and subs to ensure work committed is work being performed. CUF document	CUF review documented with a CUF review form. Grantee will submit to PTC.
10	DBE Subcontracting Change	As needed	Contractor Grantee	Changes will require grantee approval	PTC review required for each time a DBE is removed from the job.
11	DBE Semi-Annual Report	2x year	Grantee	DBE Report submitted in eGrants	PTC review reqd.

## Procurement Preparation Phase

**Example RFP Language**

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

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

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

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

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

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

**AUTHORITY AND BIDDER'S RESPONSIBILITY**

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

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

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

**SUBMISSION OF DBE INFORMATION AND PARTICIPATION**

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

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

**DBE CERTIFICATION REQUIREMENTS**

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

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

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

**CREDIT: MATERIAL – SUPPLIES – TRUCKING COMPANIES**

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

1. If the material or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the material or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the material or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the material or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the material, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products.
6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
8. Credit for material or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the material and supplies or fees or transportation charges for the delivery of material or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of material or supplies is not counted toward the DBE goal in this instance.

**USE AND/OR TERMINATION OF PROPOSED DBEs**

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

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

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

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

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

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

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

**AWARD**

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

# ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 4, 2016

Title 49 → Subtitle A → Part 26 → Subpart F → Appendix

## Title 49: Transportation

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

Subpart F—Compliance and Enforcement

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### APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

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

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

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

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

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

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

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

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

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

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

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Need assistance?

## Procurement Phase

**Disadvantaged Business Enterprise (DBE) Program  
Commitment Agreement Form**

<b>Project #:</b>		<b>County:</b>		<b>Contract:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
<b>Bid Item #</b>	<b>Item Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>	<b>Quantity</b>	<b>Total Per Item</b>
<b>Total</b>					
<p>The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.</p>					
<b>IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.</b>					
<b>Prime Contractor:</b>			Name/Title (please print):		
Address:			Signature:		
Phone:		Fax:			
E-mail:			Date:		
<b>DBE:</b>			Name/Title (please print):		
Vendor No.:		NAICS Code:			
Address:			Signature:		
Phone:		Fax:			
E-mail:			Date:		
<b>Subcontractor (if the DBE will be a second tier sub):</b>			Name/Title (please print):		
Address:			Signature:		
Phone:		Fax:			
E-mail:			Date:		

Prime Contractor's verification that the DBE is certified.

\_\_\_ DBE is certified and printout of TUCP listing is attached, and dated.

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

## Prime Contractor DBE Good Faith Effort

County: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

The following is a list of the types of actions that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases, however please check all that apply in this instance. Please provide documentation for ALL instances selected.

- Selected portions of work to be performed by DBEs and where appropriate, broke down contracts into economically feasible units to facilitate DBE participation.
- Provided interested DBE with adequate information about plans, specifications, and requirements of the contract.
- Negotiated in good faith with interested DBE, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required.
- Made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Advertised subcontracting opportunities in appropriate media.
- Used the services of minority organizations, minority contractors' groups, local state and federal minority business assistance offices and other organizations that provide assistance identifying subcontractors.
- Provided written notice to DBEs in sufficient time to allow the DBE to respond.
- Followed up initial solicitation of interest by contacting DBE to determine interest.

Describe any other efforts not covered above that may indicate affirmative action to obtain DBE participation on this project and provide documentation.

## Disadvantaged Business Enterprise Contractor Certification of Good Faith Efforts

**Purpose**

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

**General**

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

**Prime Contractor:**

Project	County	Contract Amount	DBE Percentage	
			Goal \$ _____ % _____	Proposed Goal to be met (GFE)

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

**GFE Activities**

A. Notifying DBE Firms of Contracting Opportunities

1. List all DBE firms assigned to this contract:

Firm Name and Address	Subcontract Amount

2. Outreach: List all DBE firms and their description of work on this contract:

Firm Name	NAICS Codes	Description of Work on Project

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

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

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

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

**B. Identifying Subcontractor Work Units**

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

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

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

Yes  No

Name of firm \_\_\_\_\_

C. Providing Assistance to DBEs

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

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

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

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

D. Negotiating in Good Faith

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

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

DBE Firm and Contact Person	Work Proposed	Explanation for Rejecting Proposal

2. Other comments or information:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

## Contract Phase

# DBE Monthly Progress Report

Project: \_\_\_\_\_ Contract: \_\_\_\_\_  
 County: \_\_\_\_\_ District: \_\_\_\_\_  
 Letting Date: \_\_\_\_\_ For Month of (Mo./Yr.): \_\_\_\_\_  
 Contractor: \_\_\_\_\_ Contract Amount: \_\_\_\_\_  
 DBE Goal: \_\_\_\_\_ % DBE Goal Dollars: \_\_\_\_\_

Vendor Number	Name of DBE Sub/Supplier	* RC or RN	** DBE \$ Amt Paid for Work Performed this Period (X)	*** \$ Amt Paid to Non-DBE 2nd Tier Subs and Haulers (Y)	Amt Paid to DBEs to Date (X-Y)

- \* Race Conscious or Race Neutral.
- \*\* Goal/commitment progress report amount and/or race-neutral amount. **Do not subtract** non-DBE second-tier subcontractors and haulers from this column.
- \*\*\* Report amount of payment DBE subcontractors paid to non-DBE subcontractors/haulers.

If using a non-DBE hauling firm that leases from DBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the DBE commitments approved.

Submission of this report for periods of negative DBE activity is required. This report is required until all DBE subcontracting or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE firms listed above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Company Official

**COMMERCIALLY USEFUL FUNCTION (CUF)  
PROJECT SITE REVIEW  
(CONSTRUCTION PROJECTS)**

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

Project ID  County:  Prime Contractor:	Reviewer:  Reviewer's Title:  Review Date:
DBE Name:	
DBE is performing as: the Prime Contractor <input type="checkbox"/> a Subcontractor <input type="checkbox"/> an other Tier Subcontractor <input type="checkbox"/> or Material Supplier: Manufacturer <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Broker <input type="checkbox"/>	
Provide a brief description of the DBE's scope of work. (Obtain copy of Subcontract Agreement and/or Purchase Order if needed.)	
<b>COMMENSURATE</b>	<b>YES / NO</b>
Is Payment received by the DBE commensurate with the work being performed?	<input type="checkbox"/> <input type="checkbox"/>
<b>PERFORMING</b>	
Does the DBE have employees on the job to perform the work?	<input type="checkbox"/> <input type="checkbox"/>
Does the DBE's employees only work for the DBE?	<input type="checkbox"/> <input type="checkbox"/>
Is the DBE working without assistance from the prime contractor or another subcontractor? <small>(Use of prime's equipment in an emergency is allowed but the cost associated with the use of the equipment cannot be credited towards the goal.)</small>	<input type="checkbox"/> <input type="checkbox"/>
Is the DBE only using equipment it owns, rents, or leases?	<input type="checkbox"/> <input type="checkbox"/>
Is the DBE performing <i>at least</i> 30% of their work?	<input type="checkbox"/> <input type="checkbox"/>
<b>HAULING FIRMS</b>	
Does the DBE hauling firm own or lease their trucks? (if so, obtain verification of ownership or lease documents in the name of the DBE.)	<input type="checkbox"/> <input type="checkbox"/>
Does the DBE employ drivers for trucks owned by the company? (if leased trucks include operators, this should be indicated in the agreement.)	<input type="checkbox"/> <input type="checkbox"/>
Does a review of the haul tickets associated with the project indicate that hauling is being performed by the DBE?	<input type="checkbox"/> <input type="checkbox"/>
<b>MATERIALS</b>	
Does the DBE's name appear on all invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/> <input type="checkbox"/>
<b>SUPERVISING</b>	
Is the DBE supervising its employees and their work?	<input type="checkbox"/> <input type="checkbox"/>
Is the supervisor an employee of the DBE?	<input type="checkbox"/> <input type="checkbox"/>
<b>CUF</b>	
Does the DBE appear to be performing a Commercially Useful Function (CUF)? (if no, provide comments.)	<input type="checkbox"/> <input type="checkbox"/>
<b>COMMENTS</b>	

## CUF DETERMINANTS

Page 2 of 2

### PERFORMING

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

### RED FLAGS

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

### RECORDS / DOCUMENTS

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

### MATERIALS (For material credit)

- DBE is responsible for the delivery of the materials
- DBE is ordering the material and invoices indicate that DBE is the customer
- Material invoices indicate that DBE owner or Superintendent is the contact person
- AE has approved use of joint checks

### RED FLAGS

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

### RECORDS / DOCUMENTS

- Invoices
- Haul tickets or Bills of Lading
- Material on Hand documentation
- Joint check agreement
- Cancelled checks

### SUPERVISING

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

### RED FLAGS

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

### RECORDS / DOCUMENTS

- Certified Payrolls
- Document communication with DBE owner or Superintendent

**Disadvantaged Business Enterprise (DBE)  
Substitution/Termination Request Form**

<b>Project #:</b>		<b>County:</b>		<b>Contract</b>		
<b>Request Date:</b>						
<b>Prime Contractor:</b>						
<b>Date Prime determined DBE unwilling, unable or ineligible:</b>						
<b>List Previous Approved Subcontractor:</b>				<b>Proposed Subcontractor:</b>		
<b>Bid Item</b>	<b>Work Description</b>	<b>Dollar Amount Completed</b>	<b>Remaining Dollar Amount</b>	<b>Bid Item</b>	<b>Work Description</b>	<b>Dollar Amount</b>
<b>Total \$</b>			<b>Total \$</b>			

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

Projected date Proposed Subcontractor will commence work? \_\_\_\_\_

**Reason(s) for Substitution Check Appropriate Block**

- |   |  |
|---|--|
| <input type="checkbox"/> The listed DBE is no longer in business.   | <input type="checkbox"/> The listed DBE requested removal. |
| <input type="checkbox"/> The listed DBE failed or refused to perform the contract or furnish the listed materials.                                      | <input type="checkbox"/> Other issues not listed:          |
| <input type="checkbox"/> The work performed by the listed DBE was unsatisfactory and was not in accordance with the scheduled plans and specifications. |  |

**Provide copy(s) of: Letter to terminate, DBE termination agreement statement or if applicable, DBE letter of voluntary removal request.**

<b>Contractor Signature:</b>		<b>Date:</b>
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected	<b>Reason:</b>
<b>DBE Coordinator Signature:</b>		<b>Date:</b>

TxDOT PTN has been notified in writing (via this form) prior to termination/substitution of a DBE on \_\_\_\_\_(date).