



HUB AND DBE PROGRAMS

2018 PEPS Conference

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Historically Underutilized
Business
(HUB) Program
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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 20.281

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.

34TAC, Rule 20.284(a). Statewide Annual HUB Utilization Goals

In accordance with §20.281, relating to Policy and Purpose, and Government Code, §2161.181 and §2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each agency may achieve the statewide and/or agency-specific annual HUB goals specified in the agency's Legislative Appropriations Request by contracting directly with HUBs or indirectly through subcontracting opportunities.

HUB Program Goals

- 11.2% for Heavy Construction other than building construction
- 21.1% Building Construction
- 32.9% Special Trade Construction
- 23.7 Professional Services
- 26.0% All Other Services
- 21.1% Commodities

HUB Program – Good Faith Effort

Texas Government Code, Chapter 2161.181 – 182

GOOD FAITH EFFORT FOR PURCHASES OF GOODS AND SERVICES.

A state agency, including the commission, shall make a good faith effort to increase the contract awards for the purchase of goods or services that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the commission to implement the disparity study described by Section [2161.002\(c\)](#).

GOOD FAITH EFFORT FOR CONSTRUCTION CONTRACTS.

A state agency that contracts for a construction project, including a project under Section [2166.003](#), shall make a good faith effort to increase the construction contract awards that the agency expects to make during a fiscal year to historically underutilized businesses based on rules adopted by the commission to implement the disparity study described by Section [2161.002\(c\)](#).

In this section, "project" has the meaning assigned by Section [2166.001](#).

NOTE: Emergency purchases apply to both sections.

HUB Subcontracting Plan (HSP)

Texas Government Code, Chapter 2161.252(a),(b). Texas Administrative Code Title 34, Rule 20.285

GOOD FAITH EFFORT COMPLIANCE WITH HUB SUBCONTRACTING PLAN.

Each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract.

If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

(b) When a state agency requires a historically underutilized business subcontracting plan under Subsection (a), a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive.

Important Tips for HSP

Read HUB language in solicitation carefully

Use Up-To-Date HSP

Reference HSP Quick Checklist

Attend Pre-Bids

HSP Training on TxDOT Internet

Cursory Review of HSP

34TAC, Rule 20.285(f)(g). Subcontracts

- Notification to Subcontractors from Prime Contractor within 10 days following award.
- Monitor and review revisions to the HSP,
- Monitor and review revisions to the original scope of work of the contract during an amendment, renewal, change order, etc.
- Receive and conduct audits of the HSP Prime Contractor Progress Assessment Report and HSP Compliance Review Form, and
- Identify and settle issues regarding non-compliance.

Texas Government Code Chapter 2161 and 34 TAC, 20.287

- Semi-Annual and Annual HUB Report, due March 15 and September 15
- Monthly HUB Report
- Quarterly HUB Report
- HUB Strategic Plan, due bi-annually
- HUB Progress Assessment Report, due by Dec. 30th following the end of fiscal year
- HUB Legislative Appropriations Report, due bi-annually
- Estimated Value of Expected Contract Awards for Fiscal Year, to be completed 60 days following the end of the fiscal year.
- Legislative Requests

Who views reports

- TxDOT Administration
- Texas Representatives and Senators
- SAO
- Sunset
- Internal Audit
- Local Chambers and Organizations

FY19 Initiatives

- Continue to increase HUB utilization
- Annual audit of monthly reporting data in PSCAMS
- Quarterly audit of goal attainment using data in PSCAMS
- Push Mentor Protégé Program

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Disadvantaged Business
Enterprise (DBE) Program-
Compliance and Monitoring
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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 Objectives

Ensure nondiscrimination in the award and administration of USDOT-assisted contracts

Create a level playing field where DBEs can compete for contracts

Ensure that TxDOT's DBE Program is tailored in accordance w/applicable law

Ensure only eligible firms participate

Remove barriers for DBEs to participate in USDOT-assisted contracts

Promote the use of DBEs in all types of federally-assisted contracts and procurement activities

Develop DBEs to compete outside the DBE Program

Provide recipient flexibility in establishing & providing opportunities for DBEs

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

- **TxDOT's Civil Rights Division (CIV) administers the DBE program.**
- **CIV responsibilities include:**
 - Develop TxDOT's DBE Program Plan
 - Set DBE state participation goal
 - Set specific contract goals
 - Complete annual reporting requirements to FHWA
 - Provide contract oversight and program administration
 - Verify project level monitoring at division, district, and local levels
 - Ensure districts, divisions and local agencies take compliance and enforcement actions as described in [49 CFR, 26.13\(b\)](#)

TxDOT's DBE Triennial Goal

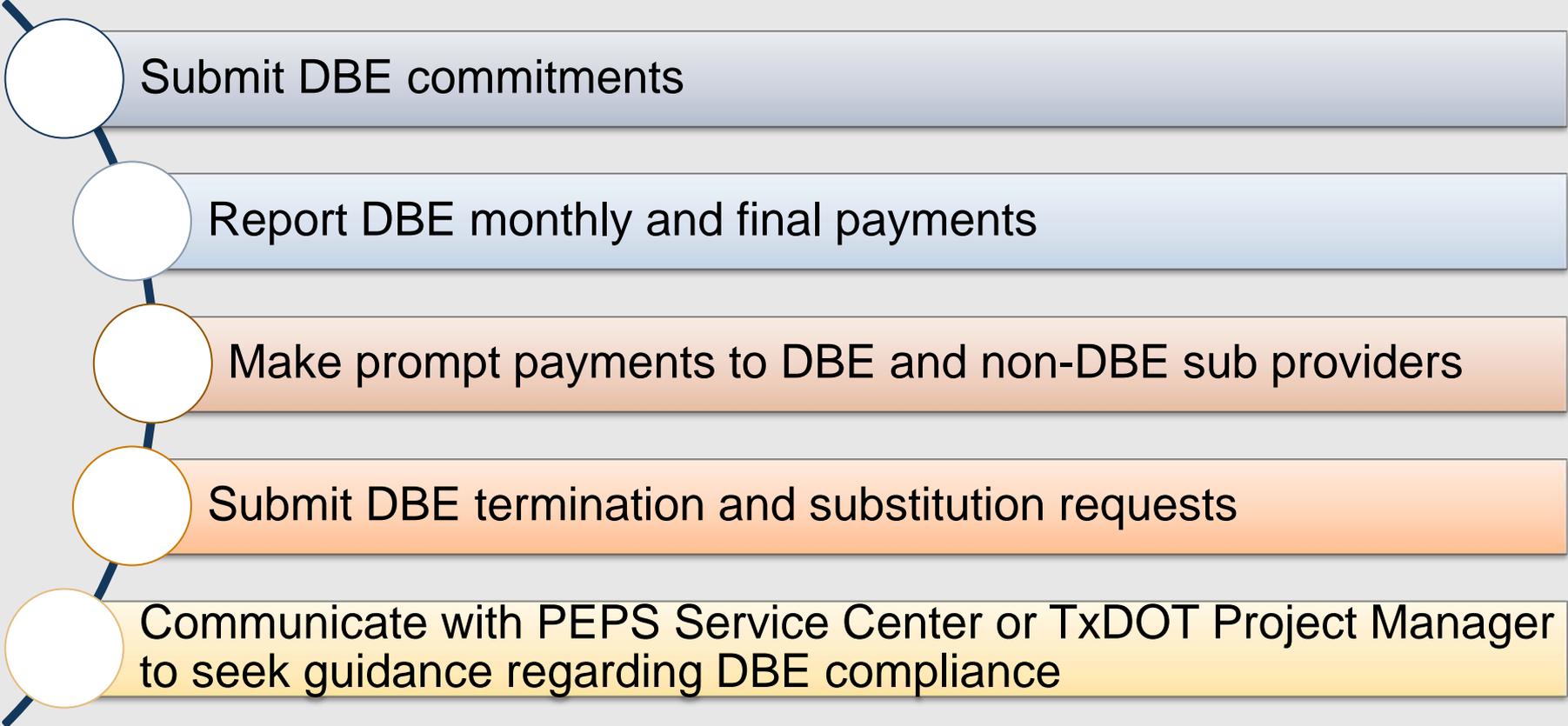
- Every three years, TxDOT is required to establish an annual DBE goal
- Establishing these goals helps ensure DBEs have the opportunity to participate on DOT-assisted contracts
- FHWA FY 17-19
 - Overall 12.6%
 - Race conscious 6.8% (Projects with goals)
 - Race neutral 5.8% (Projects with no goals)
- To help TxDOT meet its overall goal, CIV sets DBE contracts goals on PEPS Federal-aid contracts

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



Submit DBE commitments

Report DBE monthly and final payments

Make prompt payments to DBE and non-DBE sub providers

Submit DBE termination and substitution requests

Communicate with PEPS Service Center or TxDOT Project Manager to seek guidance regarding DBE compliance

TUCP Directory

- Certified DBEs must also be certified in the applicable North American Industry Classification System (NAICS) code for the type of services to be performed.
- The TUCP directory can be found at:
<https://txdot.txdotcms.com/FrontEnd/VendorsearchPublic.asp>
- Requests for additional ([NAICS](#)) work codes must be submitted to one of the authorized certifying agencies.

Six certifying agencies make all certification decisions



City of Austin, Office of Business Opportunity



City of Houston, Small Business Development



Corpus Christi Regional Transportation Authority



North Central Texas Certification Agency



South Central Texas Certification Agency



Texas Department of Transportation

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 GFEs to do so.
- Must understand the types of GFEs found in 49 CFR, Part 26, Appendix A.
- TxDOT will not penalize a provider if it fails to meet contract DBE goals as long as the provider made a GFE as outlined 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.

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 sub provider 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

- 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 payments
 - Liquidated damages
 - Initiate appropriate suspension, debarment, or decertification proceedings
 - Termination of the contract
 - Referral of any unlawful actions to the appropriate enforcement agencies
 - Other actions as appropriate



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