

Texas Department of Transportation
Toll Operations Division

Statewide Toll System Integration and Maintenance

REQUEST FOR QUALIFICATIONS
Issued November 21, 2011

ADDENDUM NO. 1
Issued December 14, 2011

ADDENDUM NO. 2
Issued December 22, 2011

The Request for Proposals issued on November 18, 2011, as modified by Addendum No. 1 issued on December 14, 2011, is hereby further modified by this Addendum No. 2. Addendum No. 2 consists of the following items:

I. VOLUME I – Instruction to Proposers

Item	Page(s)	Section	Change(s)
1.	2-1	2.1	In the 6 th line, the words “and the Technical Provisions Compliance Matrix,” are added after the words “(except the Pricing Tables”.
2.	3-1	3.2.4	The section is deleted and replaced with “Intentionally Omitted.”
3.	3-4	3.6.3(a)	Subparagraph (a) is deleted and replaced with the following; (a) For each Key Personnel, the Proposer shall provide a resume (maximum of two (2) pages). (If the same individual is proposed for more than one Key Personnel position, the proposal shall clearly demonstrate that the individual can provide the required level of service for the proposed positions.)
4.	3-4	3.6.3(b)	The opening two lines of subparagraph (b) is deleted and replaced with the following: (b) The Proposer shall provide a personnel profile for each Key Personnel including the individual’s name and title, his/her education, and a description of required qualifications and experience, as described below:
5.	4-2	New 4.2.6	The following is added as a new Section 4.2.6: 4.2.6 Technical Provisions Compliance Matrix TxDOT will review the Proposer’s completed Technical Provisions Compliance Matrix, and the Proposal will be disqualified if the Proposer indicates “No” in column (2) of the matrix for any of the requirements set forth therein.
6.	4-3	4.3(ii)	The following is added as a new Section 4.3(ii)(d), and the subsequent subparagraphs are renumbered (e) – (f): (d) System design requires little to no additional development to meet basic functional design requirements
7.	B-1 to B-20	Attachment B	Attachment B is deleted and replaced with a revised Attachment B attached hereto as Schedule A.

II. VOLUME II – Technical Provisions

Item	Page(s)	Section	Change(s)
1.	4-9	4.3.1	Subparagraph (e) is deleted from Section 4.3.1.

III. VOLUME III – Agreement and Exhibits

Item	Page(s)	Section	Change(s)
1.	N/A	Exhibit G	Exhibit G is deleted and replaced with a revised Exhibit G attached hereto as Schedule B.

SCHEDULE A

Attachment B Technical Provisions Compliance Matrix

As part of its proposal, Proposer shall complete and submit this table to indicate:

- (1) if the proposed solution complies with the requirements of the RFP; and
- (2) that the proposed solution's functionality either (a) requires some degree of additional development to meet the requirements of the RFP or (b) does NOT require any additional development to meet the requirements of the RFP.

In the Compliance column, the Proposer shall mark section-column (2) with "Yes" if the Proposer's proposed solution meets each and every mandatory requirement contained within that section *as written* in its entirety without any modifications, limitations or exclusions. In the same section, the Proposer shall mark "No" if the Proposer's proposed solution does not meet each and every mandatory requirement contained within that section *as written* in its entirety without any modifications, limitations or exclusions.

The Proposer shall mark each line item under Section 4.3 of section-column (3) with "~~DRRD~~" if the Proposer's proposed solution requires development or configuration to meet each and every mandatory requirement contained within that section *as written* in its entirety. In the same section, the Proposer shall mark "NDR" if the Proposer's proposed solution does NOT require development to meet each and every mandatory requirement contained within that section *as written* in its entirety. For these purposes, development or configuration shall mean the addition of functionality to the proposed solution to meet the requirements of the RFP.

For any section marked with a "~~DRRD~~", the Proposer shall identify the specific requirement(s) and provide an explanation under section (4) "Proposer Comment(s)/Note(s)".

For any additional reason, the Proposer may also add comments or notes in section (4) "Proposer Comment (s) / Note(s)."

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.1 PROGRAM DELIVERY					
2.1.1 Program Initiation					
2.1.2 Program Management					
2.1.2.1 Performance Requirements					
2.1.2.2 Program Criteria					
2.1.2.2.1 Management Goals					
2.1.2.2.2 Key Personnel					
2.1.2.3 Communication Plan					
2.1.2.3.1 General					
2.1.2.3.2 Meetings and Coordination					
2.1.2.3.3 Meeting Minutes					
2.1.2.3.4 Protocol for Emergencies					
2.1.2.4 Software Development Plan					
2.1.2.5 Configuration Management Plan					
2.1.2.6 Maintenance Plan					
2.1.2.7 Warranty Management Plan					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.1.2.8 Business Continuity and Disaster Recovery Plan					
2.1.2.9 Program Initiation Conference					
2.1.3 Program Scheduling					
2.1.3.1 General					
2.1.3.2 Definition and Function					
2.1.3.3 Milestones					
2.1.3.4 Float					
2.1.3.5 Activities					
2.1.3.6 Prohibition					
2.1.3.7 Early and Late Dates					
2.1.3.8 Activity Durations					
2.1.3.9 Activity Identification					
2.1.3.10 Work Breakdown Structure (WBS)					
2.1.3.11 Schedule Revisions					
2.1.4 Progress Reporting					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.1.4.1 Monthly Progress Reports					
2.1.4.2 Delays					
2.1.4.3 Incorporation of Changes					
2.1.5 Project Records					
2.1.5.1 General Requirements					
2.1.5.2 Format Requirements					
2.1.5.3 Data Backup					
2.1.5.4 Documentation					
2.1.5.4.1 Toll System Documentation					
2.1.5.4.2 System Design Submittal Process					
2.1.5.4.3 Communication and Submittal Documentation					
2.1.5.4.4 Document Control Verification					
2.1.5.5 Design Changes					
2.1.6 Quality Management					
2.1.6.1 Development of QMP					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.1.6.2 Quality Manager					
2.1.6.3 Quality Certification					
2.1.6.4 Inspection and Testing Requirements					
2.1.6.5 Reporting, Record Keeping, and Documentation					
2.1.6.6 Source Inspection					
2.1.6.7 Access to Testing Facilities by TxDOT					
2.1.6.8 Integrator Installation and Testing Scheduling and					
2.1.6.9 As-Built Documents					
2.1.7 Software Requirements					
2.1.7.1 General Guidelines					
2.1.7.2 Scheduling					
2.1.7.3 Word Processing and Spreadsheets					
2.1.7.4 Scanned Documents					
2.1.7.5 Communication Management					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.1.7.6 E-mail Guidelines					
2.1.8 Over-the-Shoulder Reviews					
2.1.9 Coordination with Others					
2.1.9.1 Other TxDOT Integrators					
2.1.9.2 Civil Roadway Contractors					
2.1.9.3 TxDOT's Design Engineer					
2.2 PROJECT DELIVERY					
2.2.1 Project Initiation					
2.2.2 Toll System Documentation					
2.2.3 Installation Plan					
2.2.4 Safety and Health Plan					
2.2.5 Maintenance Plan					
2.2.6 Toll Collector Manual					
2.2.7 Toll Supervisor Manual					
2.2.8 Computer Workstation Manual					
2.2.9 Project Scheduling					
2.2.9.1 General					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
2.2.9.2 Definition and Function					
2.2.10 Upgrade of Existing Systems					
2.2.10.1 General					
2.2.10.2 System Design and Installation					
2.2.10.3 Transition Plan					
2.2.10.4 Training					
2.2.11 FCC Licenses					
2.2.12 Final Acceptance					
Section 3 INFRASTRUCTURE REQUIREMENTS					
3.1 TOLLING ZONE INFRASTRUCTURE					
3.1.1 Tolling Zone Design					
3.1.2 Codes, Standards and Specifications					
3.1.3 Utilities					
3.1.4 Network Communications					
3.1.5 Design Coordination					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
3.1.5.1 Toll Gantries					
3.1.5.2 Emergency Generator					
3.1.5.3 Roadside Electronics Housing					
3.1.5.4 Dynamic Toll Pricing Signs					
3.1.5.5 Static Signs					
3.1.5.6 Utilization of Existing Facilities					
3.2 ADVANCE TOLL SIGNING					
3.2.1 Dynamic Toll Pricing Signs					
3.2.2 Static Signs					
3.3 STRUCTURAL CONNECTIONS					
3.3.1 Codes, Standards and Specifications					
3.3.2 Shop and Working Drawings					
Section 4 TOLL SYSTEM REQUIREMENTS					
4.1 GENERAL REQUIREMENTS					
4.1.1 Hardware Requirements					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.1.1.1 System Life					
4.1.1.2 New Equipment					
4.1.1.3 Modular Design					
4.1.1.4 Accessibility					
4.1.1.5 Circuit Protection					
4.1.1.6 Housings and Cabinets					
4.1.1.7 Hardware					
4.1.1.8 Fabrication					
4.1.1.9 Stainless Steel Materials					
4.1.2 Applicable Codes					
4.1.3 Equipment Diagnostic and Self-Test Requirements					
4.1.4 Electrical Requirements					
4.1.5 Capacity and Data Retention					
4.1.6 Environmental Requirements					
4.1.7 Lightning Protection					
4.1.8 Time of Day/Date Control and Synchronization					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.2 TOLL SYSTEM DESIGN					
4.2.1 Project Initiation Conference					
4.2.2 Preliminary Design Phase					
4.2.2.1 Preliminary Design Documentation					
4.2.2.2 Preliminary Design Review					
4.2.3 Detailed Design Phase					
4.2.3.1 Detailed Design Documentation					
4.2.3.2 Critical Design Review					
4.3 FUNCTIONAL REQUIREMENTS					
4.3.1 Functional Capabilities					
4.3.2 Communication					
4.3.3 Message Formats/Protocols					
4.3.4 Maintenance Online Management System					
4.3.4.1 Failure Detection and Reporting					
4.3.4.2 System Monitoring					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.3.4.3 Availability Tracking					
4.3.4.4 Remote Access					
4.3.4.5 Inventory/Spare Parts Control					
4.3.4.5.1 Project Segment Spare Parts Inventory					
4.3.4.5.2 Substitution of Parts and Equipment					
4.3.4.5.3 Quality Control and Assurance					
4.3.5 Tolling Zone Controller(s)					
4.3.6 ETC Tag Reading					
4.3.7 Image Capture					
4.3.7.1 Optical Character Recognition					
4.3.7.2 Cameras					
4.3.7.3 Image Trigger					
4.3.7.4 Supplemental Illumination					
4.3.8 Automatic Vehicle Detection and Classification					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.3.9 Cash Collection Subsystem					
4.3.9.1 AVC – Collector Classification					
4.3.9.2 Collector Terminal					
4.3.9.3 In-lane Receipt Printer					
4.3.9.4 Toll Fare and Customer Feedback Display					
4.3.9.5 Automatic Coin Machines					
4.3.9.6 Lane Status Sign (Canopy Light)					
4.3.9.7 Transaction Notification Light					
4.3.10 Cash and Vault Management System					
4.3.10.1 Coin and Bill Counters					
4.3.10.2 Count Room Receipt Printer					
4.3.10.3 Computer Workstations					
4.3.11 Toll Management Console					
4.3.12 Project Host Server					
4.3.12.1 Transaction Collection					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.3.12.2 Trip Building					
4.3.12.3 Toll Rates					
4.3.12.3.1 Schedule Mode					
4.3.12.3.2 Dynamic Mode					
4.3.12.3.2.1 Price Determination					
4.3.12.3.2.2 Travel Time Adjustment					
4.3.12.4 Managed Lane Traffic Data					
4.3.13 Managed Lane Violation Signal					
4.3.14 Dynamic Toll Pricing Signs					
4.3.15 Security					
4.3.15.1 Data Security					
4.3.15.2 Physical Security					
4.3.15.3 Video Security					
4.3.15.3.1 Digital Video Recording Subsystem					
4.3.15.3.2 Cameras					
4.3.15.4 Proximity Reader					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
Subsystem					
4.3.16 Performance Requirements					
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4.4.1 Change Management					
4.4.2 Test Review Board					
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4.4.3.3 Site Acceptance Testing (SAT)					
4.4.3.4 Commissioning Test					
4.4.3.5 Operational Test					
4.4.3.6 Performance Audit					
4.4.4 Test Procedures					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.4.5 Test Scheduling					
4.4.6 Test Conduct					
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4.4.9 System Changes and Modifications					
4.4.10 CSC Interface Coordination					
4.4.11 Access to Testing Facilities by TxDOT					
4.4.12 System Tests					
4.4.12.1 Factory Acceptance Test (FAT)					
4.4.12.1.1 FAT Report					
4.4.12.2 Site Acceptance Test (SAT)					
4.4.12.2.1 SAT Report					
4.4.12.3 Commissioning Test					
4.4.12.3.1 Commissioning Test Report					
4.4.12.4 Operational Test					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
4.4.12.4.1 Operational Test Report					
4.4.12.5 Performance Audit					
4.4.12.5.1 Performance Audit Report					
Section 5 SYSTEM INSTALLATION					
5.1 TOLLING ZONE INSTALLATION					
5.2 CODES, STANDARDS AND SPECIFICATIONS					
5.3 CIVIL CONSTRUCTION QUALITY PLAN					
5.4 CONSTRUCTION REPORTING, RECORD KEEPING, AND DOCUMENTATION					
5.5 SOURCE INSPECTION					
5.6 PLANT INSPECTION					
5.7 MATERIALS ON PROJECT SITE					
5.8 USE OF EXISTING INFRASTRUCTURE					
5.9 REMOVAL OF OBSOLETE HARDWARE					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
5.10 NON-CONFORMANCE					
5.11 SAFETY AND HEALTH MANAGEMENT					
5.12 MAINTENANCE DURING WORK					
5.13 HOUSEKEEPING AND MAINTENANCE OF THE ROW					
5.14 PROTECTION OF SURFACE WATERS AND FLOOD					
5.15 PROTECTION AND RESTORATION OF PROPERTY AND					
5.16 LIMITATIONS OF IMPLEMENTATION OPERATIONS					
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6.1 MAINTENANCE OF TRAFFIC DURING INSTALLATION					
6.2 MAINTENANCE OF TRAFFIC DURING MAINTENANCE					
Section 7 SYSTEM MAINTENANCE					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
7.1 GENERAL					
7.2 PREVENTIVE MAINTENANCE					
7.3 PREDICTIVE MAINTENANCE					
7.4 CORRECTIVE/EMERGENCY MAINTENANCE					
7.5 MAINTENANCE SERVICE MANUAL					
7.7 SPARE PARTS					
7.7 MAINTENANCE FACILITIES/WORKSHOP					
7.8 MAINTENANCE RECORDS					
7.9 MONTHLY MAINTENANCE REPORT					
7.1 MEAN TIME TO RESPOND AND REPAIR					
7.10.1 Mean Time to Respond					
7.10.2 Mean Time to Repair					
7.11 WORK LIMITATIONS					
7.12 INSPECTION OF WORK AND MATERIAL					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
7.12.1 ICD Compliance					
7.13 MAINTENANCE REPORTS					
7.14 MAINTENANCE OF EXISTING SYSTEMS					
7.14.1 General					
7.14.2 Access to Facilities and Equipment					
7.14.3 Performance Verification Period					
7.14.4 Transition of Maintenance Activities					
7.14.4.1 Transition Plan					
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7.14.5.3 Functional Availability					
7.14.5.4 Performance Requirements					
7.14.6 Existing Spare Parts					

(1) Section No. and Title	(2) Compliance		(3) Development		(4) Proposer Comment(s) / Note(s)
	Yes	No	(a) Development Required	(b) No Development Required	
Inventory					
7.14.7 CTTS Maintenance Facilities/Workshops					
7.14.8 System Interfaces					
7.15 DECOMMISSIONING					
7.16 END OF MAINTENANCE TERM					
7.16.1 Inspection					
7.16.2 End of Maintenance Term Transition Plan					
7.16.3 Transitioning Support					
7.16.4 Maintenance Records					
7.16.5 Spares Parts, Components, Tools					
7.16.6 Passwords					
7.16.7 Training					
7.16.8 Manuals and Drawings					
7.16.9 Spare Equipment Repair					

SCHEDULE B

EXHIBIT G

**THE TEXAS DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM FOR FEDERALLY ASSISTED
NON-TRADITIONAL CONTRACTS (NTCs)
Program Administration**

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Objectives and Policy Statement

The Texas Department of Transportation (TxDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TxDOT, has received Federal financial assistance from the Federal Highway Administration (FHWA), and as a condition of receiving this assistance, TxDOT has signed an assurance agreement that it will comply with 49 CFR Part 26. TxDOT recognizes that certain modifications to the existing TxDOT DBE program administration and coordination are necessary to adapt the program for use in connection with non-traditional contracts (NTCs), and has therefore outlined DBE program requirements on NTCs based, to the extent practicable, on the existing TxDOT DBE Program approved by FHWA. In particular, Exhibit G applies to NTCs where the scope of work is not determinable at the time of award or execution of the NTC, and is determined at a later date or dates pursuant to supplementary agreement(s) (Project Segment Supplements) entered into by TxDOT and Contractor for specific scopes of work (each, a Project Segment). Any modification and/or changes to TxDOT's DBE Program will also apply to this agreement and must be executed as such.

It is the policy of TxDOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in FHWA-assisted NTCs. It is also our policy --

- to ensure nondiscrimination in the award and administration of FHWA assisted contracts;
- to create a level playing field on which DBEs can compete fairly for FHWA assisted contracts;
- to ensure that the NTC DBE Program is narrowly tailored in accordance with applicable law;
- to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- to help remove barriers to the participation of DBEs in FHWA assisted contracts; and
- to assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Director of the Office of Civil Rights has been designated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by TxDOT in its financial assistance agreements with the DOT.

TxDOT has disseminated this policy statement to the Texas Transportation Commission and to Districts, Divisions, Regions and Offices (DDRO's) of the organization by formal memo from the Executive Director. Through trainings and

industry meetings, this DBE Program policy statement has been distributed to DBE and non-DBE business communities that perform work on DOT-assisted contracts.

Texas Department of Transportation

DBE Program for Non-Traditional Contracts

49 CFR Part 26

I. Definitions of Terms

Except as otherwise defined herein, the terms used in this program have the meanings defined in 49 CFR §26.5.

II. NONDISCRIMINATION (§26.7)

TxDOT will not 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, or national origin.

In administering its DBE program, TxDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

III. DBE PROGRAM UPDATES (§26.21)

TxDOT will continue to carry out this program until all funds from DOT financial assistance have been expended. TxDOT will provide to DOT updates representing significant changes in the program.

IV. QUOTAS (§26.43)

TxDOT does not use quotas in any way in the administration of this NTC DBE Program.

V. DBE LIAISON OFFICER (DBELO) (§26.45)

The TxDOT Executive Director will designate an individual as its DBE Liaison Officer (DBELO). The DBELO is responsible for implementing all aspects of the DBE program and ensuring that TxDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the TxDOT Executive Director concerning DBE program matters. The DBELO shall be assigned a personal assistant to support him/her with respect to the DBE program and has access to such additional personnel as may be necessary to implement and administer the program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information required by TxDOT and DOT.

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 results.
5. Analyzes TxDOT's progress toward goal attainment and identifies ways to improve progress.
6. Advises TxDOT on DBE matters and achievement.
7. Participates with legal counsel and the project director 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. Provides outreach to DBEs and community organizations to advise them of opportunities.

VI. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (§26.13)

TxDOT will sign the following assurance, applicable to all DOT-assisted contracts:

TxDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. TxDOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. TxDOT's DBE Program, as required by 49 CFR Part 26 and as approved by FHWA, 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 TxDOT of its failure to carry out its approved program, DOT may impose sanctions as provided for under Part 26 and 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.).

VII. DBE FINANCIAL INSTITUTIONS

It is the policy of TxDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted NTCs to make use of these institutions.

Information on the availability of such institutions can be obtained from the Office of Civil Rights, DBE/HUB/SBE Section.

VIII. DIRECTORY (§26.31)

TxDOT maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from TxDOT's Office of Civil Rights. The Directory can be found on the Internet at:

www.txdot.gov/business/business_outreach/tucp.htm.

IX. REQUIRED CONTRACT CLAUSES (§§26.13, 26.29)

A. Contract Assurance. TxDOT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by 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 TxDOT deems appropriate.

B. Prompt Payment. TxDOT will include the following clause in each DOT-assisted contract:

Contractor shall pay the subcontractor ~~or subprovider~~ for work performed within 10 days after Contractor receives payment for the work performed by the subcontractor ~~or subprovider~~. Also, any retained monies on a subcontractor's work shall be paid to the subcontractor within 10 days after satisfactory completion of all the subcontractor's work. Completion of all the subcontractor's work shall include test, maintenance and other similar periods that are the responsibility of the subcontractor.

For purposes of this clause, satisfactory completion is accomplished when:

- (1) the subcontractor has fulfilled the contract requirements of both TxDOT and the subcontract for the subcontracted work, including the submission of all submittals required by the specifications and TxDOT; and

(2) the work done by the subcontractor has been inspected and approved by TxDOT and the final quantities of the subcontractor's work have been determined and agreed upon.

This clause applies to both DBE and non-DBE subcontractors.

TxDOT may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor ~~or subprovider~~ has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors ~~or subproviders~~. Incorporate the provisions of this Article into all subcontract or material purchase orders.

Each Contractor awarded a contract by TxDOT will be required to include this contract clause in every ~~design or construction~~ subcontract awarded by such Contractor.

X. MONITORING AND ENFORCEMENT MECHANISMS (§26.37)

TxDOT will assign staff to monitor and track actual DBE participation through monthly progress reports and Contractor and subcontractor reports of payments in accordance with the following:

A. Post-Issuance of Draft Project Segment Supplement.

As described in Section XII, below, Contractor will be required to submit a DBE Performance Plan (Attachment ~~EJ~~) within 10 Business Days of issuance by TxDOT of a draft Project Segment Supplement, and such DBE Performance Plan shall be subject to review and approval by TxDOT prior to execution of the Project Segment Supplement. Upon execution and delivery of a Project Segment Supplement and during ~~both the design and construction portions~~ the performance of the Toll Systems Services ~~or for~~ the Project Segment, Contractor will be required to submit DBE commitments, as described in ~~paragraph Section~~ X.B, below, and monthly progress reports described in paragraph X.C, below, to show that Contractor is meeting the contract goal for the Project Segment, or, if the goal is not being met, Contractor must submit satisfactory evidence that it has made good faith efforts, in accordance with Section XII, to meet the goal.

Evidence of good faith efforts, as described in Appendix A of Part 26, and in Section X.B, below, will be monitored by TxDOT throughout the duration of the Project Segment.

B. DBE Subcontracts.

~~Contractor will provide TxDOT with a "Subprovider Monitoring System DBE Commitment Worksheet" (Attachment A) and an executed "Subprovider~~

~~Monitoring System DBE Commitment Agreement” (Attachment B) within 10 Business Days of selection of any DBE subprovider not previously identified by Contractor, for the performance of the Tolling Systems Services.~~ Within 10 Business Days of selection of any DBE subcontractor not previously identified by Contractor for the ~~construction work~~Toll Systems Services, Contractor will provide TxDOT with an executed “DBE Commitment Agreement Form” (Attachment AG). Work subcontracted to a non-DBE subcontractor/subconsultant shall not be counted toward the DBE participation contract goal.

DBE Prime Contractors may receive credit toward the DBE Goal (defined in Section XI below) for work performed by its own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event Contractor subcontracts to a non-DBE, that information must be reported on the form entitled “DBE Prime Contractor Payments to Non-DBE Subcontractors” (Attachment BD).

If Contractor cannot meet the DBE Goal for the Tolling Systems Services work ~~or construction work~~ for the Project Segment, it shall document the good faith efforts taken to obtain DBE participation and submit the Good Faith Effort Form 2184 (Attachment FK) and the required documentation thereunder. The following is a list of the types of action 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.

(1) Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the ~~work of Toll Systems Services under~~ the Project Segment Supplement. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

(2) 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 Project Segment work items into economically feasible units to facilitate DBE participation, even when Contractor might otherwise prefer to perform the work items with its own forces.

(3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Project Segment Supplement in a timely manner to assist them in responding to a solicitation.

(4) Negotiating in good faith with interested DBEs by making a portion of the work available to DBE subcontractors and suppliers and selecting those portions of the work or material needs consistent with the available DBE subcontractors and suppliers.

(5) The ability or desire of Contractor to perform the work of a Project Segment Supplement with its own organization does not relieve Contractor's responsibility to make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a Contractor's failure to meet the DBE Goal, as long as such costs are reasonable. Contractor is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

(7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

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

(9) 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.

Contractor will make all reasonable efforts to honor commitments to DBE ~~subproviders and~~ subcontractors identified in the proposal, and those identified after submission of the proposal. TxDOT's approval is required prior to terminating or removing a DBE ~~subprovider or~~ subcontractor for which a DBE commitment has been submitted (either with the proposal or later), Contractor must demonstrate to the satisfaction of TxDOT that the originally designated DBE was not able or willing to perform.

Contractor will also make a good faith effort to replace a DBE subcontractor ~~or subprovider~~ that is unable to perform successfully with another DBE, to the extent needed to meet the Project Segment goal. Contractor must submit a completed and executed "DBE Commitment Agreement" for the substitute DBE firm(s). Any substitution of DBEs will be subject to approval by TxDOT and must be submitted using the DBE Program Substitution Request Form 2228 (Attachment [GL](#)) with the required documentation thereunder. Prior to approving the substitution, TxDOT will request a statement from the DBE concerning the replacement.

Contractor must designate a DBE liaison officer who will administer Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs. Without limiting the foregoing, the designated Contractor DBE liaison officer shall be responsible for:

- (i) Day-to-day operational components of Contractor's DBE Program;
- (ii) Responding to and reporting to designated TxDOT staff on the status of any DBE issues and/or concerns;
- (iii) Submitting executed DBE subcontracts/purchase orders and any subsequent material amendments thereto to designated TxDOT staff within ten (10) days of notice to proceed (however, no DBE shall commence any work or provide any material/supply without an executed subcontract/purchase order);
- (iv) Interfacing with TxDOT regarding DBEs' issues and approvals; and
- (v) Carrying out or implementing technical assistance activities with DBE so that the playing field is level for DBE for increased DBE participation.

Contractor DBE liaison officer shall submit a written monthly report detailing the activities and documentation of good faith efforts of the previous month as well as submitting DBE Participation Reports and shall schedule monthly meetings (or more frequently if required) with the TxDOT staff to address any DBE issues or concerns. TxDOT will determine the format, requirements, and content of required written monthly reports.

Contractor is encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

C. Eligibility of DBEs.

The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

Only DBE firms certified at the time commitments are submitted (either with the proposal or later), and at the time of execution of a contract / subcontract / purchase order are eligible to be counted toward achievement of a DBE Goal. For purposes of a DBE Goal, DBEs will only be allowed to perform work in the categories of work for which they are certified. Therefore, the following shall not count toward any DBE Goal: 1) the participation of a firm not certified as a DBE at the time of the execution of the Project Segment Supplement; 2) the dollar value of any work performed under a Project Segment Supplement with a firm after it has ceased to be certified; and 3).

The participation of a DBE subcontractor toward a Contractor's final compliance with its DBE obligations on a Project Segment Supplement shall not count until the amount being counted has actually been paid to the DBE.

D. Determination of DBE Participation. DBE participation will be counted toward meeting a DBE Goal in accordance with the following:

(1) Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE Goal. ~~In the case of an architect/engineer firm, the firm must perform a professional or technical function relating to the Project Segment.~~ 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 subcontractor is itself DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE Goals.

(2) Contractor may count toward its ~~PS~~ DBE Goals contract fees paid to disadvantaged truck owner-operators provided the following requirements are met:

(a) Contractor furnishes TxDOT or his/her designee the following information on each owner-operator to be used:

- (i) Name of owner-operator;
- (ii) Vehicle identification number; and
- (iii) DBE vendor number.

(b) The record of payments to each disadvantaged truck owner-operator, whether paid by Contractor or one of its subcontractors, must be attached to Contractor's monthly report for the respective month to receive credit toward the DBE Goal.

(3) Contractor may count toward a DBE Goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(4) Contractor may count toward a DBE Goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform 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. TxDOT staffing will work with the Contractor DBE liaison officer to perform site visits as required to confirm that DBE contractors are performing a CUF. Contractor will provide monthly CUF reports for all DBE contractors and submit them to TxDOT's District DBE Coordinator for approval.

(5) Consistent with industry practices and TxDOT's DBE program, a DBE subcontractor ~~or subprovider~~ may enter into second-tier subcontracts, amounting to up to 70 percent of their contract. The DBE subcontractor ~~or subprovider~~ must perform not less than 30% of the value of the contract using employees employed and paid directly by the DBE and equipment owned or rented directly by the DBE. Work subcontracted to a non-DBE does not count towards DBE Goals. Brokers and firms with brokerage-type operations will only receive credit for their commission.

(6) A DBE trucking firm is considered to be performing a commercially useful function when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least one fully licensed, insured, and operational truck used on the contract.

(a) Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

(b) The DBE may lease trucks from another DBE firm, including certified disadvantaged truck owner-operators. Contractor receives credit for the total value of the transportation services provided by the lessee.

(c) The DBE may lease trucks from a non-DBE, including owner-operators; however, Contractor may only receive credit for the fee or commission the DBE receives as a result of the lease agreement. The DBE who leases trucks from a non-DBE is entitled to credit for 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. Additional participation by non-DBE lessees 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 TxDOT.

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

(7) When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

(8) Contractor may count toward its DBE Goals expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs assume the actual and contractual responsibility for the provision of the materials, goods and services.

(a) Contractor may count its entire expenditure to a DBE manufacturing material supplier. In order to be considered a manufacturing material supplier, a DBE must operate or maintain a factory or establishment that produces or significantly alters on the premises the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. Brokers, packagers, manufacturers' representatives or other persons who arrange or expedite transactions shall not be regarded as manufacturers. Should the DBE firm obtain the final product(s) provided to Contractor from a source other than its own factory or establishment, then the DBE firm, for that case, will not be considered to be a manufacturing material supplier and its supply work will be credited toward the DBE Goal using an adjustment percentage no greater than that used for a regular dealer.

(b) Contractor may count 60 percent of its expenditures to a DBE regular dealer. In order to be considered a regular dealer, a DBE must conform to the following definition:

(i) "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 in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

(ii) A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it 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 adhoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

(9) Contractor may count toward its DBE Goal the following expenditures to DBE firms that are not manufacturing material suppliers or regular dealers, provided that the fee or commission is determined by TxDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services:

(a) The fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of materials, or supplies required for the performance of the contract.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies.

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.

(10) If Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the Project Segment by the DBE. The material supplier must invoice the DBE who will present the invoice to Contractor. Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement. Contractor must submit to TxDOT a completed Joint Check Approval Form 2178 (Attachment [HM](#)) requesting approval from TxDOT to implement the use of joint check arrangements with the DBE and obtain TxDOT's approval to such use prior to implementing such arrangements. Contractor shall provide copies of cancelled joint checks upon TxDOT's request. No DBE Goal credit will be allowed for the cost of DBE materials that are paid by Contractor directly to the material supplier.

(11) No credit will be given toward a DBE Goal for the cost of materials placed by a DBE firm or for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is effected by making a deduction from Contractor's payment(s) to the DBE firm.

(12) Change orders act as amendments to Project Segment Supplements that can include time, increased and decreased contract values, or changes in scope of work with or without any change in contract values or contract time. When change orders increase the contract value of Project Segment Supplements that include federal funding, the increase in contract value becomes subjected to the same requirements that control the original contract value. This addition to the contract value will require an increase to the total DBE participation requirements based on the DBE Goal percentage requirements as identified in the Project Segment Supplement (5%, 10%, etc.).

E. DBE Progress Reports.

4.4.2 Toll System Services.

~~(a) Contractor will submit monthly "Subprovider Monitoring System DBE Progress Assessment Reports (Attachment E), after Toll System Services work begins, on DBE involvement to meet the goal and for race neutral participation. One copy of the report is to be sent to TxDOT's District DBE Coordinator, and one copy is to be submitted with the invoice for the design work. Only actual payments made to DBE subproviders are to be reported. These reports will be required until all DBE subprovider activity is completed. TxDOT may verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.~~

~~(b) DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing~~

~~period, cumulative payment amount and percentage of the total Project Segment Supplement amount. These reports will be due within fifteen days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.~~

~~(c) Prior to receiving final payment for design work, Contractor must submit a "Subprovider Monitoring System DBE Final Report" form (Attachment F), detailing the DBE payments. The Final Report is to be sent to TxDOT's District DBE Coordinator, and one copy to be submitted with the final invoice for the Work. If the DBE Goal requirement is not met, documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.~~

4.4.3 Construction Work.

(a) Contractor will submit monthly reports, after performance of construction work ~~the Toll Systems Services~~ begins, on DBE payments to meet the DBE Goal and for race-neutral participation. The monthly report is to be sent to the District DBE Coordinator. These reports will be due within fifteen (15) days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. The "DBE Monthly Progress Assessment Report" form (Attachment CG), is to be used for monthly reporting for the construction portion Toll Systems Services for ~~of~~ the Project Segment. TxDOT may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference TxDOT's Project Segment number.

(b) Contractor is required to provide a certification of Prompt Payment, the Prompt Payment Certification Form 2177 (Attachment I), to certify that all subcontractors and suppliers were paid from the previous payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

(c) Failure to submit monthly Prompt Payment Certification Forms may result in withholding payments until Prompt Payment Certification Forms are submitted.

(d) DBE subcontractors and/or material suppliers should be identified on the monthly report by vendor number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

(e) Monthly reports for truck owner-operators should be in the form of a list of truck owner-operators paid that month, including vendor number and the amount of payment made to each.

(f) Prior to receiving final payment for the construction work Toll Systems Services, Contractor must submit the "DBE Final Report" form (Attachment DH). If the DBE Goal requirement is not met, documentation supporting good faith efforts, as outlined in Section X.B, above, must be submitted with the "DBE Final Report".

(g) All such reports will be required until all DBE subcontracting or material supply activity is completed. TxDOT may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference TxDOT's Project Segment Supplement number.

(h) All such records and reports must be retained for a period of three (3) years following completion of the Toll Systems Services for the Project Segment ~~work~~, and shall be available at reasonable times and places for inspection by authorized representatives of TxDOT, TxDOT or the DOT.

F. Compliance of Contractor.

(1) To ensure that DBE requirements of this DOT assisted NTC are complied with, TxDOT will monitor Contractor's efforts to involve DBEs during the performance of each Project Segment Supplement. This will be accomplished by a review of monthly reports submitted to the District DBE Coordinator by Contractor indicating the progress in achieving the applicable DBE Goal for each Project Segment, and by compliance reviews conducted on the Project Segment site by TxDOT staff and by monthly communications with DBE contractors working on the Project Segment.

(2) Contractor shall receive credit toward the DBE Goal based on actual payments to the DBE subcontractor ~~or subprovider~~, with the following exceptions:

(a) A DBE firm is paid but does not assume contractual responsibility for performing the service;

(b) A DBE firm does not perform a commercially useful function;

(c) Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under which credit is claimed;

(d) Payment is made to a broker or firm with a brokering-type operation;

(e) Partial credit is allowed, in the amount of the fee or commission, provided the fee or commission does not exceed that customarily allowed for similar services, for a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.

(3) Contractor must notify the District DBE Coordinator if Contractor withholds or reduces payment to any DBE subcontractor. Contractor must submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the Project Segment.

(4) A request by Contractor for any substitution of DBE subcontractors ~~or subproviders~~ must be accompanied by the DBE Program Substitution Request Form 2228 (Attachment GL), all the required documentation thereunder, and a detailed explanation which should substantiate the need for a substitution. Contractor may not be allowed to count work on those items being substituted toward the DBE Goal prior to TxDOT's approval of the substitution.

(5) Contractor is prohibited from providing work crews and equipment to DBEs. The occasional formal leasing of a major piece of equipment with or without operator by Contractor to a DBE will be considered on a case-by-case basis by TxDOT.

(6) Failure to provide a DBE Performance Plan in compliance with the requirements of this DBE program will render a proposal nonresponsive. Contractor's failure to comply with the requirements of this DBE Program, including failure to comply with its DBE Performance Plan, will constitute a material breach of the NTC. In such a case, TxDOT reserves the right to terminate the NTC; to deduct the amount of DBE Goal not accomplished by DBEs from the money due or to become due Contractor, not as a penalty but as liquidated damages to TxDOT, or such other remedy or remedies as TxDOT deems appropriate.

XI. PROJECT SEGMENT GOALS (§26.45 AND 26.51)

TxDOT has determined that there will be no overall goal for DBE participation under the Agreement. TxDOT will, however, establish a percentage goal for DBE participation for work under the Agreement on a Project Segment by Project Segment basis. The percentage goal for DBE participation for work under any Project Segment (each, a "DBE Goal") will be set forth in the applicable Project Segment Supplement.

It is possible that a DBE Goal will not be set on every Project Segment. The size of the DBE Goal will be adapted to the circumstance of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

TxDOT will express the DBE Goals as a percentages of (1) the total amount of Toll Systems Services and (2) the total amount of Construction work to be performed pursuant to each Project Segment Supplement.

XII. GOOD FAITH EFFORTS (§26.53)

A. Information to be Submitted.

TxDOT will treat Contractor's compliance with good faith effort requirements as a matter of responsibility. Within 10 Business Days of issuance by TxDOT of a draft Project Segment Supplement, Contractor will be required to submit to TxDOT its DBE commitments and evidence of good faith efforts in the prescribed forms, as well as a detailed DBE Performance Plan.

Upon issuance by TxDOT of a draft Project Segment Supplement for which a DBE Goal has been established, Contractor shall submit to TxDOT the following information within 10 Business Days of the issuance of the draft Project Segment Supplement:

(1) To the extent identified, the names and addresses of DBE firms that will participate in performing the Toll Systems Services for the design of the Project Segment work and the names and addresses of DBE firms that will participate as subcontractors in the construction portion of the Project Segment work for such work;

(2) A description of the work that each identified DBE will perform and anticipated start and completion dates for identified DBEs;

(3) The dollar amount of the participation of each identified DBE firm;

(4) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a DBE Goal;

(5) Written and signed confirmation from the identified DBE that it is participating in the contract as provided in the Contractor's commitment;

(6) If Contractor does not meet the DBE Goal, evidence of good faith efforts, including submittal of the Good Faith Effort Form 2184 and documentation required thereunder; and

(7) A DBE Performance Plan containing a detailed description of Contractor's planned methodology for achieving the DBE Goals, including a description of the good faith efforts Contractor intends to undertake to achieve such goals.

Together with its DBE Performance Plan, Contractor must also submit an affidavit that Contractor will either attain the DBE Goal or will exercise good faith efforts to do so.

B. Demonstration of Good Faith Efforts.

The obligation of Contractor is to make good faith efforts. Contractor can demonstrate that it has done so either by meeting the PS-DBE Goals or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26, and are also listed in paragraph X.B., above.

If Contractor does not meet a DBE Goal, TxDOT is responsible for determining whether Contractor has documented sufficient good faith efforts and submitted a sufficient DBE Performance Plan to be regarded as responsible. TxDOT will ensure that all information is complete and accurate and adequately documents Contractor's good faith efforts before TxDOT commits to the performance of the Project Segment Supplement by Contractor.

C. Administrative Reconsideration.

The following provision shall be used unless Title 43, Texas Administrative Code, Chapter 9 provides an alternative process for the administrative review of DBE compliance and sanction issues.

Within 5 days of being informed by TxDOT that it has not 1) documented sufficient good faith efforts or 2) submitted a satisfactory DBE Performance Plan, Contractor may request administrative reconsideration. The administrative hearing officer will not have played any role in the original determination that Contractor did not make document sufficient good faith efforts or submit a satisfactory DBE Performance Plan. The request for reconsideration should be made in writing to the administrative hearing officer and mailed to 125 E. 11th Street, Austin, TX 78701-2483.

As part of this reconsideration, Contractor will have the opportunity to provide written documentation or argument concerning the issues of whether it met the goal or made adequate good faith efforts to do so, and whether it submitted a satisfactory DBE Performance Plan. Contractor will have the opportunity to meet in person with the designated administrative hearing officer to discuss the issues of whether it met the goal or made adequate good faith efforts to do so, and whether it submitted a satisfactory DBE Performance Plan. TxDOT will send to Contractor a written decision on reconsideration, explaining the basis for finding that Contractor did or did not meet the DBE Goal or make adequate good faith efforts to do so, or did not

submit a satisfactory DBE Performance Plan. The result of the reconsideration process is not administratively appealable to TxDOT or DOT.

D. Good Faith Efforts When a DBE is Replaced on a Contract.

TxDOT will require Contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the ~~PS~~ DBE Goal. TxDOT will require Contractor to notify TxDOT's District DBE Coordinator immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, TxDOT will require Contractor to obtain its prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If Contractor fails or refuses to comply in the time specified, TxDOT's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If Contractor still fails to comply, the contracting officer may initiate a termination for default proceeding.

XIII. COUNTING DBE PARTICIPATION (§26.55)

TxDOT will count DBE participation toward DBE Goals as provided in 49 CFR § 26.55.

XIV. CERTIFICATION (§26.83(A))

Only DBE firms certified on TxDOT's statewide TUCP DBE Directory will be eligible to participate as DBEs in the program.

XV. INFORMATION COLLECTION AND REPORTING

A. Monitoring Payments to DBEs.

TxDOT will require Contractor to maintain records and documents of payments to DBEs for three years following the performance of a Project Segment. These records will be made available for inspection upon request by any authorized representative of TxDOT, TxDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

TxDOT will keep a running tally of actual payments to DBE firms for work committed to them in accordance with this NTC DBE Program.

TxDOT will review payments to DBE subcontractors ~~and subproviders~~ to ensure that the actual amount paid to DBE subcontractors ~~and subproviders~~ equals or exceeds the dollar amounts stated in the DBE commitments submitted in accordance with this NTC DBE Program.

B. Confidentiality.

TxDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, TxDOT will not release personal financial information submitted in response to the personal net worth

requirement, to a third party (other than TxDOT or DOT) without the written consent of the submitter.

C. Noncompliance Complaint.

Any person who believes that TxDOT has failed to comply with the NTC DBE program may file a written complaint under 49 CFR Part 26.103. The complaint may be sent to the Federal Highway Administration, 126 Federal Office Building, Austin Texas 78701-3276.

D. Attachments.

~~Attachment A — Subprovider Monitoring System DBE Commitment Worksheet~~

~~Attachment B — Subprovider Monitoring System DBE Commitment Agreement~~

[A1] Attachment ~~AG~~ — DBE Commitment Agreement Form (Construction)

Attachment ~~BD~~ — DBE Prime Contractor Payments to Non-DBE Subcontractor

~~Attachment E — Intentionally Omitted~~

~~Attachment F — Subprovider Monitoring System DBE Final Report~~ [A2]

Attachment ~~CG~~ - DBE Monthly Progress Report (Construction)

Attachment ~~DH~~ — DBE Final Report (Construction)

~~Attachment I — NTC Monthly Commitment Estimate Update~~

Attachment ~~EJ~~ — Form of DBE Performance Plan

Attachment ~~FK~~ — Good Faith Effort Form 2184

Attachment ~~GL~~ — DBE Program Substitution Request Form 2228

Attachment ~~HM~~ — Joint Check Approval Form 2178

Attachment ~~NI~~ — Prompt Payment Certification Form 2177

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
[Name]
[Title]

Date: _____

This NTC Disadvantaged Business Enterprise Program is accepted by:

[TxDOT Representative]

Date: _____

ATTACHMENT A

**Subprovider Monitoring System
DBE Commitment Worksheet**

[A3]

Contract #: _____ Assigned Goal: _____ % Federally Funded: _____ State Funded: _____

Prime Provider: _____ Total Contract Amount: _____

DBE: _____ Vendor ID #: _____ Expiration Date: _____
(First 11 Digits Only)

Subprovider (List All)	Type of Work	Vendor ID # (First 11 Digits Only)	D=DBE Expiration Date	\$ Amount or % of Work
Subprovider(s) Contract or % of Work Totals				

Total DBE Commitment Dollars \$ _____

Total DBE Commitment Percentages of Contract _____%

ATTACHMENT B

Texas Department of Transportation Subprovider Monitoring System DBE Commitment Agreement

[A4] **Complete this Form for each DBE Subprovider**



Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS-4901
(Rev. 06/08)
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

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

Add Row Del Row

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

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

Prime Contractor:		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:	Date:	
E-mail:			
DBE:		Name/Title (please print):	
Vendor No.:		Signature:	
Phone:	Fax:	Date:	
E-mail:			
Subcontractor (if the DBE will be a second tier sub):		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:	Date:	
E-mail:			

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

[Contact/Help](#)

ATTACHMENT AG

Texas Department of Transportation DBE Commitment Agreement Form ~~(Construction)~~



Disadvantaged Business Enterprise (DBE) Program NTC Commitment Agreement Form

Form SMS.4901
(Rev. 11/11)
Page 1 of 1

Project #:		County:		Contract-CSJ:	
Items of work to be performed (attach a list of work items if more room is required):					
Estimated Work Start Date MM/YYYY	Item Description (if known)	Unit of Measure (if known)	Unit Price (if known)	Quantity (if known)	Total Per Item
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
			\$		\$0.00
TOTAL:					\$0.00

The above commitment is an estimate of the type of work and dollar amount of work to be performed by the listed DBE subcontractor. TxDOT acknowledges that this commitment may change with changes in the NTC scope of work. 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 final estimated commitment. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

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

Prime Contractor:	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
E-mail:	
DBE:	Name/Title (please print):
Vendor No.:	Signature:
Address:	
Phone: Fax:	
E-mail:	Date:
Subcontractor (if the DBE will be a second tier sub):	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
E-mail:	
	Date:

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §552.021 and 552.023 of the Texas Government code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all estimates/commitments be presented to the TxDOT assigned Project Manager using this basic format.

[ATTACHMENT E](#)

[\[Intentionally Omitted\]](#)

ATTACHMENT F

Texas Department of Transportation
Subprovider Monitoring System
DBE Final Report

~~[A5] The Final Report Form should be filled out by Contractor and submitted to TxDOT's District DBE Coordinator for review upon completion of the Project Segment. The report should reflect **all design subcontract activity** on the Project Segment. If the DBE Goal requirements were not met, documentation supporting good faith efforts must be submitted.~~

DBE Goal: _____

Total Project Segment Supplement (PSS) Amount: \$ _____

PSS Number: _____

Vendor ID #	Subprovider	Total # Amount Paid to Date
TOTAL		

This is to certify that _____% of the work was completed by the DBE subproviders as stated above.

 By: Contractor

 Per: Signature

Subscribed and sworn to before me, this _____ day of _____, 20____

 Notary Public _____ County

My Commission expires: _____

ATTACHMENT CG

**Texas Department of Transportation
DBE Monthly Progress Report**



Texas Department of Transportation
DBE Monthly Progress Report

Form SMS 4903
(Rev. 07/08)
Page 1 of 1

Project: _____ Contract CSJ: _____
 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)	For TxDOT use Only

- * 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 by the department must be reported to the area engineer.

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

This report must be sent to the area engineer's office within 15 days following the end of the calendar month.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

ATTACHMENT EJ

Form of DBE Performance Plan



Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMB.4901
(Rev. 06/08)
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

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

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

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

Prime Contractor:		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:	Date:	
E-mail:		Date:	
DBE:		Name/Title (please print):	
Vendor No.:		Signature:	
Phone:	Fax:	Date:	
E-mail:		Date:	
Subcontractor (if the DBE will be a second tier sub):		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:	Date:	
E-mail:		Date:	

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

[Contact/Help](#)

ATTACHMENT FK

Texas Department of Transportation
Good Faith Effort Form 2184



Prime Contractor
DBE Good Faith Effort

Form 2184
(Rev. 05/08)
Page 1 of 2

County: CSJ #:

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 by TxDOT or Contractor.
- 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. **(provide documentation on Pg.2)**
- Followed up initial solicitation of interest by contacting DBE to determine interest. **(provide documentation Pg. 2)**

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

If the dollar value of the goal for DBE participation in this project has not been met, the Contractor is required to complete the following questions to describe efforts to obtain DBE participation. Copies of correspondence, return receipts, telephone logs, or other documentation will be required to support good faith efforts. Please provide information for each DBE.

County: CSJ #:

Company Name:

Indicate Specific Work or Materials (by pay item):

Date Contacted:

Fax:

Contact Method (check all that apply): Phone Fax Mail E-mail

DBE Response

No Response

Submitted an acceptable sub-bid

Not interested: Indicate Reason(s)

Needs more information: Date Prime provided requested information

Will provide quote by: Date

Received unacceptable sub-bid Bid Amount \$ Type of Work

Date: Method: Phone Fax Mail E-mail

Please attach bid solicitations and all bid responses

ATTACHMENT G

**Texas Department of Transportation
DBE Program Substitution Request Form 2228**



**Disadvantaged Business Enterprise (DBE) Program
Substitution Request Form**

Form 2228
(Rev. 05/08)
Page 1 of 1

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

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

Use TxDOT Form 2184 if good faith effort is

Contact/Help

ATTACHMENT HM

Texas Department of Transportation
Joint Check Approval Form 2178



DBE JOINT CHECK APPROVAL

Form 2178
(Rev. 05/08)
(GSD-EPC)
Page 1 of 1

CSJ: _____
Project Number: _____
Highway: _____
County: _____
To: _____ District DBE Coordinator

We have received the attached request for the use of a joint check arrangement from _____, a DBE Subcontractor on the subject contract and _____, Material Supplier for the subject contract. The DBE subcontractor has applied for credit with the subject material supplier. The vendor's response is attached. The DBE subcontractor will place all orders to the subject material supplier. We further agree that the DBE Subcontractor retains all final decision-making responsibilities as stated in the Federal DBE Regulation 26.55 (c)(1).

We, as the Contractor for the project, agree to issue joint checks for payment of sums due, on the above referenced project, to pertinent Suppliers of the DBE Subcontractor. We further agree to notify you when the joint checks will be used and will provide the joint check agreement upon your request.

Contractor: _____
Signature: _____
Print Name: _____
Title: _____
Date: _____

Reserved for TxDOT Use Only	
TxDOT District Approval: <input type="checkbox"/> Check for Approval	<input type="checkbox"/> Check for Denial
Signature: _____	Reason for Denial:
Print Name: _____	
Title: _____	
Date: _____	

District Procedures:

1. Provide a copy of the approval or denial for the contractor.
2. Maintain a copy for the files.
3. Conduct reviews of the Contractor and DBE procedures on the use of joint checks.

Contact/Help

ATTACHMENT IN

Texas Department of Transportation
Prompt Payment Certification Form 2177



Prompt Payment Certification
(Federal-Aid Projects)

Form 2177
(Rev. 7/2007)
(GSD-EPC)
Page 1 of 1

In accordance with the requirements of Article 6.e of the DBE special provision and the prompt payment clause under Article 9.6.B and related special provisions, submit this certification form to the Engineer prior to the end of the month following the month payments were received from the department and the month following the month when final acceptance occurred, at the end of the project. (Final submission may be made prior to final acceptance if all subcontractor work and supplier material furnished for the project is complete and the subcontractors and suppliers final payments have been made in full.) The Engineer may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract. This certification is applicable to materials the Contractor purchases to remain as part of the final project and to first tier subcontractors on the project and associated project specific locations. (Subcontractors and suppliers are to comply with the prompt payment requirements.)

Certification

"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."

Project Number: _____ CCSJ: _____
Estimate Period: _____ or _____
Month Year Final Subcontractor and Supplier Payment Date

Signature Title Date
Printed Name: _____

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment	Add Row
		Delete

*Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

This certification is for the department's information only and does not place any obligations on the part of the department with regard to any part, including but not limited to, any subcontractor and Contractor's surety.

[Contact/Help](#)

[Print Form](#)

[NTD: Copy revised Exhibit G to Agreement]