



## **AGENDA**

**REGULAR MEETING OF THE CITY COUNCIL  
City of Garland  
Duckworth Building, Goldie Locke Room  
217 North Fifth Street  
Garland, Texas  
July 21, 2015  
7:00 p.m.**

The City Council extends to each visitor a sincere welcome. We value your interest in your community and your participation in the meetings of this governing body. Regular meetings of the City Council are held the 1st and 3rd Tuesdays of each month, beginning at 7:00 p.m.; the City Council meets regularly in work sessions at 6:00 p.m. the Monday preceding each regular meeting.

The Duckworth Building is wheelchair accessible. Special parking is available on the north side of the building on Austin Street and may be accessed by a sloped ramp from the street to the door facing Fifth Street. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services must contact the City Secretary's Office at (972) 205-2404 at least two working days prior to the meeting so that appropriate arrangements can be made. **BRILLE IS NOT AVAILABLE.**

### **CITY COUNCIL GOALS 2020**

(Adopted by Resolution No. 9402 on December 20, 2005)

- **Sustainable quality development and redevelopment**
- **Financially stable government with tax base that supports community needs**
- **Defends rightful powers of municipalities**
- **Fully informed and engaged citizenry**
- **Consistent delivery of reliable City services**
- **Safe, family-friendly neighborhoods**
- **Embrace diversity**

## MAYORAL PROCLAMATIONS, RECOGNITIONS AND ANNOUNCEMENTS

The Mayor may present proclamations and recognize attendees or award winners, and may make announcements regarding upcoming City events and matters of interest to citizens. There will be no Council deliberations or votes on these matters.

## CONSENT AGENDA

All items under this section are recommended for approval by a single motion of Council, without discussion. Council has been briefed on these items at a previous work session and approval of the consent agenda authorizes the City Manager to implement each item. The Mayor will announce the agenda and provide an opportunity for members of the audience and the City Council to request that an item be removed and considered separately.

1. Consider approval of the minutes of the July 7, 2015 Regular Meeting.

2. Consider approval of the following bids:

a. **Marion Drive Water Line Replacement** **Bid No. 4908-15**

**Tri-Con Services, Inc.** **\$499,999.00**

*This request is to replace approximately 2,700 linear feet of 6" water line with a new 8" PVC water line on Marion Drive. This project includes replacement of water service lines, sodding, pavement markings, driveway approach replacement, and other related items.*

b. **Thermal Imaging Cameras** **Bid No. 5413-15**

**ADH Marketing, Inc.** **\$242,400.00**

*This request is to purchase twenty-four Thermal Imaging Cameras for the Garland Fire Department to use in training and emergency responses.*

**c. Construction Oversight and Field Project Management Bid No. 5469-15**

**TechServ Consulting and Training, Ltd. \$500,000.00**

*This request is to provide construction oversight and field project management services for GP&L Transmission and Distribution Capital Improvement projects. This will be a Term Contract with four optional renewals.*

**d. Sanitary Sewer Improvements Bid No. 5488-15**

**Tri-Con Services, Inc. \$2,217,000.00**

*This request is to construct approximately 3,558 linear feet of 14" HDPE sanitary sewer by directional drill and 709 linear feet of 10" PVC sanitary sewer by open-cut and bore along Wynn Joyce Road from Amy Lane to Oats Road. This project also includes decommissioning of the existing Wynn Joyce Lift Station. The quantities are estimated and may be more or less based on actual needs.*

**e. Professional Engineering Services Roadway Improvements – Oates Road, Broadway to Rosehill Bid No. 5618-15**

**Brown and Gay Engineers \$266,024.00**

*This request is to provide Professional Surveying, Geotechnical, and Engineering Design Services to develop detailed construction plans for roadway improvements along Oates Road from Broadway Boulevard to Rosehill Road.*

**f. Lidar Oversight, Engineering, and Reporting Bid No. 5626-15**

<b>POWER Engineers</b>	<b>\$514,450.00</b>
<b>Optional Contingency</b>	<b><u>51,445.00</u></b>
<b>TOTAL</b>	<b><u>\$565,895.00</u></b>

*This request is to provide Oversight, Engineering, and Reporting of Lidar Services including electronic data modeling for TPA transmission lines in the Gibbons Creek, Garland, and Denton areas. Due to the complex nature of the project, an Optional Contingency is included for additional work that may be required.*

**g. Professional Engineering Services Roadway Bid No. 5627-15  
Improvements – Brand Road, S.H. 190 to Muirfield**

**R-Delta Engineers, Inc. \$615,320.00**

*This request is to provide Professional Surveying, Geotechnical, and Alignment Study and Detailed Construction Plans for roadway improvements for Brand Road between S.H. 190 and Muirfield Road.*

**h. Materials for Transmission Reconstruction Bid No. 5503-15**

<b>Techline, Inc.</b>	<b>\$550,191.97</b>
<b>Optional Contingency</b>	<b>55,000.00</b>
<b>Refundable Reel Deposit</b>	<b><u>38,400.00</u></b>
<b>TOTAL</b>	<b><u>\$643,591.97</u></b>

*This request is to provide the materials necessary for the GP&L Olinger to Wylie East Circuit Transmission Construction project. Due to the complex nature of the project, an Optional Contingency is included for any unforeseen additional materials that may be required.*

- 3. Consider a resolution appointing a successor Paying Agent/Registrar for the certain outstanding obligations of the City; approving and authorizing the execution of Paying Agent/Registrar Agreement or Agreements with said successor Paying Agent/Registrar; and resolving other matters incident and related thereto.**

*At the July 6, 2015 Work Session, Council considered the appointment of a new paying agent and registrar.*

- 4. Consider a resolution consenting to the assignment of a contract for the collection of delinquent taxes and providing an effective date.**

*In accordance with Texas Property Tax Code section 6.30 the City of Garland has contracted with Sydna H. Gordon of Gay, McCall, Isaacks, Gordon & Roberts, P.C. for the collection of delinquent taxes. Whereas, Mrs. Gordon is no longer associated with the firm of Gay, McCall, Isaacks, Gordon & Roberts, P.C. the staff requests that Council consider an ordinance to amend the contract in order to reflect Mrs. Gordon's current firm affiliation of Perdue, Brandon, Fielder, Collins & Mott, LLP.*

5. **Consider a resolution authorizing the City Manager to execute a Memorandum of Understanding with the Texas Department of Transportation regarding adoption of the agency's Federally Approved Disadvantaged Business Enterprise Program; and providing an effective date.**

*At the July 20, 2015 Work Session, Council considered a resolution authorizing the City Manager to enter into a Memorandum of Understanding (MOU) with the Texas Department of Transportation. The MOU will facilitate the City's coordination and adoption of the agency's federally approved Disadvantaged Business Enterprise Program, a contract requirement for the construction of Winters Park/Spring Creek Greenbelt Trail, which is funding from the Federal highway program.*

6. **Consider a resolution approving the sale of real property, 826 Beverly (the "property"); authorizing the Mayor of the City of Garland to execute a deed conveying the property to Sufi Properties, Inc. ("the buyer"); and providing an effective date.**

*At the July 6, 2015 Work Session, Council considered the sale of a City owned property at 826 Beverly Drive to Sufi Properties, Inc. for \$20,226.58.*

7. **Consider a resolution authorizing the Mayor to execute and Abandonment of Easement instrument for the abandonment of a drainage easement in the proposed Winchester Commons subdivision; and providing an effective date.**

*At the July 6, 2015 Work Session, Council considered the abandonment of a variable width Drainage Easement in proposed Winchester Commons addition.*

8. **Consider a resolution authorizing the submission and acceptance of an application to the Bureau of Justice Assistance for a grant under the 2015 Edward Byrne Memorial Justice Assistance Grant Program; and providing an effective date.**

*At the July 20, 2015 Work Session, Council was scheduled to consider a request from the Police Department to apply for the 2015 Edward Byrne Memorial Justice Assistance Grant program for reducing crime and improving public safety.*

9. **Consider a resolution authorizing the City Manager to execute a contract of sale with Texas Health Resources for approximately 14.4 acres of land; and providing an effective date.**

*At the April 6, 2015 Work Session, Staff briefed Council on the purchase of vacant property needed for the construction of a Garland Power & Light (GP&L) substation. This proposed substation will provide transmission service to an ONCOR distribution substation, as well as provide distribution service to future Garland load. The property is located near the intersection of Lookout Drive and Telecom Parkway. At the April 6, 2015 briefing, it was anticipated that slightly more than five acres of land would be needed for the GP&L substation. However, subsequent to the briefing, it has become apparent that due to sizable load growth opportunities in the proposed substation area, additional land will be needed to meet future service demands. Based on current load growth forecasts for the area, approximately fourteen acres of land will be needed for both transmission and distribution electric service from the proposed GP&L substation. In addition to the substation, the land will contain the proposed site for the public safety radio system tower and communications building.*

### **ITEMS FOR INDIVIDUAL CONSIDERATION**

#### **Speaker Regulations:**

**Anyone wishing to speak for, against, or on agenda items must fill out a speaker card and give it to the City Secretary before speaking (cards are located at the entrance to the Council Chambers). The Mayor will recognize speakers; he may impose a time limit and may provide for rebuttal. All comments and testimony are to be presented from the podium.**

10. **Hold public hearings on the following zoning cases:**
  - a. **Consider the application of Mit Patel requesting approval of 1) an amendment to Planned Development District 12-16 for General Business Uses (Community Retail Uses under Ordinance 6773 – Garland Development Code), 2) a Detail Plan and Specific Use Permit for Hotel/Motel, Limited Service and 3) a variance to Section 10-100 of Ordinance No. 4647 regarding parking. This property is located at the**

**southeast corner of Saturn Road and Marketplace Drive. (File No. 15-07, District 5)**

*The applicant requests approval of a Detail Plan and a Specific Use Permit to develop a three-story limited service hotel with 38,231.81 square feet of floor area. The hotel will provide 65 guest rooms and 700 square feet of meeting space.*

- b. Consider the application of GreenbergFarrow requesting approval of a Specific Use Permit (Specific Use Provision) for Retail Sales with gas pumps on a property zoned Freeway District (Community Retail District under Ordinance 6773 – Garland Development Code). This property is located at 555 West I-30 Freeway (on the southwest corner of the Wal-Mart Supercenter parking lot). (File No. 15-17, District 4)**

*The applicant requests approval for a gas station that consists of a 1,200-square foot retail building, a 4,824-square foot canopy over 8 fuel pumps.*

- c. Consider the application of Twenty Eight, Ltd., dba Kwik Kar of Buckingham requesting approval of 1) an amendment of Planned Development District 93-13 for General Business Uses [Commercial Retail District uses under Ordinance 6773] and 2) a Detail Plan for Automotive Repair Minor. This property is located at 810 Buckingham. (File No. 15-22, District 8)**

*The applicant requests approval of a Detail Plan to construct a 1,500 square foot building to house additional automotive repair services.*

- d. Consider the application of K-9 University requesting approval of a Specific Use Provision for Pet Care/Play Facility (indoor) on a property zoned Community Retail District. This property is located at 3349 West Campbell Road. (File No. 15-23, District 1)**

*The applicant requests approval of a Specific Use Provision for Pet Care/Play Facility (indoor) on a property zoned Community Retail District. The proposed use will allow for a facility that will serve nearby residents as well as the surrounding area.*

**11. Consider appointments to Boards and Commissions.**

*Board members are selected for two-year terms by the City Council in August. Terms are usually staggered whereby at least half of the membership has board experience. Board members are appointed based on qualifications.*

Council Member Goebel

- Zaria Dickson – Garland Youth Council
- Erick Zamora – Garland Youth Council

Council Member Stephen W. Stanley

- Stephanie Hernandez – Garland Youth Council
- Katherine Sinclair – Garland Youth Council

Council Member B.J. Williams

- Janie Goheen – Garland Youth Council
- Summer Davis – Garland Youth Council

Council Member Billy Mack Williams

- Dagem Adehena – Garland Youth Council
- Ethan Maxwell Moeck – Garland Youth Council

Mayor Pro Tem Jim Cahill

- Elizabeth Sinclair – Garland Youth Council

**12. Citizen comments.**

*Persons wishing to address issues not on the agenda may have three minutes to address Council at this time. Council is prohibited from discussing any item not posted according to the Texas Open Meetings Act.*

**13. Adjourn.**

*All Regular Council meetings are broadcast live on CGTV, Time Warner Cable Channel 16, and Verizon FIOS TV 44. Meetings are rebroadcast at 9:00 a.m. and 7:00 p.m. on Wednesday-Sunday and at 7:30 p.m. on Thursday. Live streaming and on-demand videos of the meetings are also available online at [www.garlandtx.gov](http://www.garlandtx.gov). Copies of the meetings can be purchased through the City Secretary's Office – audio CD's are \$1 each and DVD's are \$3 each.*

The City Council of the City of Garland convened in regular session at 7:00 p.m. on Tuesday, July 7, 2015, in the Goldie Locke Room at The Duckworth Building, 217 North Fifth Street, Garland, Texas, with the following members present:

**COUNCIL PRESENT:**

Mayor	Douglas Athas
Mayor Pro Tem	Jim Cahill
Deputy Mayor Pro Tem	Marvin 'Tim' Campbell
Council Member	Anita Goebel
Council Member	Stephen Stanley
Council Member	B. J. Williams
Council Member	Billy Mack Williams
Council Member	Lori Barnett Dodson
Council Member	Scott LeMay

**STAFF PRESENT:**

City Manager	Bryan L. Bradford
City Attorney	Brad Neighbor
City Secretary	Eloyce René Dowl

**CALL TO ORDER:**

The meeting was called to order by Mayor Douglas Athas. Council Member Billy Mack Williams led the invocation and Pledge of Allegiance.

**CEREMONIALS**

The Mayor and Council Member Dodson presented a Special Recognition proclamation to the Firefighters of Station No. 3, Shift A (District 6).

The Mayor recognized Boy Scout Armando Sanchez Jr. of Troop 1978, attending for Citizenship in the Community.

**CONSENT AGENDA:**

All items marked with asterisks (\*\*) on the Consent Agenda were voted on at the beginning of the meeting. Mayor Athas read those items into the record. Motion was made by Council Member Billy Mack Williams, seconded by Council Member Dodson, to approve items 1, 2a, 2b, 2d, 2e, 2f, 2g, 3, 4, 5, and 6 . Motion carried, 9 ayes, 0 nays.

Item 2c was pulled for discussion at the request of Council Member Stanley.

**1. APPROVED\*\***

Approval of the minutes of the June 16, 2015 Regular Meeting.

2a. APPROVED\*\* Bid No. 5447-15 to Barnsco, Inc. in the amount of \$131,310.80 for concrete construction materials.

This request is to purchase steel reinforcing bars and other related materials to be used in the Street Department's Concrete Paving Program. This is a Term Contract with one optional renewal.

2b. APPROVED\*\* Bid No. 5577-15 to RCC Consultants, Inc. in the amount of \$497,919.94 for the P25 Radio Implementation Consulting Services.

This request is to award Consulting Services for Phase III of the P25 Radio System Project. The cities of Garland and Mesquite utilized RCC Consultants to complete Phase I Radio Needs Assessment and Phase II RFP.

2c. APPROVED Bid No. 5551-15 to Professional Turf Products, L.P. in the amount of \$157,256.98 for irrigation controller replacements.

This request is to replace twenty-three Irrigation System Controllers at Firewheel Golf Park that were damaged in the recent flooding. The immediate replacement of the controllers was necessary, to not only minimize further losses in revenue, but also avoid additional damage to the Golf Course due to a lack of proper irrigation.

Kevin Slay, Managing Director of Customer Service was the speaker on this item. Motion was made by Council Member Stanley, seconded by Council Member B. J. Williams, to approve item 2c. Motion carried, 9 ayes, 0 nays

2d. APPROVED\*\* Bid No. 5583-15 to Freese and Nichols, Inc. in the amount of \$105,710.00 for Professional Engineering Services.

This request is to provide professional design, geotechnical, and survey services for water improvements along Marketplace Drive. The limits of the project are from Northwest Highway to Saturn Road.

2e. APPROVED\*\*

Bid No. 5474-15 to Techline, Inc. in the amount of \$750,094.00, (includes an optional contingency of \$75,000.00) for a total of \$825,094.00 for the Olinger to Wylie 138 kV Transmission Monopoles.

This request is to provide eighty Steel Transmission Poles and related materials required for the Olinger to Wylie 138 kV transmission line. Due to the complex nature of the project, an Optional Contingency is included for any unforeseen additional work that may be required.

2f. APPROVED\*\*

Bid No. 5597-15 to Lee Lewis Construction, Inc. in the amount of \$4,452,548.00 for the Construction Manager at Risk for Fire Station No. 5.

This request is to provide Construction Manager at Risk services for the demolition of the old Fire Station No. 5 and construction of the new Fire Station No. 5 located at 5626 Lyons Road.

2g. APPROVED\*\*

Bid No. 5586-15 to Kimley-Horn and Associates, Inc. in the amount of \$130,000.00 for Professional Engineering Services.

This request is to provide professional design, geotechnical, and survey services for water and wastewater improvements along and between Profit Drive and Lavon Drive.

3. APPROVED\*\*

Ordinance No. 6787 amending the zoning laws of the City of Garland by approving an amendment to Planned Development District 03-22 for neighborhood office uses and a Detail Plan for Medical and Dental Office/Clinic on a 0.767- acre tract of land located on the east side of Jupiter Road, approximately 140 feet north of the intersection of Jupiter Road and Collins Boulevard; providing for conditions, restrictions, and regulations; and providing for a penalty and an effective date. (File No. 15-13, Houshang Jahvani)

4. APPROVED\*\*

Resolution No. 10207 authorizing the refunding of certain obligations with the proceeds of the "City of Garland, Texas, Combination Tax and Electricity Utility System Revenue Refunding Bonds, Series 2015" or such other obligations as the City may designate; authorizing certain officers to proceed with matters relating to the issuance of such bonds; and resolving other matters incidental and related thereto.

At the June 15, 2015 Work Session, Staff proposed that Council proceed with the sale of Combination Tax and Electric Utility System Revenue Refunding Bonds for the purpose of refunding a portion of TMPA's outstanding revenue refunding bonds, Series 1993.

5. APPROVED\*\*

Approval by minute action authorizing the City Manager to execute an interlocal agreement between the City of Garland and the City of Mesquite for the design, purchase and maintenance of a P25 radio system.

At the June 15, 2015 Work Session, Staff informed Council that the City of Garland and the City of Mesquite each conducted a Public Safety Radio Assessment to determine the future communication requirements of the Cities. Following the assessment, the Cities collectively submitted a Request for Proposal for a joint Public Safety Radio System to serve the needs of the Cities and our existing system participants.

6. APPROVED\*\*

Approval by minute action authorizing the City Manager to execute an interlocal agreement between the City of Garland and Dallas County to allow the Garland Police Department access to the County's TechShare Program for electronic filing of criminal cases with the Dallas County District Attorney's Office.

At the June 1, 2015 Work Session, Council considered accepting a Memorandum of Understanding / Interlocal Agreement (MOU/ILA) with Dallas County on behalf of the Dallas County District Attorney's Office for criminal justice information sharing via Dallas County TechShare Prosecutor.

7. POSTPONED

Consider a resolution supporting the IH-635 East Legislative Delegation's Efforts.

At the July 6, 2015 Work Session, Council considered approving a resolution of the City of Garland supporting the IH-635 East Legislative Delegation's efforts regarding the development of IH-635 East and noise walls along the corridor.

Council agreed by consensus to postpone until after the July 14 Council Retreat.

8. CITIZEN COMMENTS: Gerald Nichols

9. ADJOURN:                    There being no further business to come before the Council,  
Mayor Athas adjourned the meeting at 7:22 p.m.

CITY OF GARLAND, TEXAS

/s/ Douglas Athas, Mayor

/s/ City Secretary



## Purchasing Report

### MARION DRIVE WATER LINE REPLACEMENT OPEN MARKET

**PURCHASE JUSTIFICATION:**

The purpose of this project is to replace approximately 2,700 linear feet of 6" water line with a new 8" PVC water line on Marion Drive. This project includes replacement of water service lines, sodding, pavement markings, driveway approach replacement, and other related items. The quantities are estimated and may be more or less based on actual needs. All work performed will be in accordance with the unit pricing. Funding was approved in the 2015 CIP.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Tri-Con Services, Inc.	All	\$499,999.00
<b>TOTAL:</b>		\$499,999.00

**BASIS FOR AWARD:**

**Lowest Responsible Bid**

Submitted by:  
  
 Gary L. Holcomb, CPPO, C.P.M.  
 \_\_\_\_\_  
 Director of Purchasing

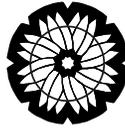
Reviewed by:  
  
 Bryan L. Bradford  
 \_\_\_\_\_  
 City Manager

Date: 07/09/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$ 1,000,000	Operating Budget: <input type="checkbox"/> CIP: <input checked="" type="checkbox"/> Year: 2015
Expended/Encumbered to Date: 0	Document Location: Page W01
Balance: \$ 1,000,000	Account #: 220-4049-3019000-9213
This Item: 499,999	Fund/Agency/Project – Description: Water Commercial Paper CIP / Transmission Mains
Proposed Balance: \$ 500,001	Comments:
Matt Watson 07/13/15 Budget Analyst Date	
Ron Young 07/13/15 Budget Director Date	





# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 4908-15** **Marion Drive Water Line Replacement**

**Recommended Vendor:**

Tri-Con Services, Inc.

**Total Recommended Award:**

\$499,999.00

**Basis for Award:**

Lowest Responsible Bidder

**Purpose:**

The purpose of this project is to replace approximately 2,700 linear feet of 6" water line with a new 8" PVC water line on Marion Drive from Resistol to Melody Ln. This project includes replacement of water service lines, sodding, pavement markings, driveway approach replacement, and other related items.

**Evaluation:**

Requests for bids were issued in accordance with Purchasing procedures. Three (3) bids were received and evaluated. Tri-Con Services, Inc. submitted the lowest overall bid.

**Recommendation:**

Staff recommends awarding the contract to Tri-Con Services, Inc. as the lowest responsible bidder.

**Funding Information:**

220-4049-3019000-9213/CW-190-CP-1-9213

**Department Director:**

Michael C. Polocek, P.E., Director of Engineering, 972-205-2170



## Purchasing Report

### THERMAL IMAGING CAMERAS OPEN MARKET

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to purchase twenty-four (24) Thermal Imaging Cameras (TICs) for the Garland Fire Department to use in training and emergency responses. Funding was approved in the 2014-15 Operating Budget.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
ADH Marketing, Inc.	All	\$242,400.00
<b>TOTAL:</b>		<u>\$242,400.00</u>

**BASIS FOR AWARD:**

**Best Value**

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
 Director of Procurement

Bryan L. Bradford  
 City Manager

Date: 07/09/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$	288,650
Expended/Encumbered to Date:	35,399
Balance: \$	<u>253,251</u>
This Item:	242,400
Proposed Balance: \$	<u>10,851</u>
Trent Schulze	07/10/15
Budget Analyst	Date
Ron Young	07/10/15
Budget Director	Date

Operating Budget: <input checked="" type="checkbox"/>	CIP: <input type="checkbox"/>	Year: <u>FY 2014-15</u>
Document Location:	<u>Page 194</u>	
Account #:	100-1321-9007	\$240,000.00
	100-1321-6003	2,400.00
<b>Fund/Agency/Project – Description:</b>		
General Fund / Fire Department – Thermal Imaging Cameras		
<b>Comments:</b>		

CITY OF GARLAND - BID RECAP SHEET  
 OPENED: 05/28/15  
 REQ. NO. PR 34622  
 BID NO. 5413-15  
 PAGE: 1 of 1  
 BUYER: T. Smith

ADH Marketing, Inc.

Metro Fire

MES

Casco Industries  
Alt. No. 1

Casco Industries  
Alt. No. 2

Casco Industries  
Alt. No. 3

ITEM	QTY	UNIT	DESCRIPTION	ADH Marketing, Inc.		Metro Fire		MES		Casco Industries Alt. No. 1		Casco Industries Alt. No. 2		Casco Industries Alt. No. 3	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	24	ea.	Thermal Imaging Cameras	\$10,100.00	\$242,400.00	\$11,570.00	\$277,680.00	\$11,295.18	\$271,084.32	\$8,184.00	\$204,600.00	\$8,564.00	\$205,536.00	\$9,144.00	\$228,600.00
			Evaluation Criteria:												
			GFD Performance and Functionality	Maximum = 50	50.00		31.10	50.00	38.48			39.17	42.65		
			Price	Maximum = 30	23.00		18.00	19.00	30.00			29.00	26.00		
			References	Maximum = 20	20.00		20.00	0.00	20.00			20.00	20.00		
			Total Score:		93.00		69.10	69.00	88.48			88.17	88.65		
TOTAL GROSS PRICE					\$242,400.00		\$277,680.00		\$271,084.32		\$204,600.00		\$205,536.00		\$228,600.00
CASH DISCOUNT															
TOTAL NET PRICE					\$242,400.00		\$277,680.00		\$271,084.32		\$204,600.00		\$205,536.00		\$228,600.00
F.O.B.					DELIVERED		DELIVERED		DELIVERED		DELIVERED		DELIVERED		DELIVERED
DELIVERY															

NEXT LOW: \$242,400.00  
 LOW: \$228,600.00  
 SAVINGS: \$13,800.00

2046 # BidSync Notifications  
 43 # BidSync HUBS  
 0 # Direct Contact HUBS  
 0 # HUBS Responded

All bids submitted for the designated project are reflected on this bid tab sheet. However, the listing of a bid on this sheet should not be construed as a comment on the responsiveness of such bid or as any indication that the city accepts such bid as responsive. The City will notify the successful bidder upon award of the contract and, according to the law, all bids received will be available for inspection at that time.



# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5413-15** **Thermal Imaging Cameras**

**Recommended Vendor:**

ADH Marketing, Inc.

**Total Recommended Award:**

\$242,400.00

**Basis for Award:**

Best Value

**Purpose:**

The purpose of this contract is to purchase twenty-four (24) Thermal Imaging Cameras (TIC) for the Garland Fire Department to use in training and Emergency Responses.

**Evaluation:**

Requests for bids were issued in accordance with Purchasing procedures. Six (6) bids were received and evaluated based on the published criteria of performance and functionality, price, and references. ADH Marketing, Inc. received the highest evaluated score, offering the best value for the City.

**Recommendation:**

Staff recommends awarding the contract to ADH Marketing, Inc.

**Funding Information:**

100-1321-9007, 100-1321-6003

**Department Director:**

Raymond Knight, Fire Chief, 972-781-7101



## Purchasing Report

### **CONSTRUCTION OVERSIGHT AND FIELD PROJECT MANAGEMENT TERM CONTRACT**

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to provide construction oversight and field project management services for GP&L Transmission and Distribution Capital Improvement projects. This will be a Term Contract with four (4) optional renewals. Funds will be committed to appropriate accounts at time of invoice payment. Expenditures will not exceed appropriated funds.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
TechServ Consulting and Training, Ltd.	All	\$500,000.00
	<b>TOTAL:</b>	<u>\$500,000.00</u>

**BASIS FOR AWARD:**

**Most Qualified**

Submitted by:  
 \_\_\_\_\_  
 Gary L. Holcomb, CPPO, C.P.M.  
 Director of Procurement

Reviewed by:  
 \_\_\_\_\_  
 Bryan L. Bradford  
 City Manager

Date: 07/09/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$ <u>N/A</u>	Operating Budget: <input type="checkbox"/> CIP: <input checked="" type="checkbox"/> Year: <u>2015</u>
Expended/Encumbered to Date: <u>N/A</u>	Document Location: <u>Pages E01, E07, &amp; E09</u>
Balance: \$ <u>N/A</u>	Account #: <u>451-6999</u>
This Item: <u>500,000</u>	<b>Fund/Agency/Project – Description:</b> Term Contract – Electric CIP Fund / Transmission Lines; Distribution Lines - Overhead; & Distribution Lines - Underground
Proposed Balance: \$ <u>N/A</u>	<b>Comments:</b> Term Contract sets price but does not commit funds. Expenses will be charged to accounts as incurred.
Trent Schulze <u>07/10/15</u> Budget Analyst Date	
Ron Young <u>07/10/15</u> Budget Director Date	





# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5469-15** **Construction Oversight and Field Project Management**

**Recommended Vendor:**

TechServ Consulting and Training, Ltd.

**Total Recommended Award:**

\$500,000.00

**Basis for Award:**

Most Qualified

**Purpose:**

The purpose of this contract is to provide construction oversight and field project management services for GP&L Transmission and Distribution projects. This will be a term contract with four (4) optional renewals.

**Evaluation:**

Requests for qualifications were issued in accordance to Purchasing procedures. TechServ Consulting and Training Ltd. was the only vendor response and was determined qualified to meet the needs of the City.

**Recommendation:**

Staff recommends awarding the contract to TechServ Consulting and Training Ltd.

**Funding Information:**

Blanket Account 451-6999

**Department Director:**

Ross Owen, Transmission & Distribution Director, 972-205-3532



## Purchasing Report

### SANITARY SEWER IMPROVEMENTS OPEN MARKET

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to construct approximately 3,558 linear feet of 14" HDPE sanitary sewer by directional drill and 709 linear feet of 10" PVC sanitary sewer by open-cut and bore along Wynn Joyce Road from Amy Lane to Oates Road. This project also includes decommissioning of the existing Wynn Joyce Lift Station. The quantities are estimated and may be more or less based on actual needs. All work performed will be in accordance with the unit pricing. Funding was approved in the 2015 Capital Improvement Program.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Tri-Con Services, Inc.	All	\$2,217,000.00
<b>TOTAL:</b>		<u>\$2,217,000.00</u>

**BASIS FOR AWARD:**

**Lowest Responsible Bid**

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
\_\_\_\_\_  
Director of Procurement

Bryan L. Bradford  
\_\_\_\_\_  
City Manager

Date: 07/09/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$ <u>2,532,075</u>	Operating Budget: <input type="checkbox"/> CIP: <input checked="" type="checkbox"/> Year: <u>2015</u>
Expended/Encumbered to Date: <u>29,004</u>	Document Location: <u>Page WW10</u>
Balance: \$ <u>2,503,071</u>	Account #: 237-4149-3217400-9305 237-4149-3217407-9305
This Item: <u>2,217,000</u>	Fund/Agency/Project – Description: Wastewater Revenue Bond CIP / Lift Station Abandonment
Proposed Balance: \$ <u>286,071</u>	Comments:
Matt Watson <u>07/13/15</u> Budget Analyst Date	
Ron Young <u>07/13/15</u> Budget Director Date	





# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5488-15** **Sanitary Sewer Improvements**

**Recommended Vendor:**

Tri-Con Services, Inc.

**Total Recommended Award:**

\$2,217,000.00

**Basis for Award:**

Lowest Responsible Bid

**Purpose:**

The purpose of this contract is to construct approximately 3,558 linear feet of 14" HDPE sanitary sewer by directional drill and 709 linear feet of 10" PVC sanitary sewer by open-cut and bore along Wynn Joyce Road from Amy Lane to Oates Road. This project also includes decommissioning of the existing Wynn Joyce Lift Station.

**Evaluation:**

Requests for bids were issued in accordance with Purchasing procedures. Two (2) bids were received and evaluated. Tri-Con Services, Inc. submitted the lowest overall bid.

**Recommendation:**

Staff recommends awarding the contract to Tri-Con Services, Inc. as the lowest responsible bidder.

**Funding Information:**

237-4149-3217400-9305, 237-4149-3217407-9305

**Department Director:**

Michael C. Polocek, P.E., Director of Engineering, 972-205-2178



## Purchasing Report

**PROFESSIONAL ENGINEERING SERVICES  
 ROADWAY IMPROVEMENTS – OATES ROAD, BROADWAY TO ROSEHILL  
OPEN MARKET**

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to provide Professional Surveying, Geotechnical, and Engineering Design Services to develop detailed construction plans for roadway improvements along Oates Road from Broadway Boulevard to Rosehill Road. Brown and Gay Engineers was selected as the most qualified firm for this project from a short list of engineers evaluated and ranked by the published criteria in RFQ 3617-13.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Brown and Gay Engineers	All	\$266,024.00
	<b>TOTAL:</b>	<u>\$266,024.00</u>

**BASIS FOR AWARD:**

Most Qualified

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
Director of Procurement

Bryan L. Bradford  
City Manager

Date: 07/08/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$	<u>924,000</u>
Expended/Encumbered to Date:	<u>75,258</u>
Balance: \$	<u>848,742</u>
This Item:	<u>266,024</u>
Proposed Balance: \$	<u>582,718</u>
Matt Watson	<u>07/10/15</u>
Budget Analyst	Date
Ron Young	<u>07/10/15</u>
Budget Director	Date

Operating Budget: <input type="checkbox"/>	CIP: <input checked="" type="checkbox"/>	Year: <u>2015</u>
Document Location:	<u>Page ST06</u>	
Account #:	<u>624-1409-1426104-7101</u>	
Fund/Agency/Project – Description:	<u>2004 GO Bond Program / Engineering / Oates Road - Broadway to Rosehill</u>	
Comments:		





# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5618-15** **Professional Engineering Services**

**Recommended Vendor:**

Brown and Gay Engineers

**Total Recommended Award:**

\$266,024

**Basis for Award:**

Most Qualified

**Purpose:**

The purpose of this contract is to provide professional surveying, geotechnical, and engineering design services to develop detailed construction plans for roadway improvements along Oates road from Broadway Boulevard to Rosehill Road.

**Evaluation:**

Brown and Gay Engineers was selected as the most qualified firm for this project from a short list of engineers evaluated and ranked by the published criteria in RFQ 3617-13.

**Recommendation:**

Staff recommends awarding the contract for Professional Engineering Services to Brown and Gay Engineers.

**Funding Information:**

624-1409-1426104

**Department Director:**

Michael C. Polocek, P.E., Director of Engineering, 972-205-2178



## Purchasing Report

### LIDAR OVERSIGHT, ENGINEERING, AND REPORTING OPEN MARKET

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to provide Oversight, Engineering, and Reporting of Lidar Services including electronic data modeling for TMPA transmission lines in the Gibbons Creek, Garland, and Denton areas. Due to the complex nature of the project, an Optional Contingency is included for additional work that may be required. This project will be performed over three (3) years.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
POWER Engineers Optional Contingency	All	\$514,450.00 51,445.00
	<b>TOTAL:</b>	<b>\$565,895.00</b>

**BASIS FOR AWARD:**

**Most Qualified**

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
Director of Procurement

Bryan L. Bradford  
City Manager

Date: 07/09/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$	2,286,720
Expended/Encumbered to Date:	1,668,019
Balance: \$	618,701
This Item:	263,568
Proposed Balance: \$	355,133
Trent Schulze	07/14/15
Budget Analyst	Date
Ron Young	07/14/15
Budget Director	Date

Operating Budget: <input checked="" type="checkbox"/>	CIP: <input type="checkbox"/>	Year: <u>FY 2014-15</u>
Document Location: <u>Page 212</u>		
Account #: 211-3542-7111 211-3542-7101		
Fund/Agency/Project – Description: Electric Operating Budget		
<b>Comments:</b> Project will be performed over three years. Current year impact will be \$263,568.		





# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5626-15** **TMPA LIDAR Surveying & Processing**

**Recommended Vendor:**

POWER Engineers

**Total Recommended Award:**

\$565,895.00 (includes \$51,445.00 in contingency funding)

**Basis for Award:**

Professional Services – Awarded on Qualifications

**Purpose:**

To provide oversight, engineering, and reporting of LiDar services and electronic data modeling for two hindered seventy (270) miles of TMPA Transmission lines in the Gibbons Creek, Garland and Denton areas.

**Evaluation:**

Awarded based on Professional Services.

**Recommendation:**

Staff recommends POWER Engineers as the engineering firm for the TMPA LIDAR surveying & oversight.

**Funding Information:**

This item will be funded over a three year period out of the TMPA Transmission Operating account 211-3542-7111

**Department Director:**

Ross Owen, Transmission & Distribution Director, 972.205.3532



## Purchasing Report

**PROFESSIONAL ENGINEERING SERVICES  
 ROADWAY IMPROVEMENTS – BRAND ROAD, S.H. 190 TO MUIRFIELD  
OPEN MARKET**

**PURCHASE JUSTIFICATION:**

The purpose of this contract is to provide Professional Surveying, Geotechnical, and Alignment Study and Detailed Construction Plans for roadway improvements for Brand Road between S.H. 190 and Muirfield Road. R-Delta Engineers, Inc., was selected as the most qualified firm for this project from the short list of engineers evaluated and ranked by the published criteria in RFQ 3617-13.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
R-Delta Engineers, Inc.		\$615,320.00
	<b>TOTAL:</b>	<u>\$615,320.00</u>

**BASIS FOR AWARD:**

Most Qualified

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
Director of Procurement

Bryan L. Bradford  
City Manager

Date: 07/08/15

Date: 07/14/15

<b><u>FINANCIAL SUMMARY:</u></b>	
Total Project/Account: \$	<u>1,000,000</u>
Expended/Encumbered to Date:	<u>2,314</u>
Balance: \$	<u>997,686</u>
This Item:	<u>615,320</u>
Proposed Balance: \$	<u>382,366</u>
Matt Watson	07/10/15
Budget Analyst	Date
Ron Young	07/10/15
Budget Director	Date

Operating Budget: <input type="checkbox"/>	CIP: <input checked="" type="checkbox"/>	Year: <u>2015</u>
Document Location:	<u>Page ST19</u>	
Account #:	<u>692-1409-1430214-7101</u> <u>(CA4302-CO-2-7101)</u>	
Fund/Agency/Project – Description:	<u>CO-Funded CIP / Engineering /</u> <u>Brand Road Alignment Study</u>	
Comments:		





# **GARLAND**

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## **PURCHASING**

### **Executive Summary Bid 5627-15 Professional Engineering Services**

**Recommended Vendor:**

R-Delta Engineers, Inc.

**Total Recommended Award:**

\$615,320.00

**Basis for Award:**

Most Qualified

**Purpose:**

The purpose of this contract is to provide professional surveying, geotechnical, alignment study, and detailed construction plans for roadway improvements for Brand Road between SH190 and Muirfield Road.

**Evaluation:**

R-Delta Engineers, Inc. was selected as the most qualified firm for this project from the short list of engineers evaluated and ranked by the published criteria in RFQ 3617-13.

**Recommendation:**

Staff recommends awarding the contract for Professional Engineering Services to R-Delta Engineers, Inc.

**Funding Information:**

692-1409-1430214-7101 (CA4302-CO-2-7101)

**Department Director:**

Michael C. Polocek, P.E., Director of Engineering, 972-205-2178



## Purchasing Report

### MATERIALS FOR TRANSMISSION RECONSTRUCTION OPEN MARKET

**PURCHASE JUSTIFICATION:**

The purpose of this bid is to provide the materials necessary for the GP&L Olinger to Wylie East Circuit Transmission Construction project. Due to the complex nature of the project, an Optional Contingency is included for any unforeseen additional materials that may be required. This is an approved Capital Improvement project, and expenses will not exceed appropriated funds.

**AWARD RECOMMENDATION:**

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Techline, Inc.	All	\$550,191.97
Optional Contingency		55,000.00
Refundable Reel Deposit		38,400.00
	<b>TOTAL:</b>	<b>\$643,591.97</b>

**BASIS FOR AWARD:**

**Lowest Responsible Bid**

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.  
\_\_\_\_\_  
Director of Procurement

Bryan L. Bradford  
\_\_\_\_\_  
City Manager

Date: 07/08/15

Date: 07/14/15

**FINANCIAL SUMMARY:**

<p><b>Total Project/Account:</b> \$ <u>7,359,851</u></p> <hr/> <p><b>Expended/Encumbered to Date:</b> <u>2,264,545</u></p> <hr/> <p><b>Balance:</b> \$ <u>5,095,306</u></p> <hr/> <p><b>This Item:</b> <u>643,592</u></p> <hr/> <p><b>Proposed Balance:</b> \$ <u>4,451,714</u></p> <hr/> <p>Trent Schulze <span style="float: right;">07/10/15</span> Budget Analyst <span style="float: right;">Date</span></p> <hr/> <p>Ron Young <span style="float: right;">07/10/15</span> Budget Director <span style="float: right;">Date</span></p>	<p><b>Operating Budget:</b> <input type="checkbox"/> <b>CIP:</b> <input checked="" type="checkbox"/> <b>Year:</b> <u>2015</u></p> <hr/> <p><b>Document Location:</b> <u>Page E01</u></p> <hr/> <p><b>Account #:</b> 210-3599-3140901-6051 (EC-T409-003-16051)</p> <hr/> <p><b>Fund/Agency/Project – Description:</b> Electric CIP Fund / Transmission Lines</p> <hr/> <p><b>Comments:</b></p>
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# **GARLAND**

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## **PURCHASING**

### **Executive Summary** **Bid 5503-15** **Materials for Transmission Reconstruction**

**Recommended Vendor:**

Techline, Inc.

**Total Recommended Award:**

\$643,591.97

**Basis for Award:**

Lowest Responsible Bid

**Purpose:**

The purpose of this bid is to provide the materials required for the GP&L Olinger to Wylie East Circuit Transmission Construction Project.

**Evaluation:**

Requests for bids were issued in accordance with Purchasing procedures. Three (3) bids were received and evaluated. MVA Power was apparent low bidder, but quoted unapproved alternate manufacturers and did not include the requested bid bond. Texas Electric Cooperatives was apparent second low bidder, but did not quote on all of the requested materials. Techline Inc. was selected as the lowest responsible bidder quoting all items and meeting all requirements of the specifications.

**Recommendation:**

Staff recommends awarding to Techline Inc. as the lowest responsible bidder.

**Funding Information:**

CIP 210-3599-3140901-6051 (EC-T0409-003-1-6051).

**Department Director:**

Ross Owen, Transmission & Distribution Director, 972-205-3532



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## Appointment of a Paying Agent and Registrar

### Summary of Request/Problem

At the July 6, 2015 Work Session, Council considered the appointment of a new paying agent and registrar.

### Recommendation/Action Requested and Justification

It is recommended that Council approve a Resolution to appoint Amegy Bank National Association as the paying agent and registrar for the City's bonded debt.

**Submitted By:**

**David Schuler**  
Chief Financial Officer

**Approved By:**

**Bryan L. Bradford**  
City Manager

**A RESOLUTION appointing a successor Paying Agent/Registrar for the certain outstanding obligations of the City; approving and authorizing the execution of Paying Agent/Registrar Agreement or Agreements with said successor Paying Agent/Registrar; and resolving other matters incident and related thereto.**

WHEREAS, the City Council (the "City Council") of the City of Garland, Texas (the "City") has heretofore issued Obligations identified on Schedule I (the "Obligations") and The Bank of New York Mellon Trust Company, N.A. ("BONY"), currently serves as Paying Agent/Registrar for the Obligations pursuant to certain Paying Agent/Registrar Agreements (the "Agreements"); and

WHEREAS, the City desires to terminate the Agreements with BONY and appoint Amegy Bank National Association ("Amegy") as a successor Paying Agent/Registrar for the Obligations pursuant to the ordinances authorizing the issuance of the Obligations (the "Ordinances") and the Agreements; and

WHEREAS, the City hereby finds and determines that the termination of the Agreements with BONY and the appointment of Amegy as Paying Agent/Registrar for the Obligations will not disrupt, delay or otherwise adversely affect the payment of the Obligations; and

WHEREAS, the City Manager and Director of Financial Services are each hereby authorized to provide the requisite notice to the appropriate persons at BONY to effectuate the transfer of Paying Agent/Registrar services to Amegy; and

WHEREAS, a form of the written agreement with Amegy setting forth the duties and responsibilities of the Paying Agent/Registrar for such Obligations, has been prepared and submitted to the City Council for approval and authorization to execute; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

SECTION 1: Amegy is hereby appointed as the successor Paying Agent/Registrar for the Obligations in accordance with the terms and provisions of the Ordinances and the Agreements. The form of "Paying Agent/Registrar Agreement" by and between the City and Amegy, attached hereto as Exhibit A, is hereby approved as to form and content with such changes approved by the Mayor, City Manager or Director of Financial Services, such approval to be evidenced by the signature of the Mayor, City Manager or Director of Financial Services. The Mayor, City Manager and Director of Financial Services and City Secretary are each hereby authorized and directed to execute such Agreement in substantially the form and content herein approved for and on behalf of the City and as the act and deed of this City Council.

SECTION 2: The City shall cause to be sent to each registered owner by United States Mail, first class postage prepaid the requisite written notice that Amegy has been appointed as the successor Paying Agent/Registrar for the Obligations; such notice to read substantially in the form and content of Exhibit B attached hereto and to be sent to each Holder, which notice shall also give the address of Amegy as the new Paying Agent/Registrar.

SECTION 3: The City Manager or the Director of Financial Services is hereby authorized to provide a copy of this Resolution to the appropriate person at BONY to inform this entity that it has been replaced by the City as the Paying Agent/Registrar for the Obligations.

This notice shall state that the effective date of this transfer is September 21, 2015 which is at least 60 days from the date hereof.

SECTION 4: The City Manager or the Director of Financial Services shall coordinate with BONY and Amegy to ensure the Security Registers, as defined in the Agreements, applicable to the Obligations; together with other pertinent books and records pertaining to the Obligations, currently maintained at BONY are transferred in a timely manner to Amegy in order to allow this entity to assume the functions as successor Paying Agent/Registrar for the Obligations.

SECTION 5: The City Council hereby authorizes the Director of Financial Services, the City Manager or the Assistant City Manager to pay BONY any outstanding fees and expenses owed by the City and to coordinate the delivery of all funds held by BONY to Amegy to effectuate the transfer of paying agent/registrar services.

SECTION 6: The City Council hereby authorizes the City Manager or Director of Financial Services to cause an appropriate notice to be filed with the Municipal Securities Rulemaking Board regarding the change to the Paying Agent/Registrar for the Obligations pursuant to this Resolution.

*[remainder of page left blank intentionally]*

PASSED AND APPROVED, this July 21, 2015.

CITY OF GARLAND, TEXAS

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Mayor

ATTEST:

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City Secretary

(City Seal)

SCHEDULE I

Title	Original Par Amount (\$)	Dated Date
City of Garland, Texas, General Obligation Refunding Bonds, Series 2015A	22,695,000	2/1/2015
City of Garland, Texas, General Obligation Refunding Bonds, Taxable Series 2015B	22,490,000	2/1/2015
City of Garland, Texas, Electric Utility System Revenue Refunding Bonds, New Series 2015	15,355,000	2/1/2015
City of Garland, Texas, General Obligation Refunding Series 2014A	34,215,000	11/1/2014
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2014	13,475,000	6/1/2014
City of Garland, Texas, Electric Utility System Revenue Refunding Bonds, New Series 2014	85,305,000	6/1/2014
City of Garland, Texas, Water and Sewer System Revenue Refunding and Improvement Bonds, New Series 2014	38,175,000	6/1/2014
City of Garland, Texas, General Obligation Refunding Bonds, Series 2014	18,450,000	1/15/2014
City of Garland, Texas, General Obligation Refunding Bonds, Series 2013	12,280,000	5/1/2013
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2013	12,725,000	5/1/2013
City of Garland, Texas, Electric Utility System Revenue Refunding Bonds, Series 2013	11,790,000	5/1/2013
City of Garland, Texas, Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2013	29,925,000	5/1/2013
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2012	6,755,000	6/1/2012
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2012	8,415,000	6/1/2012

City of Garland, Texas, General Obligation Refunding Bonds, Series 2011A	17,995,000	11/1/2011
City of Garland, Texas, General Obligation Refunding Bonds, Series 2011B	41,360,000	11/1/2011
City of Garland, Texas, Electric Utility System Revenue Refunding Bonds, Series 2011A	20,830,000	11/1/2011
City of Garland, Texas, Water and Sewer System Revenue Refunding Bonds, Series 2011A	30,150,000	11/1/2011
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2011	4,260,000	6/15/2011
City of Garland, Texas, Electric Utility System Revenue Bonds, Series 2011	7,185,000	6/15/2011
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2011	19,205,000	6/15/2011
City of Garland, Texas, General Obligation Refunding Bonds, Series 2011	10,860,000	2/1/2011
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010	3,205,000	4/15/2010
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2010	21,270,000	4/15/2010
City of Garland, Texas, Combination Tax and Electric Utility System Revenue Refunding Bonds, Series 2010	126,885,000	3/1/2010
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009	22,985,000	5/15/2009
City of Garland, Texas, Electric Utility System Revenue Bonds, Series 2009	11,760,000	5/15/2009
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2009	18,090,000	5/15/2009
City of Garland, Texas, General Obligation Refunding Bonds, Series 2008A	57,760,000	6/15/2008

City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2008	15,965,000	6/15/2008
City of Garland, Texas, Electric Utility System Revenue Bonds, Series 2008	10,115,000	6/15/2008
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2008	39,900,000	6/15/2008
City of Garland, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2007	16,975,000	3/15/2007
City of Garland, Texas, Electric Utility System Revenue Bonds, Series 2007	21,050,000	3/15/2007
City of Garland, Texas, Water and Sewer System Revenue Bonds, Series 2007	29,070,000	3/15/2007
City of Garland, Texas, General Obligation Refunding Bonds, Series 2007A	67,385,000	2/15/2007

EXHIBIT A  
FORM OF PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT B

NOTICE TO HOLDERS  
OF CHANGE IN PAYING AGENT/REGISTRAR

Amegy Bank National Association has been appointed successor Paying Agent/Registrar for the obligations set forth in Schedule I attached hereto, effective September 21, 2015. The address for such Paying Agent/Registrar is as follows:

Amegy Bank National Association  
2601 Dallas Parkway  
Plano, Texas 75093

Dated this \_\_\_\_\_, 2015.

David Schuler  
Director of Financial Services  
City of Garland  
200 N. Fifth Street  
Garland, Texas 75040



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## AMEND DELINQUENT TAX COLLECTION CONTRACT

### Summary of Request/Problem

In accordance with Texas Property Tax Code section 6.30 the City of Garland has contracted with Sydna H. Gordon of Gay, McCall, Isaacks, Gordon & Roberts, P.C. for the collection of delinquent taxes. Whereas, Mrs. Gordon is no longer associated with the firm of Gay, McCall, Isaacks, Gordon, & Roberts, P.C. the staff requests that Council consider an ordinance to amend the contract in order to reflect Mrs. Gordon's current firm affiliation of Perdue, Brandon, Fielder, Collins & Mott, LLP.

### Recommendation/Action Requested and Justification

Approve an resolution to amend the delinquent collections contract to reflect Mrs. Sydna H. Gordon's current firm affiliation of Perdue, Brandon, Fielder, Collins & Mott, LLP.

**Submitted By:**

**Kevin Slay  
Managing Director  
Tax, Municipal Court, Customer Service**

**Approved By:**

**Bryan L. Bradford  
City Manager**

**RESOLUTION NO.**

**A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A CONTRACT FOR THE COLLECTION OF DELINQUENT TAXES AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, by contract executed on or about October 18, 1994 (the "Contract"), as amended on or about November, 2006, the City has contracted with Sydna H. Gordon of Gay, McCall, Isaacks, Gordon & Roberts, P.C. for the collection of delinquent taxes;

**WHEREAS**, the law firm of Gay, McCall, Isaacks, Gordon & Roberts, P.C. has requested the City's written consent to the assignment of the Contract to the law firm of Perdue, Brandon, Fielder, Collins & Mott, LLP; and

**WHEREAS**, the proposed assignment of the contract will continue the tax collection and legal services being provided to the City; and

**WHEREAS**, Sydna H. Gordon of Perdue, Brandon, Fielder, Collins & Mott, LLP will continue operation of the tax collections at the same location in Garland at which Gay, McCall, Isaacks, Gordon & Roberts, P.C. has conducted tax collections for the City; and

**WHEREAS**, the attorneys providing the tax collection services for the City will continue to provide these legal services with Perdue, Brandon, Fielder, Collins & Mott, LLP;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**Section 1**

That the City Council hereby consents to the assignment of the Contract, as amended, to Sydna H. Gordon of Perdue, Brandon, Fielder, Collins & Mott, LLP, effective July 1, 2015.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the \_\_\_\_\_ day of July, 2015.

**CITY OF GARLAND, TEXAS**

Mayor

**ATTEST:**

City Secretary



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## CONSIDER MEMORANDUM OF UNDERSTANDING WITH TEXAS DEPARTMENT OF TRANSPORTATION

### Summary of Request/Problem

The City Council is requested to consider a resolution authorizing the City Manager to enter into a Memorandum of Understanding (MOU) with the Texas Department of Transportation (TxDOT). The MOU will facilitate the City's coordination and adoption of the agency's federally approved Disadvantaged Business Enterprise Program (DBE Program), a contract requirement for the construction of Winters Park/Spring Creek Greenbelt Trail, which is funding from the Federal highway program.

The project construction documents include special provisions for the contractor's execution and compliance with the requirements of TxDOT's DBE program.

Council received written briefing on this item at their Work Session of July 20 and a resolution is brought forth for consideration.

#### Attachments:

Resolution

Exhibit 'A' MOU TxDOT DBE

Attachments referenced in TxDOT MOU, Items 5(f) and 10

### Recommendation/Action Requested and Justification

The Council is requested to consider the attached resolution authorizing the City Manager to execute a Memorandum of Understanding with the Texas Department of Transportation, adopting the agency's federally approved Disadvantaged Business Enterprise program, as required for construction of City projects using Federal highway funding.

#### Submitted By:

**Warren Bird, Recreation Director  
Parks, Recreation & Cultural Arts**

#### Approved By:

**Bryan L. Bradford  
City Manager**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE TEXAS DEPARTMENT OF TRANSPORTATION REGARDING ADOPTION OF THE AGENCY'S FEDERALLY APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

**Section 1**

That the City Manager is hereby authorized to execute a Memorandum of Understanding with the Texas Department of Transportation, regarding the adoption of the State's Federally approved Disadvantaged Enterprise Business Program as required for a Local, Federally-funded project, substantially in the form attached hereto as Exhibit "A" and incorporated herein.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this the \_\_\_ day of \_\_\_\_\_, 2015.

CITY OF GARLAND, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary



**EXHIBIT 'A'**

**MEMORANDUM OF UNDERSTANDING  
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF  
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM BY THE CITY OF GARLAND**

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)**, an agency of the State of Texas; and THE CITY OF GARLAND, a political subdivision of the State of Texas.

Whereas, from time to time THE CITY OF GARLAND receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist THE CITY OF GARLAND with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, THE CITY OF GARLAND, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFR 26 (DBE Program); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of THE CITY OF GARLAND's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, THE CITY OF GARLAND and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, THE CITY OF GARLAND desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and THE CITY OF GARLAND find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to THE CITY OF GARLAND's adoption of the TxDOT DBE's Program to meet the federal requirements;

Now, therefore, TxDOT and THE CITY OF GARLAND, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) THE CITY OF GARLAND is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The THE CITY OF GARLAND receives its federal assistance through TxDOT. As a sub-recipient, THE CITY OF GARLAND has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as THE CITY OF GARLAND, adopt the DBE program, administered through TxDOT, and THE CITY OF GARLAND by its prescribed protocol adopted the TxDOT DBE Program as of the date when adoption occurred.

(3) This MOU evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by THE CITY OF GARLAND to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for THE CITY OF GARLAND and for TxDOT.

(5) THE CITY OF GARLAND and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by THE CITY OF GARLAND :

(a) THE CITY OF GARLAND will be responsible for project monitoring and data reporting to TxDOT. THE CITY OF GARLAND will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to THE CITY OF GARLAND .

(b) THE CITY OF GARLAND will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. THE CITY OF GARLAND's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. THE CITY OF GARLAND and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with THE CITY OF GARLAND in an effort to meet the timing and other requirements of THE CITY OF GARLAND projects.

(d) THE CITY OF GARLAND will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on THE CITY OF GARLAND construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) THE CITY OF GARLAND will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. THE CITY OF GARLAND and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. THE CITY OF GARLAND shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. THE CITY OF GARLAND will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement  
Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

(g) THE CITY OF GARLAND will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding THE CITY OF GARLAND's administration of the DBE Program through TxDOT.

(h) THE CITY OF GARLAND will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs.

THE CITY OF GARLAND and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in THE CITY OF GARLAND area.

(j) THE CITY OF GARLAND will submit DBE semi-annual progress reports to TxDOT.

(k) THE CITY OF GARLAND will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on THE CITY OF GARLAND projects in the DBE Education and Outreach Programs.

(l) The Executive Director of THE CITY OF GARLAND will implement all federal requirements, including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1, THE CITY OF GARLAND shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of Sate highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights (OCR).

(n) THE CITY OF GARLAND will comply with 49 CFR 26.29 as stated in Attachment F.

(6) In the event there is a disagreement between TxDOT and THE CITY OF GARLAND about the implementation of the TxDOT DBE Program by THE CITY OF GARLAND the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by THE CITY OF GARLAND can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.

(7) This MOU becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this MOU is terminated for any reason, THE CITY OF GARLAND will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This MOU applies only to projects for which THE CITY OF GARLAND is a sub-recipient of federal funds through TxDOT. THE CITY OF GARLAND may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. THE CITY OF GARLAND may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this MOU are also incorporated as if fully set out herein for all purposes:

Attachment A – FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B – SPECIAL PROVISION – LOCAL GOVERNMENT / RMA / NON-STANDARD CONTRACTS

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F1 – DBE Regulations: 49 CFR Part 26

Attachment F2 – DBE Special Provisions 000-1966

Attachment F3 – TxDOT's Organizational Chart

Attachment F4 – Measurement and Payment Special Provision 009-007

Attachment F5 – Texas Unified Certification Program (TUCP) DBE directory  
example and website address to the directory

Attachment F6 – DBE Goal Methodology

Attachment F7 – DBE Bidder Certification

Attachment F8 – DBE Joint Check Approval Form

Attachment F9 – TUCP Standard Operating Procedures (SOP)

Attachment F10 – TUCP Memorandum of Agreement (MOA)

Attachment F11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this MOU shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by

registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

THE CITY OF GARLAND

Bryan L. Bradford  
City Manager

Hand Delivery:

200 N. Fifth Street, 4th Floor, Garland, TX 75040

Registered or Certified Mail (Return receipt requested):

P.O. BOX 469002, Garland, TX 75046-9002

TEXAS DEPARTMENT OF TRANSPORTATION

DBE Liaison  
Office of Civil Rights  
Address: 125 E. 11th Street  
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This MOU may be modified or amended only by written instrument, signed by both

THE CITY OF GARLAND and the TxDOT and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however,

THE CITY OF GARLAND and TxDOT may mutually agree to terminate this MOU.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This MOU shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in duplicate originals by TxDOT and THE CITY OF GARLAND, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

THE CITY OF GARLAND

By: \_\_\_\_\_  
LtGen J.F. Weber, USMC (Ret)  
Executive Director

By: \_\_\_\_\_  
Bryan L. Bradford  
City Manager

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

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

# Attachment 1



## 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
<b>Total</b>					

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.**

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



## Attachment 3



### DBE Final Report

Form SMS 4804  
(Rev. 07/08)  
Page 1 of 1

The DBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all DBE activity on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project: \_\_\_\_\_ Contract CSJ: \_\_\_\_\_  
 County: \_\_\_\_\_ Control Project: \_\_\_\_\_  
 Letting Date: \_\_\_\_\_ DBE Goal: \_\_\_\_\_ %  
 Contractor: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Vendor number	Name of DBE Sub/Supplier	*RC or RN	** DBE goal – total \$ amt pd to date	*** \$ amt pd to non-DBE 2nd tier subs & haulers	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.
- \*\*\* DBE subcontractors paid to non-DBE subcontractors/haulers.

This is to certify that \_\_\_\_\_ % of the work was completed by Disadvantaged Business Enterprises as stated above.

By \_\_\_\_\_ Per: \_\_\_\_\_  
Name of General Contractor Contractor's Signature

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_

\_\_\_\_\_  
Notary Public County

My commission expires: \_\_\_\_\_

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 4**



**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
------	--------------------------

\*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.

**Clarification of FHWA's Oversight Role in Accessibility**



# Memorandum

U.S. Department of Transportation

**Federal Highway Administration**

**Subject:** ACTION: Clarification of FHWA's Oversight Role in Accessibility  
**Date:** 9-12-06

**From:** Frederick D. Isler  
Associate Administrator for Civil Rights  
King W. Gee  
Associate Administrator for Infrastructure

**Reply to Attn of:** HCR-1  
HIF-1

**To:** Associate Administrators  
Chief Counsel  
Chief Financial Officer  
Directors of Field Services  
Resource Center Director and Operations Managers  
Division Administrators  
Federal Lands Highway Division Engineers

The Federal Highway Administration (FHWA) recognizes the need for the transportation system to be accessible to all users. The purpose of this memorandum is to clarify FHWA's role and responsibility to oversee compliance on pedestrian access required by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Since 1978, FHWA has promoted accessible transportation systems through technical assistance and guidance on ADA and Section 504. In addition, accessibility improvements are eligible for Federal-aid funding.

The FHWA is responsible for implementation of pedestrian access requirements from the ADA and Section 504. This is accomplished through stewardship and oversight over all Federal, State, and local governmental agencies ("public agencies") that build and maintain highways and roadways, whether or not they use Federal funds on a particular project.

## Policy

In February 2000, the FHWA issued a policy providing technical guidance to integrate facilities for pedestrians, including persons with disabilities, into the transportation infrastructure. The guidance can be found at [www.fhwa.dot.gov/environment/bikeped/design.htm#d4](http://www.fhwa.dot.gov/environment/bikeped/design.htm#d4).

The ADA and Section 504 do not require public agencies to provide pedestrian facilities. However, where pedestrian facilities exist they must be accessible. Furthermore, when public agencies construct improvements providing access for pedestrians, the completed project also must meet accessibility requirements for persons with disabilities to the maximum extent feasible.

## Planning

Title 23 requires that long-range transportation plans and transportation improvement programs, in both statewide and metropolitan planning processes, provide for the development and integrated management and operation of accessible transportation systems and facilities.

Additionally, State DOTs and Metropolitan Planning Organizations (MPOs) must certify (at least biennially for State DOTs and annually for MPOs) that the transportation planning process is being carried out or conducted in accordance with all FHWA, Federal Transit Administration and other

applicable Federal statutory and regulatory requirements [see 23 CFR 450.220 and 23 CFR 450.334, respectively]. Further, 23 CFR 450.316(b)(3) requires the metropolitan planning process to identify actions necessary to comply with the ADA and Section 504.

### **Transition Plans**

The ADA and Section 504 require State and local governments with 50 or more employees to perform a self-evaluation of their current services, policies, and practices that do not or may not meet ADA requirements. The public agency must develop a Transition Plan addressing these deficiencies. This plan assesses the needs of persons with disabilities, and then schedules the required pedestrian accessibility upgrades. The Transition Plan is to be updated periodically, with its needs reflected in the processes utilized by State DOTs, MPOs, and transit agencies to develop the Statewide Transportation Improvement Programs and metropolitan Transportation Improvement Programs.

### **Projects**

Public agencies should work to meet accessibility requirements throughout the project delivery process. Issues surrounding pedestrian accessibility should be addressed at the earliest stage possible to reduce or prevent conflicts with other right-of-way, planning, environmental, and design considerations. This could include the acquisition of right-of-way and use of special plan details for specific locations to remove barriers. Projects requiring pedestrian accessibility include projects for new construction and projects altering existing street and highway facilities.

### **New Construction**

All projects for new construction that provide pedestrian facilities must incorporate accessible pedestrian features to the extent technically feasible, without regard to cost. The development process should ensure accessibility requirements are incorporated in the project.

### **Alterations**

Alterations shall incorporate accessibility improvements to existing pedestrian facilities to the extent that those improvements are in the scope of the project and are technically feasible, without regard to cost. Projects altering the usability of the roadway must incorporate accessible pedestrian improvements at the same time as the alterations to the roadway occur. See *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S.C. 1033 (1994). Alterations are changes to a facility in the public right-of-way that affect or could affect access, circulation, or use by persons with disabilities.

The FHWA has determined that alterations are projects that could affect the structure, grade, function, and use of the roadway. Alteration projects include reconstruction, major rehabilitation, structural resurfacing, widening, signal installation, pedestrian signal installation, and projects of similar scale and effect.

### **Maintenance**

Maintenance activities are not considered alterations. Therefore, maintenance projects do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. The U.S. Department of Justice (DOJ) and the courts consider maintenance activities to include filling potholes. The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. Maintenance activities include, but are not limited to, thin surface overlays (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems.

As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel open and usable for persons with disabilities, throughout the year. This includes snow and debris removal, maintenance of pedestrian traffic in work zones, and correction of other disruptions. Identified accessibility needs should be noted and incorporated into the transition plan.

### **Accessibility Design Criteria for Sidewalks, Street Crossings, and Trails** **Sidewalks and Street Crossings**

Where sidewalks are provided, public agencies shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings. 28 CFR 35.151(c), referencing 28 CFR Part 36, App. A, ADA Accessibility Guidelines (ADAAG). The FHWA encourages the use of ADAAG standards. If pedestrian signals are provided, they must have a reasonable and consistent plan to be accessible to persons with visual disabilities.

Sidewalks and street crossings generally should use the guidelines the Access Board is proposing for public rights-of-way. The FHWA distributed an information memorandum on November 20, 2001, stating that *Designing Sidewalks and Trails, Part II, Best Practices Design Guide* can be used to design and construct accessible pedestrian facilities. This report provides information on how to implement the requirements of Title II of the ADA. *Designing Sidewalks and Trails for Access* is the most comprehensive report available for designing sidewalks and street crossings and contains compatible information on providing accessibility with information published by the Access Board in the ADAAG. This report can be found at [www.fhwa.dot.gov/environment/sidewalk2](http://www.fhwa.dot.gov/environment/sidewalk2).

When the Access Board completes guidelines for public rights-of-way and they are adopted by the United States Department of Transportation and DOJ as standards under the ADA and Section 504, they will supersede the currently used standards and criteria.

When Federal-aid highway program funds are used for parking facilities, or buildings such as transit facilities, rest areas, information centers, transportation museums, historic preservation projects, or other projects where pedestrians are expected, the project must meet the current applicable accessibility standards, whether or not the project is within the public right-of-way. The ADAAG includes special provisions for building alterations and for historic preservation projects.

### **Shared Use Paths and Trails**

The design standards for shared use paths and trails are specific to the function of the path or trail:

- Shared use paths and pedestrian trails that function as sidewalks shall meet the same requirements as sidewalks. Where shared use paths and pedestrian trails cross highways or streets, the crossing also shall meet the same requirements as street crossings, including the provision of detectable warnings.
- Shared use paths and pedestrian trails that function as trails should meet the accessibility guidelines proposed in the Access Board's *Regulatory Negotiation Committee on Accessibility for Outdoor Developed Areas Final Report* found at [www.access-board.gov/outdoor/outdoor-rec-rpt.htm](http://www.access-board.gov/outdoor/outdoor-rec-rpt.htm). This report also has guidelines for Outdoor Recreation Access Routes (routes connecting accessible elements within a picnic area, camping area, or a designated trailhead).
- Recreational trails primarily designed and constructed for use by equestrians, mountain bicyclists, snowmobile users, or off-highway vehicle users, are exempt from accessibility requirements even though they have occasional pedestrian use.

Most trailside and trailhead structural facilities (parking areas, restrooms) must meet the ADAAG standards.

### **Technical Feasibility and Cost**

When constructing a new transportation facility or altering an existing transportation facility, a public agency should consider what is included within the scope of the project. For elements that are within the scope of the project, the ADAAG provides that "Any features of a...facility that are being altered and can be made accessible shall be made accessible [i.e., made to conform with ADAAG] within the scope of the alteration." ADAAG 4.1.6(j). The only exception to this rule is where conformity with ADAAG is "technically infeasible," meaning that "existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame [e.g., in the case of a highway project, a bridge support]; or because other existing physical or site constraints prohibit modification of addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility." ADAAG 4.1.6(j).

Where making an alteration that meets accessibility requirements is technically infeasible, the public agency must ensure that the alteration provides accessibility to the "maximum extent feasible." If a public agency believes that full ADAAG compliance is technically infeasible, the public agency should document that the proposed solution to the problem meets the "maximum extent feasible" test. With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, DOJ guidance provides that under ADAAG standards "cost is not a factor." DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). Consequently, if the accessibility improvement is technically feasible, the public agency must bear the cost of fully meeting ADAAG standards.

However, cost may be a factor in determining whether to undertake a stand-alone accessibility

improvement identified in a Transition Plan. For example, if an existing highway, not scheduled for an alteration, is listed in the public agency's Transition Plan as needing curb cuts, the public agency may consider costs that are "unduly burdensome." The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost.

If the project alters any aspect of the pedestrian route, it must be replaced with accessible facilities. Additional work outside of the scope and limits of the project altering a facility is at the discretion of the agency. However, any features not conforming to ADA requirements outside the project scope should be added to the Transition Plan.

### **FHWA Responsibilities**

The FHWA is responsible for ensuring public agencies meet the requirements of the ADA and Section 504 for pedestrian access for persons with disabilities. Under DOJ regulations, FHWA divisions must work with their State DOTs, MPOs, and local public agencies to ensure ADA and Section 504 requirements are incorporated in all program activities for all projects within the public right-of-way regardless of funding source. Program activities include project planning, design, construction, and maintenance. Furthermore, FHWA is responsible for ensuring accessibility requirements for projects that are not within public right-of-way, but use funding through FHWA. This includes parking areas, information centers, buildings, shared use paths, and trails. Divisions have a legal responsibility to work with State agencies or other recipients to ensure ADA and Section 504 requirements are incorporated into all projects using funding through FHWA.

For all projects that use Federal funds as part of the financing arrangements, the division offices need to periodically:

- Review those projects, where they have oversight responsibilities, for accommodation of pedestrians. The divisions shall not approve Federal funding for projects that do not adequately provide pedestrian access for persons with disabilities where the project scope and limits include pedestrian facilities in the public right-of-way.
- Review the Stewardship Agreement to ensure pedestrian accessibility requirements are included, as appropriate.
- Review the State DOT, MPO, and/or local jurisdiction processes, procedures, guidelines, and/or policies that address ADA in transportation planning and programming processes and how accessibility commitments are addressed in transportation investment decisions.
- Assist transportation agencies in updating their Transition Plans. The United States Department of Transportation Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and Transition Plan of Federal-aid recipients (49 CFR 27.11). The ADA deadline for completing the accessibility improvements within the Transition Plan was in 1995. For those State and local governments that have not performed the self-evaluation and prepared a plan, it is critical that they complete the process.
- Encourage and facilitate training for FHWA personnel on accessible pedestrian features.
- Ensure pedestrian accessibility compliance through periodic program reviews of recipients' highway planning, design, and construction activities.
- In addition, the Federal Lands Highway Divisions should ensure that each direct Federal construction project fulfills both policy guidance on pedestrian access and meets the minimum ADA and Section 504 accessibility requirements.

For all highway, street and trail facilities, regardless of whether Federal funds are involved, the division offices need to:

- Perform onsite review of complaints about accessibility and report the findings of the review to HCR-1.
- Make presentations and offer training on pedestrian accessibility at meetings, conferences, etc.

- In contacts with State and local officials, encourage them to develop procedures for incorporating pedestrian accessibility into their projects.

### **Additional Information and Resources**

A Web site with questions and answers concerning recurring issues, training opportunities, and background legal information on FHWA's responsibilities under the ADA and Section 504 is located at <http://www.fhwa.dot.gov/civilrights/index.htm>. This memorandum has been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

Questions concerning these obligations may be directed to:

- For Accessibility Policy: Candace Groudine, Bob Cosgrove, Office of Civil Rights
- For Design Standards: William A. Prosser, Office of Program Administration
- For Trails: Christopher Douwes, Office of Natural and Human Environment
- For Construction and Maintenance: Christopher Newman, Office of Asset Management
- For Legal: Lisa MacPhee, Office of the Chief Counsel



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United States Department of Transportation - **Federal Highway Administration**

## ☒ Questions and Answers About ADA/Section 504

These questions and answers are presented to help FHWA and its State and local transportation department partners better understand roles and responsibilities to provide accessible transportation facilities under the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Section 504). These questions and answers are derived from extensive experience and input from the FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty. Like all guidance material, these questions and answers are not, in themselves, legally binding and do not constitute regulations. These Q&As explain the FHWA's position on the implementation of the ADA and Section 504. These questions and answers have been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

The FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty developed these questions and answers and approved them as consistent with the language and intent of the ADA and Section 504. The questions and answers outlined in this document are to be applied to Federal, State, and local governmental agencies; hereafter called "public agencies" or "agencies."

### Public Agencies covered by ADA and Section 504

1. What authority requires public agencies to make public right of way accessible for all pedestrians with disabilities?
2. What do these statutes require public agencies to do?
3. Does the ADA require public agencies to provide pedestrian facilities?
4. What is FHWA's responsibility for assuring access for persons with disabilities?
5. What public agencies must provide accessible pedestrian walkways for persons with disabilities?
6. Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?
7. What United States Department of Justice (USDOJ) and United States Department of Transportation (USDOT) regulations govern accessibility requirements?
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25. For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?
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## **Criteria**

33. What accessibility training is available?
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## **Public Agencies covered by ADA and Section 504**

1. *What authority requires public agencies to make public right-of-way accessible for all pedestrians with disabilities?*  
Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164). The laws work together to achieve this goal. (9-12-06)
2. *What do these statutes require public agencies to do?*  
These statutes prohibit public agencies from discriminating against persons with disabilities by excluding them from services, programs, or activities. These statutes mean that the agency must provide pedestrian access for persons with disabilities to the agency's streets and sidewalks, whenever a pedestrian facility

exists. Regulations implement this requirement by imposing standards for accessible features such as curb cuts, ramps, continuous sidewalks, and detectable warnings. (9-12-06)

3. *Does the ADA require public agencies to provide pedestrian facilities?*

No. However, when a public agency provides a pedestrian facility, it must be accessible to persons with disabilities to the extent technically feasible.

4. *What is FHWA's responsibility for assuring access for persons with disabilities?*

FHWA is responsible for ensuring access for persons with disabilities in four areas:

1. For surface transportation projects under direct FHWA control (e.g., Federal Lands projects): FHWA is responsible for ensuring that project planning, design, construction, and operations adequately address pedestrian access for people who have disabilities.
2. For Federally funded surface transportation projects that provide pedestrian facilities within the public right-of-way: FHWA is responsible for ensuring that the public agencies' project planning, design, and construction programs provide pedestrian access for persons with disabilities. FHWA-funded projects outside of the public right-of-way, such as Transportation Enhancement projects, must also adhere to these requirements.
3. For pedestrian facilities within the public right-of-way, or any other FHWA enhancement project, regardless of funding source: FHWA is responsible for investigating complaints. 28 CFR §§ 35.170 – 35.190.
4. FHWA should provide or encourage accessibility training for Federal, State, and local agencies and their contractors.

FHWA does not have ADA oversight responsibilities for projects outside of the public right-of-way that do not use Federal surface transportation program funds. (9-12-06)

5. *What public agencies must provide accessible pedestrian walkways for persons with disabilities?*

All State and local governmental agencies must provide pedestrian access for persons with disabilities in compliance with ADA Title II. 42 U.S.C. §12131(1). Federal, State, and local governments must provide pedestrian access for persons with disabilities in compliance with Section 504 standards. 29 U.S.C. §794(a). (9-12-06)

6. *Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?*

No. The public agency is responsible for providing access for persons with disabilities. Private entities with joint responsibility for a public right-of-way, such as a private tenant on public property, are responsible for accessibility for persons with disabilities on the public right-of-way under Title II of ADA. The lease or other document creating this legal relationship should commit the private party to ensuring accessibility. In addition, public/private partnership relationships for the public right-of-way retain accessibility obligations to persons with disabilities under Title II. If the private entity eventually takes over the right-of-way in its entirety, then the private entity becomes responsible for accessibility for persons with disabilities under the private entity's obligations under Title III of the ADA. (9-12-06)

7. *What United States Department of Justice (DOJ) and United States Department of Transportation (DOT) regulations govern accessibility requirements?*

The DOJ ADA regulation is 28 CFR Part 35. The DOT Section 504 regulation at 49 CFR Part 27 governs public agencies, with the ADA incorporated at 49 CFR §27.19. Additional regulations drafted specifically for recipients of the Federal Transit Administration are at 49 CFR Part 37. (9-12-06)

8. *What is FHWA's authority to implement ADA and Section 504 requirements?*

The DOJ regulations designate the DOT as the agency responsible for overseeing public agencies' compliance with the ADA. 28 CFR §35.190(b)(8). The DOT has delegated to the FHWA the responsibility to ensure ADA compliance in the public right-of-way and on projects using surface transportation funds. (9-12-06)

9. *What is the public right-of-way?*

The public right-of-way consists of everything between right-of-way limits, including travel lanes, medians, planting strips, sidewalks, and other facilities. (9-12-06)

## **Transition plans**

10. *What authority requires public agencies to make transition plans?*

The ADA requires public agencies with more than 50 employees to make a transition plan. 28 CFR §35.150(d). (9-12-06)

11. *What should a transition plan include?*

The transition plan must include a schedule for providing access features, including curb ramps for walkways. 28 CFR §35.150(d)(2). The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. 28 CFR §35.150(d)(2). The transition plan should accomplish the following four tasks:

1. identify physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
2. describe in detail the methods that will be used to make the facilities accessible;
3. specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan; and
4. indicate the official responsible for implementation of the plan. 28 CFR §35.150(d)(3). (9-12-06)

12. *How does the transition plan relate to a public agency's transportation planning process?*

The ADA transition plan is intended to identify system needs and integrate them with the State's planning process. The transition plan and its identified needs should be fully integrated into the public agency's Statewide Transportation Improvement Program (STIP) and metropolitan Transportation Improvement Program (TIP). Agencies should incorporate accessibility improvements into the transportation program on an ongoing basis in a variety of ways:

1. Any construction project that is programmed must meet accessibility requirements when built.
2. Accessibility improvements identified in the transition plan that are not within the scope of an alteration project should be incorporated into the overall transportation planning process. This can be accomplished through the development of stand-alone accessibility projects.
3. As a means to identify ADA compliance needs, during scheduling maintenance activities, the agencies should identify ADA accessibility needs and incorporate them into the overall transportation planning process. (9-12-06)

13. *What public agencies must make a transition plan?*

The ADA requires any public agency with more than 50 employees to make a transition plan setting forth the steps necessary to make its facilities accessible to persons with disabilities. 28 CFR §35.150(d). (9-12-06)

14. *When should the FHWA review an agency's transition plan?*

DOT Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11). The FHWA Division offices should review pedestrian access compliance with the ADA and Section 504 as part of its routine oversight activities as defined in their stewardship plan. (9-12-06)

15. *When and how should a transition plan be updated?*

An agency's transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. 28 CFR §35.105. The plan should be updated periodically to ensure the ongoing needs of the community continue to be met. The transition plan should be coordinated appropriately with the STIP and the TIP. Changes to the plan shall be made available to the public for comment. The public agency should specifically target any local community groups representing persons with disabilities for comment, to ensure that the agency is meeting the local priorities of the persons with disabilities in that community. If a public agency has never completed a transition plan, the Division should inform the public agency to complete a transition plan now and review that public agency's completed transition plan.

The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process. (9-12-06)

## **Projects Covered by the ADA and Section 504**

16. *What projects must provide pedestrian access for persons with disabilities?*

Any project for construction or alteration of a facility that provides access to pedestrians must be made accessible to persons with disabilities. 42 U.S.C. §§ 12131 - 12134; 28 CFR §§ 35.150, 35.151; **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)

17. *What projects constitute an alteration to the public right-of-way?*

An alteration is a change to a facility in the public right-of-way that affects or could affect access, circulation, or use. Projects altering the use of the public right-of-way must incorporate pedestrian access improvements within the scope of the project to meet the requirements of the ADA and Section 504. These projects have the potential to affect the structure, grade, or use of the roadway. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal

installation and upgrades, and projects of similar scale and effect. (9-12-06)

18. *What activities are not considered to be alterations?*

The DOJ does not consider maintenance activities, such as filling potholes, to be alterations. The DOJ does consider resurfacing beyond normal maintenance to be an alteration. DOJ's ADA Title II Technical Assistance Manual, § II-6.6000, 1993.

The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. These activities include, but are not limited to, thin surface treatments (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems. (9-12-06)

## Timing of Accessibility Improvements

19. *Does a project altering a public right-of-way require simultaneous accessibility improvements?*

Yes. An alteration project must be planned, designed, and constructed so that the accessibility improvements within the scope of the project occur at the same time as the alteration. 29 CFR § 35.151; *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994).

The ADA does not stipulate how to perform simultaneous accessibility improvements. For example, a public agency may select specialty contractors to perform different specialized tasks prior to completion of the alteration project or concurrently with an ongoing project. (9-12-06)

20. *When does the scope of an alteration project trigger accessibility improvements for people with disabilities?*

The scope of an alteration project is determined by the extent the alteration project directly changes or affects the public right-of-way within the project limits. The public agency must improve the accessibility of only that portion of the public right-of-way changed or affected by the alteration. If a project resurfaces the street, for accessibility purposes the curbs and pavement at the pedestrian crosswalk are in the scope of the project, but the sidewalks are not. Any of the features disturbed by the construction must be replaced so that they are accessible. All remaining access improvements within the public right-of-way shall occur within the schedule provided in the public agency's planning process. (9-12-06)

21. *Do maintenance activities require simultaneous improvements of the facility to meet ADA standards?*

No. Maintenance activities do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. However, in the development of the maintenance scope of work identified accessibility needs should be incorporated into the transition process. (9-12-06)

22. *When should accessible design elements be incorporated into projects in the public right-of-way?*

FHWA encourages the consideration of pedestrian needs in all construction, reconstruction, and rehabilitation projects. If a public agency provides pedestrian facilities, those facilities must be accessible to persons with disabilities. A public agency is not relieved of its obligation to make its pedestrian facilities accessible if no individual with a disability is known to live in a particular area. This is true regardless of its funding source. DOJ's ADA Title II Technical Assistance Manual, § II-5.1000, 1993. (9-12-06)

## Cost

23. *How does cost factor into a public agency's decision in its transition plan concerning which existing facilities must comply with ADA and Section 504 pedestrian access requirements?*

For existing facilities requiring accessibility improvements as scheduled in the transition plans, the public agency must provide accessibility improvements unless the cost of the upgrades is unduly burdensome. The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost. 28 CFR Part 35, App. A, discussion at §35.150, ¶¶ 4 – 7. The decision that pedestrian access would be unduly burdensome must be made by the head of a public agency or that official's designee, accompanied by a written statement of the reasons for the decision. 28 CFR §35.150(a)(3). (9-12-06)

24. *For a new project planned outside of the transition plan, with ADA accessibility improvements required to make the facility readily accessible and useable by individuals with disabilities, can cost be a reason not to complete an ADA-required accessibility improvement?*

No. Cost may not be a reason to fail to construct or delay constructing a new facility so that the facility is readily accessible to and useable by persons with disabilities under the ADAAG standards. 28 CFR §35.151(a); see DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(3). (9-12-06)

25. *For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?*

No. Cost may not be a reason for a public entity to fail to complete an ADA-required improvement within the

scope of an alteration project under the ADAAG standards. A public agency must complete any ADA-required accessibility improvements within the scope of an alteration project to the maximum extent feasible. 28 CFR §35.151(b); DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). (9-12-06)

26. *What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?*

In an alteration project, the public agency must incorporate the ADA accessibility standards to the maximum extent feasible. 28 CFR §35.151(b). The feasibility meant by this standard is physical possibility only. A public agency is exempt from meeting the ADA standards in the rare instance where physical terrain or site conditions restrict constructing or altering the facility to the standard. ADA Accessibility Guidelines 4.1.6(1)(j). Cost is not a factor in determining whether meeting standards has been completed to the maximum extent feasible. DOJ's ADA Title II Technical Assistance Manual, § II-6.3200(3)-(4), 1993. No particular decisionmaking process is required to determine that an accessibility improvement is not technically feasible, but the best practice is to document the decision to enable the public agency to explain the decision in any later compliance review. (9-12-06)

27. *What should a public agency do when it does not control all of the public right-of-way required to provide access for persons with disabilities?*

The public agency should work jointly with all others with interests in the highway, street, or walkway to ensure that pedestrian access improvements occur at the same time as any alteration or new project. The ADA encourages this cooperation by making each of the public agencies involved subject to complaints or lawsuits for failure to meet the ADA and Section 504 requirements. 28 CFR §§ 35.170 – 35.178. (9-12-06)

28. *Can a public agency delay compliance with the ADA and Section 504 on alteration projects through a systematic approach to schedule projects?*

No. All pedestrian access upgrades within the scope of the project must occur at the same time as the alteration. *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)

### Elements of Accessible Design

29. *What are the elements of an accessible design?*

Public agencies have the choice of whether to follow the standards in the ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS). 28 CFR §35.151(c); (appendix A to 28 CFR Part 36). FHWA encourages public agencies to use ADAAG. Under the ADAAG standards, an accessible design to a highway, street, or walkway includes accessible sidewalks and curb ramps with detectable warnings. 28 CFR §35.151(c) and (e) (curb ramps), ADAAG 4.3-4.5 (accessible routes), 4.7 (curb ramps with detectable warnings), 4.29 (detectable warnings). Continuously maintained sidewalks are required by the case of *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002), cert. denied, 123 S.Ct. 2639 (2003). Accessible pedestrian signals and signs must be considered, with a reasonable and consistent plan to facilitate safe street crossings. 28 CFR §35.151(c); 23 U.S.C. §217(g)(2). (9-12-06)

### Funding

30. *What sources of funding may be used to comply with ADA and Section 504 requirements?*

#### Federal Funding Opportunities for Pedestrian Projects and Programs

ACTIVITY	NH S	ST P	HSI P	RH C	T E	CMA Q	RT P	FT A	Tr E	B RI	40 2	PL A	TCS P	FL H	BY W	SRT S
Pedestrian plan		*	*			*						*	*			
Paved shoulders	*	*	*	*	*	*				*			*	*	*	
Shared-use path/trail	*	*	*		*	*	*			*			*	*	*	*

Recreational trail							*							*		
Spot improvement program		*	*		*	*							*			*
Maps		*			*	*					*		*			*
Trail/highway intersection	*	*	*		*	*	*						*	*	*	*
Sidewalks, new or retrofit	*	*	*	*	*	*		*	*	*			*	*	*	*
Crosswalks, new or retrofit	*	*	*	*	*	*		*	*				*	*	*	*
Signal improvements	*	*	*	*	*	*							*			*
Curb cuts and ramps	*	*	*	*	*	*							*			*
Traffic calming		*	*	*									*			*
Safety brochure/book		*			*	*					*		*			*
Training	*	*	*		*	*	*				*		*			*

NHS National Highway System

TrE Transit Enhancements

STP Surface Transportation Program

BRI Bridge (HBRRP)

HSIP Highway Safety Improvement Program

402 State and Community Traffic Safety Program

RHC Railway-Highway Crossing Program

PLA State/Metropolitan Planning Funds

TE Transportation Enhancement Activities	TCSP Transportation and Community and System Preservation Program
CMAQ Congestion Mitigation/Air Quality Program	FLH Federal Lands Highways Program
RTP Recreational Trails Program	BYW Scenic Byways
FTA Federal Transit Capital, Urban & Rural Funds	SRTS Safe Routes to School

32. Each program has its own specific requirements and provisions. Further details on these sources of funding may be found in the following memo: *Flexible Funding for Highways and Transit and Funding for Bicycle & Pedestrian Programs*, February 6, 2006, at [www.fhwa.dot.gov/hep/flexfund.htm](http://www.fhwa.dot.gov/hep/flexfund.htm). (9-12-06)

## Maintenance

31. *What obligation does a public agency have regarding snow removal in its walkways?*  
A public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. 28 CFR §35.133. Part of this maintenance obligation includes reasonable snow removal efforts. (9-12-06)
32. *What day-to-day maintenance is a public agency responsible for under the ADA?*  
As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel on pedestrian facilities open and usable for persons with disabilities, throughout the year. This includes snow removal, as noted above, as well as debris removal, maintenance of accessible pedestrian walkways in work zones, and correction of other disruptions. ADAAG 4.1.1(4). Identified accessibility needs should be noted and incorporated into the transition plan. (9-12-06)

## Criteria

33. *What accessibility training is available?*  
FHWA has the following training courses available:
1. National Highway Institute: Pedestrian Facility Design, Course Number 142045. See [www.nhi.fhwa.dot.gov/training/brows\\_catalog.aspx](http://www.nhi.fhwa.dot.gov/training/brows_catalog.aspx), and search for Course 142045.
  2. Association of Pedestrian and Bicycle Professionals/FHWA: Designing Pedestrian Facilities for Accessibility. See [www.apbp.org](http://www.apbp.org) or contact: Judy Paul at 609-249-0020.
  3. Resource Center Civil Rights Team: Designing Pedestrian Facilities for Accessibility. Contact: Deborah Johnson at 410-962-0089.
34. *Where is information on the criteria to be used in developing accessible facilities?*  
The following list of documents contains resources from several agencies and organizations  
**US Access Board:** The Access Board is the Federal agency responsible for developing ADA design standards. The following publications on accessible pedestrian design are available on the Board's Web site at [www.access-board.gov](http://www.access-board.gov):
- o Accessibility Guidelines (ADAAG)
  - o Notice of Availability of Draft Public Rights-of-Way Guidelines
  - o Accessibility Guidelines Accessible Public Rights-of-Way Design Guide
  - o Pedestrian Access to Roundabouts
  - o Detectable Warnings: Synthesis of US and International Practice
  - o Accessible Pedestrian Signals
  - o Advisory Committee Report: *Building a True Community*
  - o Accessible Public Rights-of-Way

- o Interfacing Accessible Pedestrian Signals and Traffic Signal
- o Controllers

Call 1-800-872-2253, 1-800-993-2822 (TDD) to order the US Access Board Video, *Accessible Sidewalks: Design Issues for Pedestrians with Disabilities*

- o Program 1: Pedestrians who use wheelchairs
- o Program 2: Pedestrians who have ambulatory impairments
- o Program 3: Pedestrians who have low vision
- o Program 4: Pedestrians who are blind

**The Federal Highway Administration:** Pedestrian documents and reports are available at [www.fhwa.dot.gov/environment/bikeped/publications.htm](http://www.fhwa.dot.gov/environment/bikeped/publications.htm). A bicycle and pedestrian publications order form is at [www.fhwa.dot.gov/environment/bikeped/order.htm](http://www.fhwa.dot.gov/environment/bikeped/order.htm).

Research and best practices design publications on pedestrian accessibility:

- o *Designing Sidewalks and Trails for Access, Part I, A Review of Existing Guidelines*, [www.fhwa.dot.gov/environment/sidewalks/](http://www.fhwa.dot.gov/environment/sidewalks/) (electronic formats only: hard copies out of print).
- o *Designing Sidewalks and Trails for Access, Part II, Best Practices Guide*, [www.fhwa.dot.gov/environment/sidewalk2/](http://www.fhwa.dot.gov/environment/sidewalk2/) (electronic formats only: hard copies out of print, HTML version incorporates all the changes listed in the errata sheet: [www.fhwa.dot.gov/environment/bikeped/errata.htm](http://www.fhwa.dot.gov/environment/bikeped/errata.htm)).
- o Design Guidance Accommodating Bicycle and Pedestrian Travel:
- o A Recommended Approach, A DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure.
- o *Manual on Uniform Traffic Control Devices (MUTCD)* provides the standards for traffic control devices and includes guidance on Accessible Pedestrian Signals, Chapter 4E. and Temporary Traffic Control Elements, Chapter 6D. The MUTCD is available at <http://mutcd.fhwa.dot.gov>.
- o Detectable Warnings Memorandum (July 30, 2004).
- o Detectable Warnings Memorandum (May 6, 2002): FHWA and the US Access Board encourage the use of the latest recommended design for truncated domes.

#### Accessible Pedestrian Signals

- o Synthesis and Guide to Best Practices Web site - this Web site provides overall information on installation criteria and design considerations.
- o Synthesis and Guide to Best Practices Article - this article provides the latest recommended technical specifications for installing accessible pedestrian signals.
- o FHWA Pedestrian and Bicycle Safety - includes pedestrian and bicycle safety resources. [http://safety.fhwa.dot.gov/ped\\_bike/ped/index.htm](http://safety.fhwa.dot.gov/ped_bike/ped/index.htm).
- o FHWA Pedestrian and Bicycle Safety Research - provides information on issues and research related to improving pedestrian and bicyclist safety. [www.ffhrc.gov/safety/pedbike/index.htm](http://www.ffhrc.gov/safety/pedbike/index.htm).

#### Other DOT Web sites

- o U.S. Department of Transportation Accessibility Web site - The Department is committed to building a transportation system that provides access for all Americans. See [www.dot.gov/citizen\\_services/disability/disability.html](http://www.dot.gov/citizen_services/disability/disability.html).
- o Bureau of Transportation Statistics (BTS), Freedom to Travel,

([www.bts.gov/publications/freedom\\_to\\_travel/](http://www.bts.gov/publications/freedom_to_travel/)), a report on the travel issues for people who have disabilities.

#### **Institute of Transportation Engineers**

- [Alternative Treatments for At-Grade Pedestrian Crossings](#) (an informational report which documents studies on crosswalks and warrants used by various entities).
- ITE's Web site, [www.ite.org/accessible/](http://www.ite.org/accessible/), has information on accessible intersection design, *Electronic Toolbox for Making Intersections More Accessible for Pedestrians Who are Blind or Visually Impaired*

#### **Informational Web sites**

- Accessible Design for the Blind: information and research on making travel safer and accessible for pedestrians with disabilities, [www.accessforblind.org](http://www.accessforblind.org).
- The Pedestrian/Bicycle Information Center (sponsored by FHWA):
  - [www.walkinginfo.org](http://www.walkinginfo.org)
  - [www.bicyclinginfo.org](http://www.bicyclinginfo.org)

### **Definitions**

#### **Accessible.**

Describes a site, building, facility, or portion thereof that complies with the ADA Accessibility Guidelines. (ADAAG 3.5)

#### **Accessible Route.**

A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts. (ADAAG 3.5)

#### **Accessible Space.**

Space that complies with the ADAAG. (ADAAG 3.5)

#### **Alteration.**

An alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. (ADAAG 3.5)

Further, each facility or part of a facility altered by, on behalf of, or for the use of, a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. (28 CFR §35.151(b))

#### **Circulation Path.**

An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings. (ADAAG 3.5)

#### **Designated agency.**

The Federal agency designated to oversee compliance activities for particular components of State and local governments. (28 CFR §35.104)

#### **Detectable Warning.**

A standardized surface feature built in or applied to walking surfaces or other elements to warn visually

impaired people of hazards on a circulation path. (ADAAG 3.5)

***Discrimination.***

Denying handicapped persons the opportunity to participate in or benefit from any program or activity. (28 CFR §35.149)

***Facility.***

All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site. (28 CFR §35.104; ADAAG 3.5)

***Maximum Extent Feasible.***

In alteration projects, an ADA-required accessibility improvement must be installed to the maximum extent feasible; that is, to the maximum extent technically, or physically, feasible. (ADAAG 4.1.6(1)(j))

***Public Entity.***

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government. (42 U.S.C. §12131)

***Public Facility.***

A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR Part 35 or 49 CFR §§ 37.41, 37.43. (28 CFR §35.104)

***Public Use.***

Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned. (ADAAG 3.5)

***Undue Burden.***

In determining whether financial and administrative burdens are undue in making decisions program-wide in the transition plan, a public agency must consider all of that public agency's resources available for use in the funding and operation of the service, program, or activity. (29 CFR Part 35, App. A, discussion of §35.150, ¶ 6)

This page last modified on May 13, 2008

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United States Department of Transportation - **Federal Highway Administration**

## **Attachment B**

2010 Specifications

### **SPECIAL PROVISION Local Government / RMA / Non-Standard Contracts**

#### **Disadvantaged Business Enterprise in Federal-Aid Construction**

**Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

#### **Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.**

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:
  - a. The prime contractor (Contractor) will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the approved DBE Program, or show a good faith effort to meet the DBE goal for this contract.
  - b. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT financially assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Entity deems appropriate subject to review by the Department.
  - c. The requirements of this Special Provision shall be physically included in any subcontract.
  - d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good

faith effort to meet the commitment. The Entity will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days, excluding national holidays, from receipt of the information outlined in this Special Provision under Article A.3, "Contractor's Responsibilities." If the requirements of Article A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

## **2. Definitions.**

- a. "Department" means the Texas Department of Transportation.
- b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, and including the operating administrations, i.e. the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor at any tier, or Entity and a Contractor at any tier which is paid for in whole or in part with DOT financial assistance.
- d. "Entity" means local government agency, MPO, RMA, etc.
- e. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- f. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26 Subparts D and E.
- g. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of 49 CFR Part 26 Subpart C and this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- h. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- 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.

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 Dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc 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.

\*"Broker" is an intermediary or middleman that does not take possession of a commodity or act as a Regular Dealer selling to the public.

- j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification in their region, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities, including TxDOT, to serve as certifying agents for Texas in specified regions. Applicants for DBE certification may be directed to the TUCP internet site for more information at:

[//www.txdot.gov/business/business\\_outreach/tucp.htm](http://www.txdot.gov/business/business_outreach/tucp.htm)

**3. Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.

- a. After conditional award of the contract, the Contractor shall submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Entity's contracting office not later than 5:00 p.m. on the 10<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed seven (7) business days, excluding national holidays, may be granted based on documentation submitted by the Contractor. The Entity shall submit the DBE Commitment Agreement package to the Department's Office of Civil Rights in Austin, Texas not later than 5:00 p.m. on the 30<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. The DBE Commitment Agreement package is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the contract.

- b. DBE prime contractors who subcontract with DBEs may receive credit toward the DBE goal for work performed by the DBE's own forces and work subcontracted to DBEs. A Contractor must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902. The completed form is provided to the Entity with a copy to the TxDOT District Office responsible for overseeing the project.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. 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.
- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. 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.
  - Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
  - Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
  - A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a Bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the

Contractor to perform the work of the contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractor's efforts to meet the project goal.
  - Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
  - Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - 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.
  - If the Entity determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the TxDOT District Office responsible for overseeing the project. Opportunity for further appeals will be addressed by the TxDOT Office of Civil Rights.
- d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the Entity can take remedial financial action as provided by the Entity's/Department's rules or practices or reference to 43 TAC §9.56, as a guideline when the Entity does not have uniform rules or practices for non-compliance with the terms of its contracts.

All contract and project information shall be submitted directly to the Entity and with a copy to the TxDOT District or Office responsible to oversee the project.

- e. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Article A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor shall make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," and Form No. 2228 "Disadvantaged Business Enterprise (DBE) Request for Substitution for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Entity. Prior to approving the substitution, the Entity will request a statement from the DBE about the circumstances

of its subcontract's termination. The contractor must have a written consent prior to substitution. A copy of all documentation shall be provided to the TxDOT District Office responsible to oversee the project.

- f. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records, reports, efforts and contacts made to subcontract with DBEs.
- g. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

#### **4. Eligibility of DBEs.**

- a. 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.
- b. The Department 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 the Department's OCR. An update of the Directory can be found on the Internet at  
  
<http://www.dot.state.tx.us/business/tucpinfo.htm>.
- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Article A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
- d. Only DBE firms certified at the time of execution of a contract, subcontract, or purchase order are eligible for DBE goal participation.

#### **5. Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the Contractor toward DBE goals:

- a. The total amount paid to the DBE for work performed with the DBE's own forces is counted toward the DBE goal. 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 a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- b. A Contractor may count toward its 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.
  - (1) A Contractor may count toward its 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 CUF 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 CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

A minimum of one CUF Project Site Review (CUFPSR) will be conducted by the Entity using Department Form 2182 on all DBE firms working on the project.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, Contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (if applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

**In all cases, Contractor or other non-DBE subcontractor assistance will not be credited toward the DBE goal.**

- (2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to seventy percent (70%) of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

- (3) A DBE trucking firm who is certified as a DBE is considered to be performing a CUF 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 (1) fully licensed, insured, and operational truck used on the contract.

- (a) The entity shall verify ownership of all trucks prior to commencement of work of the DBE trucking firm.

- (b) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates with drivers it employs.
  - (c) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
  - (d) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. 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 the DBE-owned trucks on its sub-contract. Additional participation by non-DBEs receive credit only for the fee or commission it receives as result of the lease arrangement.
  - (e) 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.
  - (f) The DBE Trucking Firm shall submit Form 2371, "Trucking Credit Worksheet", within 10 calendar days of the end of the month to the Prime Contractor. The prime shall submit a copy of Form 2371 with the DBE Monthly Progress Report.
- (4) When a DBE is presumed not to be performing a CUF the TxDOT District Office responsible to oversee the project will be notified. The DBE may present evidence to rebut this presumption.
- c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE manufacturer is found at Article A.2.h. of this Special Provision.)
  - (2) If the materials or supplies are purchased from a DBE Regular Dealer, count 60% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE Regular Dealer is found at Article A.2.i. of this Special Provision.)
  - (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a Regular Dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the

delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT financially assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- d. Should the DBE firm request assistance in the form of a joint check and the contractor chooses to assist the DBE firm, other than a manufacturing material supplier or Regular Dealer, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The 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 the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Entity, prior to implementing the use of joint check arrangements with the DBE. The Contractor shall submit to the Entity, Joint Check Approval Form 2178 and provide copies of cancelled joint checks to the Entity upon request if the joint check arrangement is approved. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier. A copy of the completed form is to be provided to the TxDOT District Office responsible for overseeing the project.

- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.
- f. No DBE goal credit will be allowed for the period of time determined by the Entity that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the Entity. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable and as required under Article A.3.e.

## **6. Records and Reports.**

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. Report payments made to non-DBE firms. The monthly report is to be

sent to the Entity with a copy to the TxDOT District Office responsible to oversee the project. 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. Form No. SMS.4903, DBE Progress Report, is to be used for monthly reporting. Form No. SMS.4904, DBE Final Report, is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Entity with copies to the TxDOT District Office responsible for overseeing the project and to the TxDOT Office of Civil Rights. These forms may be obtained from the Department or may be reproduced by the Contractor. The Entity 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 the Entity's or Department's project number, as applicable.

- b. 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.
- c. All such records must be retained by the Contractor and the Entity for a minimum of four (4) years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT operating administration.
- d. Prior to receiving final payment, the Contractor shall submit Form No. SMS.4904, DBE Final Report. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Article A.3.c. of this Special Provision, must be submitted with the DBE Final Report. A copy of the completed form is provided to the TxDOT District Office responsible for overseeing the project.

#### **7. Compliance of Contractor.**

- a. To ensure that DBE requirements of this DOT financially assisted contract are complied with, the Entity will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review by the Entity of monthly reports submitted to the Entity by the Contractor indicating his progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by the Entity and by the Department, as needed.
- b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Entity if it withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract. Copies of these documents will be provided to the Entity and to the TxDOT District Office responsible for overseeing the project.

- c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Entity.
- d. The Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies and/or materials from the Contractor or its affiliates is not allowed.
- e. When a DBE subcontractor, named in the commitment under Article A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the Contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
- f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of the contract. In such a case, the Entity or the Department, as appropriate, reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or such other remedy or remedies as the Entity deems appropriate, subject to review by the Department.

**Article B. Race-Neutral Disadvantaged Business Enterprise Participation.**

- 1. **Policy.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means.
  - a. If there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds.
  - b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT financially assisted contracts. Failure by the Contractor to carry out these

requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Entity deems appropriate, subject to review by the Department.

- 2. Reports.** Race-Neutral DBE participation on projects with no DBE goal shall be reported on Form No. SMS.4903, DBE Progress Report and submitted to the Entity each month and at project completion. Copies of payment documents should be sent to the TxDOT District Office responsible for project oversight. Payments to DBE firms are reported on Form No. SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

## Attachment C

### **426.18 What assurances must recipients and contractors make?**

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient 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. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, 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 the recipient of its failure to carry out its approved program, the Department 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 1988 (18 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **ATTACHMENT D**

### **DBE Program Compliance Guidance for Local Government Agencies**

#### **OVERVIEW:**

The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts. The DBE Program applies to a Local Government Agency's highway contracts, funded in part or whole, from federal funds received through TxDOT and the Federal Highway Administration (FHWA). A Local Government Agency (LGA) may use TxDOT's DBE Program through a Memorandum Of Understanding (MOU). The MOU is the agreement that allows LGA's to use TxDOT's DBE Program and identifies the responsibility of each LGA as it pertains to DBE Program.

DBE annual goals are established by the Business Opportunity Programs Office (BOP) for the department's DBE Federal-Aid Highway Construction Programs. Individual contract goals are established by LGA with input from the BOP Office.

The BOP Office is responsible for administering the department's DBE Program. The BOP office, in conjunction with the LGA, will be responsible for monitoring the DBE Program and ensuring compliance. In an effort to effectively monitor the DBE Program, the DBE Program Compliance Guidance has been created and implemented. The LGAs will play a vital role in ensuring proper administration and compliance with the DBE Program.

#### **GENERAL DBE PROGRAM PROCESS:**

Annually, BOP will develop an overall goal for DBE participation in projects receiving federal funds. The objective is to achieve as much of the goal through "race-neutral" means as practical. This means that DBEs will participate in projects in the routine course of business and a specific project goal will not be assigned. If sufficient DBE participation is not anticipated through race-neutral means, "race-conscious" provisions are implemented and individual projects goals are assigned based on the availability of DBE firms to perform work within the scope of the project. In Fiscal Year 2005 and 2006, approximately one-half of the overall goal was achieved by race-neutral means.

The most current version of the DBE Special Provision is included in the bid documents of all federally funded projects. The Provision is divided into race-conscious and race-neutral sections. Race-neutral projects do not have a specific project goal while race-conscious projects will have a minimum goal to be achieved by the contractor to assure compliance with the terms of the

contract. The goal will be a percentage of the contract amount and is listed in the bid documents.

For projects with a goal, the contractor must submit a list of DBE firms the contractor commits to use to fulfill the goal as stated in the DBE Special Provisions. Once approved, this list forms the basis for project monitoring. The LGA monitors all federally funded projects that have DBE work to be counted toward meeting the annual goal. Monitoring is similar for race-neutral and race-conscious projects, but additional steps are required on race-conscious projects when the contractor does not meet the project goal or wants to substitute DBE firms for those listed in the contractor's commitment.

At the end of the project, actual DBE participation is totaled and credited to the annual goal for both race-neutral and race-conscious projects. Monitoring throughout the project gives assurance that credit is given for work accomplished in compliance with the specifications and statutes.

#### **DBE PROGRAM COMPLIANCE GUIDANCE:**

There are three key documents used in implementation and management of the DBE Program; the actual program as approved by FHWA, the current Special Provision to be included in all projects with federal funds, and a TxDOT Standard Operating Procedures Manual (SOP). This SOP contains the following Sections:

- A. DBE Certification Program
- B. Withdrawal, Denial, Surrender, Decertification and Appeal Program
- C. Goal Setting, Counting DBE Participation, and Data Reporting
- D. DBE Commitments, Good Faith Efforts, and Substitutions/Replacements
- E. Joint Check Agreements
- F. Prompt Payment and Retainage Monitoring and Enforcement
- G. Commercially Useful Function Program Review
- H. DBE Third Party Challenges

**SECTION A: DBE CERTIFICATION PROGRAM**  
**SECTION B: WITHDRAWAL, DENIAL, DECERTIFICATION, AND APPEAL**  
**PROGRAM PROCEDURES**

**General:** In regards to Section A and B, the LGA does not have any responsibility regarding the DBE Certification Program as it relates to certification, withdrawal, denial, decertification and certification appeal procedures. As such, Section A and B are not part of the DBE Program Guidance for LGA.

**Local Government Agency Procedures:** The BOP Office and other TUCP Certifying Agencies have primary responsibility for all DBE certification actions. The LGA does not have any direct responsibility but may be requested to provide information or assistance to BOP or other TUCP Certifying Agencies regarding DBEs that are working on LGA federally-funded projects.

The LGA must be familiar with the TxDOT internet site [www.dot.state.tx.us](http://www.dot.state.tx.us), TUCP Directory and use the information as appropriate for their monitoring activities.

## **SECTION C: GOAL SETTING, COUNTING DBE PARTICIPATION, AND DATA REPORTING**

**General:** BOP is responsible for developing TxDOT's annual goal for DBE participation in projects funded by FHWA. The annual goal is comprised of race-neutral and race-conscious participation. For race-conscious participation, the LGA will assign a DBE goal for appropriate projects.

Work completed by a DBE will be counted toward the overall goal if the work is actually performed by the DBE (i.e. the DBE performs a "Commercially Useful Function" (CUF). CUF monitoring is discussed elsewhere in this document.

By special provision, the contractor must maintain certain records and submit certain reports. The contractor's records must be made available to LGA, TxDOT and FHWA on request. The following reports are submitted to LGA:

1. *DBE Program Commitment Agreement Form*
2. *DBE Monthly Project Report*
3. *DBE DBE/HUB Final Report*
4. *Prompt Payment Certification*

### **Local Government Agency Procedures:**

- Step 1** – Receive reports from the various sources and distribute as appropriate. The original of all reports should be kept with the official project records.
- Step 2** – Verify the accuracy of DBE payments by comparing the *DBE Monthly Progress Report* to the *Prompt Payment Certification*.
- Step 3** – Keep a running total of actual payments to DBE firms by entering information from *DBE Monthly Project Report* in subcontractors monitoring system.
- Step 4** – Review the contractor's *DBE DBE/HUB Final Report* to ensure that DBE/SBE contract requirements have been satisfied.

## SECTION D: DBE COMMITMENTS, GOOD FAITH EFFORTS, AND SUBSTITUTION REPLACEMENTS

**General:** This Section does not apply to race-neutral projects.

For projects with a specified percentage DBE goal, contractors make a commitment to meet the goal by signing the proposal and submitting a bid. Once the low bidder is determined and the contract is conditionally awarded, the contractor must submit a *DBE Commitment Agreement Form* or a *Pre-Good Faith Effort Review*. The *DBE Commitment Agreement Form* lists bid items and DBEs the contractor intends to use to fulfill the project DBE goal. The *DBE Commitment Agreement Form* is reviewed by the LGA to determine the appropriate DBE credit that will be allowed for each DBE. DBE Material Suppliers and Truckers have to provide the documentation at the time of commitment that supports the level of DBE credit that will be approved for each DBE. The contractor submits a *Pre-Good Faith Effort Review* if they believe they made every reasonable effort to do so but still cannot commit to meeting the goal. In either case, the form is submitted to the LGA for their action.

During the life of the project, LGA monitors the contractor's progress toward meeting the goal. If it appears that the goal may not be achieved, the contractor must show that they made a Good Faith Effort (GFE) to meet the goal. If justified, the GFE is approved. The contractor may also request that a different firm be substituted for one named in the *DBE Commitment Agreement Form*. The BOP Office will conduct periodic reviews of the LGA's projects to ensure compliance with the DBE Program requirements.

### Local Government Agency Procedures:

#### Contract award

- Step 1** – LGA receives appropriate submission from the contractor and renders final compliance determination. LGA will keep informed of any adverse issues encountered during their review and approval process. After all issues are resolved, LGA approves contractor's commitment, enters information into their subcontractor monitoring system, and notifies the prime, and the DBE of their approval.
- Step 2** – Contractor assures that a copy of *DBE Commitment Agreement Form* or *Notification of Compliance Letter* is transmitted to the project personnel for inclusion in the project records and for use in monitoring during construction.

#### Post GFE Review

- Step 1** – Determine actual goal achievements at the end of the project by reviewing their subcontractor monitoring programs, the

final estimate, and the Contractor's *DBE/HUB Final Report*. If the contractor did not meet the specified DBE goal, start Post GFE review by having the project personnel send the contractor a *Post Award GFE Information Request Letter*.

- **Step 2** – Assist the project personnel as requested in analyzing the contractor's documentation of GFE.
- **Step 3** – If the contractor's GFE is deficient, notify the contractor in writing, giving the contractor an opportunity to appeal the determination and/or provide additional information.
- **Step 4** – Complete a *Post-GFE Review Report* and prepare final disposition. Provide the BOP Office with a copy of the final disposition.

### **Substitutions/Replacements**

- **Step 1** – Review documentation associated with the contractor's request.
  - *DBE Commitment Agreement* for DBE to be substituted. Assure that the contractor provides all of the information requested.
  - Written justification from the contractor listing reasons the DBE is being substituted.
- **Step 2** – Verify accuracy of the contractor's documentation by discussing circumstances with the project personnel as necessary.
- **Step 3** – Request a written statement from the DBE acknowledging they are being replaced. Consider any additional information the DBE may offer.
- **Step 4** – Determine whether the contractor is in compliance with the DBE special provision.
- **Step 5** – Prepare a *Substitution Form* and send to the project personnel for approval.

## SECTION E: JOINT CHECK AGREEMENTS

**General:** The contractor may choose to assist a DBE firm by acting as a guarantor for payment of materials used by a DBE by the use of joint checks. To be eligible, the contractor must make joint checks available to all subcontractors and the DBE must agree to the arrangement. The contractor issues a joint check to the DBE and the material supplier and the DBE must issue the joint check to the material supplier. If approved by the LGA, this arrangement does not count against the DBE goal.

### Local Government Agency Procedures:

- Step 1** – Project personnel receives *DBE Joint Check Approval* from the contractor. Assist the project personnel in determining compliance with the Special Provision as requested. Project personnel sends signed *Approval* to the contractor by letter with copies to the DBE.
- Step 2** – Compare the *DBE Monthly Progress Report* and *Prompt Payment Certification Form* for reasonable consistency.
- Step 3** – Request a copy of cancelled joint checks for the months the contractor issued a joint check to each DBE with an approved *DBE Joint Check Approval*. Review the joint checks to ensure that payment was processed through the DBE.
- Step 4** – If two consecutive reviews for the same DBE show no discrepancies, the LGA may reduce the frequency of requesting copies of cancelled joint checks.
- Step 5** – Submit compliance questions to BOP for assistance as necessary.

## SECTION F: PROMPT PAYMENT AND RETAINAGE MONITORING AND ENFORCEMENT

**General:** The contractor is paid for satisfactorily completed work every month through the monthly estimate process. This payment is for the work the contractor and all subcontractors perform. The contractor must pay subcontractors for the satisfactorily completed work within 10 days after the contractor receives payment for the subcontractors work from LGA.

Retainage is an amount of money withheld to ensure that the contractor fulfills all contract requirements, including submitting all documents at the end of the project. Retainage normally ranges from 3% – 5% of the amount paid and is not released until the final estimate is processed. It is common practice for the contractor to withhold retainage from their subcontractors. However, the contractor must release the total amount retained when the subcontractor satisfactorily completes all their work on the project. Depending on the scope of the subcontract, this may occur long before all work on the contract is finished.

### Local Government Agency Procedures:

- Step 1** – The project personnel receives a monthly *Prompt Payment Certification* from the contractor before the end of the month following receipt of payment from the LGA. This certification is kept in the project records and will be used only for dispute resolution.
- Step 2** – Assist the project personnel as requested in the event a subcontractor alleges they did not receive prompt payment from the contractor. The project personnel must have the complaint in writing.
- Step 3** – During visits to the project site, randomly spot check whether certifications are received in the time specified. Take appropriate action if non-compliance issues are discovered.

## SECTION G: COMMERCIALLY USEFUL FUNCTION REVIEW PROGRAM

**General:** Commercially Useful Function (CUF), is the term used to describe a DBE's independence from the contractor. Over-reliance on a contractor brings a DBE's CUF into question. To perform a CUF, the DBE must be responsible for performing, managing, and supervising the work under its contract. The DBE must also be responsible for negotiating prices for, ordering, installing, and paying for material used in its work.

A contractor may only count the value of the work actually performed by a DBE toward the DBE goal. A DBE may enter into second-tier subcontracts, up to 70% of their contract. Work subcontracted to a non-DBE does not count towards the DBE goals. If the DBE does not perform or exercise responsibility for at least 30% of the total cost of their contract with their own work force, it will be presumed the DBE is not performing a CUF and none of the payments will be counted toward the contract goal.

The DBE Special Provision contains a discussion of when the contractor can count work by a DBE toward the goal.

### Local Government Agency Procedures:

- **Step 1** – For projects with a specified DBE goal, contact the project personnel to ensure there is a copy of the *DBE Program Commitment Agreement Form* on the project.
- **Step 2** – For all projects, ask the project personnel to forward a copy of all completed *CUF On-Site Compliance Review Forms* to the LGA.
- **Step 3** – Project personnel will conduct at least one CUF review with each DBE on the project. Their review is documented using a *CUF On-Site Compliance Review Form* and should be performed as soon as practical after the DBE starts work on the project.
- **Step 4** – Periodically review the *DBE Monthly Progress Report* to assure that the the initial CUF review is conducted on the project in a timely manner. Contact the project personnel to discuss delays in receipt of CUF reviews. Provide assistance to the project personnel as requested and as work schedule allows.
- **Step 5** – Project personnel should observe DBE work as part of their normal inspection function. If the DBE's practices change after the initial CUF review, the project personnel should complete the *CUF Project Site Review*.
- **Step 6** – Periodically visit the project site after CUF monitoring starts. Discuss project personnel responsibilities and answer any questions the project personnel poses. As time allows, conduct a CUF review with project personnel and document using the *CUF Project Site Review form*. Explain "red flags" to project personnel to enhance their understanding of CUF.

- **Step 7** – Collect questions concerning CUF and submit to LGA with supporting documentation for their action. LGA will document their determination and will transmit the final determination to the contractor and the DBE. Forward to the project personnel for inclusion in the project records.

BOP will conduct periodic reviews of projects to monitor the LGA's compliance with CUF requirements.

## **SECTION H: DBE THIRD PARTY CHALLENGES**

**General:** Anyone has the right to challenge the eligibility of a DBE firm. The challenge must be in writing and contain information to support the challenge. Responsibility for resolving the challenge lies with the TUCP certifying agency that initially certified the DBE's eligibility.

### **Local Government Agency Procedures:**

- **Step 1** – Forward any third party challenges received by the LGA to BOP. BOP will be responsible for identifying the appropriate TUCP certifying agency that will handle the disposition of this challenge.

# ATTACHMENT E

FHWA-1273 -- Revised May 1, 2012

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

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

### ATTACHMENTS

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

#### I. GENERAL

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

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

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

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

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

#### II. NONDISCRIMINATION

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

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

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

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

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

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**ATTACHMENT F**

**Disadvantaged Business  
Enterprise (DBE)  
Program  
(49 CFR 26)**



**UPDATED JANUARY 2010  
REVISED JUNE 2006  
REVISED OCTOBER 1999**

## **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 (USDOT), 49 CFR Part 26. TxDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TxDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of TxDOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

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

### **Nondiscrimination Policy**

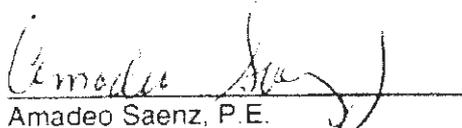
TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age or disability.

In administering its DBE program, 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, national origin, age or disability.

TxDOT has disseminated this policy statement to the Texas Transportation Commission and all the components of our organization. Through the distribution of this DBE program, we have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

**Appointment of DBE Liaison Officer (DBELO)**

The Assistant Executive Director for Support Operations has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Executive Director for Support Operations 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 Department of Transportation.

  
\_\_\_\_\_  
Amadeo Saenz, P.E.  
Executive Director  
Texas Department of Transportation

11/30/07  
\_\_\_\_\_  
Date

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
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## **SUBPART A - GENERAL REQUIREMENTS Section**

### **26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

TxDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq;  
TxDOT is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity; Act for the 21<sup>st</sup> Century (TEA-21, Pub. L 105-178, 112 Stat. 107. SAFETEA-LU, P.L 109-59;

TxDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L 105-178. SAFETEA-LU, P.L. 109-59

### **Section 26.5 Definitions**

TxDOT will adopt the definitions contained in Section 26.5 for this program.

### **Section 26.7 Non-discrimination Requirements**

TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 -**Attachment 1** 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.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will submit annually The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FAA recipients [as amended 68 FR 35556, June 16, 2003].

We will report on a semi-annual basis The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FHWA [as amended 68 FR 35556, June 16,2003].

We will report on a semi-annual basis The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FTA recipients [as amended 68 FR 35556, June 16, 2003].

These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Bidders List: 26.11(c)

TxDOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms. We will collect this information in the following ways:

The TxDOT Bidder's list consists of firms that include highway construction prime contractors, professional service providers and subcontractor and material suppliers. Subcontractor and material supplier information is supplied by the low bid Prime Contractor. TxDOT Bidder's List data was developed from contractors who have submitted bids on highway construction contracts. In the contract proposal, the low bidder, prior to award of the contract, is required to submit bidders information they received for the project. The Bidder's List also contains data from DBEs that submitted bids for construction and professional service contracts and from the DBE Commitments and Awards made.

**Section 26.13 Federal Financial Assistance Agreement**

TxDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted

contracts. The recipients DBE Program, as required by 49 CFR part 26 and as approved by DOT, 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, the Department may impose sanction 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.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. This information is included in the DBE Special Provision 000-1966 1.A.1.b. - **Attachment 2.**

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

The Department provides U.S. DOT with updates representing significant changes in the program as they occur. The department understands that all changes must be approved by FHWA, FTA, FAA prior to implementation.

**Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

**Section 26.25 DBE Liaison Officer (DBELO)**

The Assistant Executive Director for Support Operations has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Executive Director for Support Operations 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 Department of Transportation.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TxDOT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organizational chart - **Attachment 3** displays the DBELO's position in the organization.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 17 to assist in the administration of the program. The duties and responsibilities of the DBELO and staff include the following:

- 1 Gathers and reports statistical data and other information as required by 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 attainment and identifies ways to improve progress).
- 5 Participates with the Division Directors and District Officials to determine contractor compliance with good faith efforts.
- 6 Analyzes TxDOT's progress toward DBE goal attainment and identifies ways to improve progress.
- 7 Participates in pre-bid meetings.
- 8 Advises the Executive Director and the Texas Transportation Commission on DBE matters and achievement.
- 9 Chairs the DBE Liaison Committee.
- 10 Participates in pre-bid meetings.
- 11 Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- 12 Plans and participates in DBE training seminars.
- 13 Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
- 14 Provides outreach to DBEs and community organizations to advise them of opportunities.
- 15 Maintains the Texas Unified Certification Program (TUCP) updated directory on certified DBEs.

### **Section 26.27 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 contract to make use of these institutions. We have made a thorough search for financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Texas and were unable to identify financial institutions meeting the requirements of Section 26.27.

### **Section 26.29 Prompt Payment Mechanisms**

TxDOT will require prime contractors to pay subcontractors for satisfactory performance of their contracts as specified in the Special Provision 009-007 Measurement and Payment - **Attachment 4**, which is included in all federal-aid contracts.

In regards to the prompt pay full payment of retainage, TxDOT has adopted option 2. TxDOT will decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage held by prime contractor to the subcontractor as specified in Special Provision 009-007 Measurement and Payment-**Attachment4**.

[68 FR 35553, June 16, 2003]

### **Section 26.31 Directory**

TxDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory on a weekly basis.

The TUCP Certifying Partners agree that TxDOT will serve as the TUCP directory manager. The directory manager will be responsible for the following actions:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the DBE directory current;
- Make the DBE directory available to all TUCP Partners and other interested parties;

- Maintain the TUCP directory website at [www.dot.state.tx.us](http://www.dot.state.tx.us) see **Attachment 5** for sample.

### **Section 26.33 Over-concentration**

TxDOT has not identified that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

TxDOT has established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

TxDOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

Monitoring Mechanisms-To ensure that DBE requirements of the DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of the contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, **and** by compliance reviews conducted on the project site by the Department. The DBE Special Provision 000-1966 - **Attachment 2** is included in all federal-aid projects and outlines the monitoring mechanism for compliance with 49CFR Part 26.

Enforcement mechanisms- A Contractor's failure to comply with the requirements of the DBE Special Provision 000-1966 - **Attachment 2** shall constitute a material breach of the federal-aid contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

[As amended at 65 FR 68951, Nov 15, 2000, 68 FR 35554, June 16, 2003]

## **SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

TxDOT does not use set-asides or quotas in any way in the administration of this DBE program.

## **Section 26.45 Overall Goals**

In accordance with Section 26.45(f) TxDOT will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, TxDOT will consult with women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TxDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that TxDOT will accept comments on the goals for 45 days from the date of the notice. The notice is published on TxDOT's website, newsletter, newspapers, available minority-focus media, and trade publications. Normally, we will issue this notice by June 25<sup>th</sup> of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT assisted contract.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 6** to this program. This section of the program will be updated annually.

## **Section 26.49 Transit Vehicle Manufacturers Goals**

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

## **Section 26.51 (d-g) Contract Goals**

TxDOT will use contract goals to meet any portion of the overall goal TxDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT assisted contract.

### **TxDOT DBE Special Provision and Bidder's Certification**

The purpose of the DBE Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply, to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

### **Certification of DBE Goal Attainment**

The certification of DBE goal attainment is included in all proposals for federal-aid highway projects. By signing the proposal, the Bidder certifies that the DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal. Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of the requirements of the proposal. As a result, the bid proposal guaranty of the bidder will become property of the Department and the Bidder will be excluded for re bidding on the project when it is re-advertised. See **Attachment 7**.

Tracking and monitoring of DBE goals throughout the life of the contract will be performed by the Department.

The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. Office of Civil Rights reviews monthly progress reports through computer programs, i.e. SiteManager and Subcontractor Monitoring System (SMS). Upon continual monitoring of the DBE commitment and payments by the Area Engineer, the Area Engineer will notify the Office of Civil Rights of any issue that requires further review. The Office of Civil Rights will initiate a compliance review and take the appropriate contract remedies. See attached DBE Special Provisions 000-1966 - **Attachment 2**.

### **Section 26.53 Good Faith Efforts Procedures**

#### **Demonstration of good faith efforts (26.53(a) & (c))**

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

TxDOT's Office of Civil Rights is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror. This process for Good Faith Effort is included in the DBE Special Provision 000-1966 3.c. - **Attachment 2**.

#### **Information to be submitted (26.53(b))**

TxDOT treats bidder/offers' compliance with good faith efforts<sup>1</sup> requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and

6. If the contract goal is not met, evidence of good faith efforts.

**Administrative reconsideration (26.53(d))**

Within 15 days of being informed by TxDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the Office of Civil Rights, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701, (512) 416-4700. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Good Faith Efforts when a DBE is replaced on a contract (26.53(f))**

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The Districts will be responsible for coordinating and approving Prime's request for Substitution. Districts will notify Office of Civil Rights of the determination of a contractor's compliance and/or noncompliance of the DBE Special Provision and be responsible for coordinating appropriate sanctions with TxDOT's DBE Liaison Officer. If the contractor fails to comply according to federal regulations specified in 49 CFR §26.53 and according to TxDOT contract specifications the contractor will be sanctioned as outlined in TxDOT DBE Special Provision 000-1966-**Attachment 2**.

A Contractor's failure to comply with the requirements of the DBE Special Provision shall constitute a material breach of the contract. In such a case, the Department reserves the right to terminate the contract, deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Contractor, secure a refund, not as a penalty but as liquidated damages to the Department, or such other remedy or remedies as the Department deems appropriate.

## Section 26.55 Counting DBE Participation

TxDOT will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

The district will perform CUF reviews on contracts that have a DBE goal. A CUF review will be performed on DBEs listed on the approved contract commitment using the *Commercially Useful Function (CUF) Project Site Review* checklist. If needed to verify a CUF, obtain a copy of the subcontract agreement for clarification regarding the DBEs contractual responsibilities. Office of Civil Rights will perform the CUF reviews on DBE suppliers. For non-supplier DBEs listed on the contract DBE commitment working on the project site and associated project specific locations, complete the checklist as follows:

1. Complete the initial checklist as soon as possible after the DBE's commencement of its work.
2. Monitor the DBEs performance and conduct additional reviews when the DBE's work performance brings into question whether the DBE meets CUF requirements.
3. If information obtained indicates possible noncompliance with the CUF requirements, contact Office of Civil Rights for a final determination.

In order to provide consistent interpretations statewide, Office of Civil Rights will make final negative CUF determinations and provide guidance and assistance for CUF reviews.

For trucking firms TxDOT will count DBE goal credit as follows:

A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF 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 1 fully licensed, insured, and operational truck used on the contract.

- (a) The 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 an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- (c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. 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 the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

- (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.

[68 FR 35554, June 16, 2003]

### Use Of Joint Checks

With department approval, the use of joint checks between a prime contractor and a DBE subcontractor is allowed. The new DBE Special Provision Section 1.A.5.d. states the following regarding the use of joint checks:

***"If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The 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 the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement***

***The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier."***

*Procedures-* For all federal-aid contracts, review and approve the use of joint checks prior to their use. Districts should verify that the DBE subcontractor is responsible for ordering, scheduling delivery and issuing payment for the materials.

Prime contractor requests for joint check approval must be submitted to the Area Engineer on *Form 2178, DBE Joint Check Approval - Attachment 8*. The Department will expedite approval or denial of the use of DBE joint check agreements to ensure timely delivery of materials. Reasons for denial include, but are not limited to, the prime contractor's insistence on the joint check arrangement and failure of all parties to agree to the arrangement (only the DBE or the supplier may request the use of a joint check).

Obtain copies of cancelled joint checks as necessary to verify that the joint checks have passed through the DBE. Bank images are an acceptable method of review. Review the joint check agreements as necessary to ensure that a three party arrangement exists.

Material cost paid by the prime contractor directly to the material supplier is not allowed for DBE goal credit and may cause the denial of DBE goal credit for all work performed by the DBE subcontractor.

#### **SUBPART D - CERTIFICATION STANDARDS**

TxDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. For information about the certification process or to apply for certification, firms should contact:

The Office of Civil Rights, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701, Toll Free 1-866-480-2518

Our certification application forms and documentation requirements are found in the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9**.

#### **SUBPART E - CERTIFICATION PROCEDURES**

TxDOT is a member of the Texas Unified Certification Program (TUCP)]. The TUCP will meet all of the requirements of this section. A description of the TUCP Memorandum of Agreement (MOA) is found at **Attachment 10**.

**Withdrawal of DBE Application:** TxDOT will follow the procedures under the TUCP for withdrawal DBE Application. A DBE may withdraw their application prior to a certification decision being rendered by TxDOT. TxDOT will acknowledge the DBE request for withdrawal of DBE Application by certified letter. The DBE may not reapply for certification for a period of 12 months from the date of receipt of TxDOT's letter, this withdrawal may not be appealed to US DOT.

**Voluntary Surrender of Certification:** TxDOT will follow the procedures under the TUCP for surrender of DBE Certification. A DBE may surrender their certification and TxDOT will acknowledge the DBE's request for surrender of their certification by certified letter. The DBE may not reapply for certification for a period of 12 months from the date of receipt of TxDOT's letter. This voluntary surrender may not be appealed to US DOT.

#### **Section 26.83 Procedures for Certification Decisions**

For procedures for the certification decisions see the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9**.

TxDOT is one of six certifying agencies in Texas. The six certifying agencies have agreed by Memorandum of Agreement that TxDOT will be responsible for all highway construction industry DBE applications, Annual Affidavits, three-year on-site review, and decertification if applicable.

TxDOT will ensure that the decision in a proceeding to remove a firm's eligibility (decertification) is made by personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from personnel who did take part in these actions.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation**

TxDOT will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE Certification and supporting documentation.

TxDOT will keep the identity of complainants confidential at their election, however complainants will be advised that in some circumstances, failure to waive the privilege will result in the closure of the investigation or proceeding or hearing. Federal Aviation Administration (FAA) follows the procedures of 14 CFR Part 16 with respect to confidentiality of information and complaints.

All participants in the Department's DBE Program (including but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigation and other request for information. Failure to do so shall be a ground for appropriate action against the party involved.

If you are a recipient, contractor, or any other participant in the program you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part. Records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

## **ATTACHMENTS**

- Attachment 1 DBE Regulations: 49 CFR Part 26
- Attachment 2 DBE Special Provision 000-1966
- Attachment 3 Organizational Chart
- Attachment 4 Measurement and Payment Special Provision 009-007
- Attachment 5 TUCP DBE directory example and website address to the directory
- Attachment 6 DBE Goal Methodology
- Attachment 7 DBE Bidder Certification
- Attachment 8 DBE Joint Check Approval Form
- Attachment 9 TUCP SOP
- Attachment 10 TUCP MOA
- Attachment 11 Forms List

# ATTACHMENT 1

**ATTACHMENT 1****ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR Data is current as of January 23, 2014**

Title 49: Transportation

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

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- §26.81 What are the requirements for Unified Certification Programs?
- §26.83 What procedures do recipients follow in making certification decisions?
- §26.85 Interstate certification.
- §26.86 What rules govern recipients' denials of initial requests for certification?
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- §26.89 What is the process for certification appeals to the Department of Transportation?
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- §26.101 What compliance procedures apply to recipients?
- §26.103 What enforcement actions apply in FHWA and FTA programs?
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- §26.107 What enforcement actions apply to firms participating in the DBE program?
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Appendix A to Part 26—Guidance Concerning Good Faith Efforts

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

Appendix C to Part 26—DBE Business Development Program Guidelines

Appendix D to Part 26—Mentor-Protégé Program Guidelines

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

Appendix F to Part 26—Uniform Certification Application Form

AUTHORITY: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C. 47107, 47113, 47123; Sec. 1101 (b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

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## Subpart A—General

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### §26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

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### **§26.3 To whom does this part apply?**

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

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### **§26.5 What do the terms used in this part mean?**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

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

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise* or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*DOT/SBA Memorandum of Understanding* or *MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Home state* means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011]

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### **§26.7 What discriminatory actions are forbidden?**

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must 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 program with respect to individuals of a particular race, color, sex, or national origin.

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### **§26.9 How does the Department issue guidance and interpretations under this part?**

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

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### **§26.11 What records do recipients keep and report?**

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011]

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### **§26.13 What assurances must recipients and contractors make?**

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient 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. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure

nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, 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 the recipient of its failure to carry out its approved program, the Department 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.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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### **§26.15 How can recipients apply for exemptions or waivers?**

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

- (ii) Your level of DBE participation continues to be consistent with the objectives of this part;
- (iii) There is a reasonable limitation on the duration of your modified program; and
- (iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

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

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### **§26.21 Who must have a DBE program?**

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

- (1) All FHWA recipients receiving funds authorized by a statute to which this part applies;
- (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;
- (3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

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### **§26.23 What is the requirement for a policy statement?**

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

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**§26.25 What is the requirement for a liaison officer?**

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

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**§26.27 What efforts must recipients make concerning DBE financial institutions?**

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

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**§26.29 What prompt payment mechanisms must recipients have?**

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

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### **§26.31 What information must you include in your DBE directory?**

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

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### **§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?**

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

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### **§26.35 What role do business development and mentor-protégé programs have in the DBE program?**

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

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### **§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?**

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

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### **§26.39 Fostering small business participation.**

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

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## **Subpart C—Goals, Good Faith Efforts, and Counting**

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### **§26.41 What is the role of the statutory 10 percent goal in this program?**

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

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### **§26.43 Can recipients use set-asides or quotas as part of this program?**

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

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### **§26.45 How do recipients set overall goals?**

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted

contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the

adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011]

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#### **§26.47 Can recipients be penalized for failing to meet overall goals?**

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

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#### **§26.49 How are overall goals established for transit vehicle manufacturers?**

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent

applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

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#### **§26.51 What means do recipients use to meet overall goals?**

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

*Example to paragraph (f)(1):* Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

*Example to paragraph (f)(2):* In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your

use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

*Example to paragraph (f)(3):* Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

*Example to paragraph (f)(4):* In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

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### **§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?**

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

- (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
  - (v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and
- (3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—
- (i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
  - (ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.
- (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
- (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
- (1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- (e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.
- (f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

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

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(h) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

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### **§26.55 How is DBE participation counted toward goals?**

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may

determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

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

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. 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 the appropriate Department Operating Administration.

*Example to this paragraph (d)(5):* DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

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## Subpart D—Certification Standards

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### §26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

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### **§26.63 What rules govern group membership determinations?**

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

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### **§26.65 What rules govern business size determinations?**

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

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**§26.67 What rules determine social and economic disadvantage?**

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

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### **§26.69 What rules govern determinations of ownership?**

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

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

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an

owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

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

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

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### **§26.71 What rules govern determinations concerning control?**

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal

devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

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

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would

provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011]

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### **§26.73 What are other rules affecting certification?**

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

*Example 1:* Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

*Example 2:* Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

*Example 3:* Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

*Example 4:* Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

*Example 5:* Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

*Example 6:* The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

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## Subpart E—Certification Procedures

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### §26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP

shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

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### **§26.83 What procedures do recipients follow in making certification decisions?**

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.*, of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If you have grounds to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the

application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011]

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### **§26.85 Interstate certification.**

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see §26.83(j)) and any notices of changes (see §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85 (c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site

visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

- (i) Evidence that State A's certification was obtained by fraud;
- (ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
- (iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
- (iv) The State law of State B requires a result different from that of the State law of State A.
- (v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all

the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

- (i) The name of the firm;
- (ii) The name(s) of the firm's owner(s);
- (iii) The type and date of the action;
- (iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

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#### **§26.86 What rules govern recipients' denials of initial requests for certification?**

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

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#### **§26.87 What procedures does a recipient use to remove a DBE's eligibility?**

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the

firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

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

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

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### **§26.89 What is the process for certification appeals to the Department of Transportation?**

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department

makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

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### **§26.91 What actions do recipients take following DOT certification appeal decisions?**

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the

date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

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## Subpart F—Compliance and Enforcement

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### §26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

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### §26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

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#### **§26.105 What enforcement actions apply in FAA programs?**

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

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#### **§26.107 What enforcement actions apply to firms participating in the DBE program?**

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

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### **§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?**

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

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## Appendix A to Part 26—Guidance Concerning Good Faith Efforts

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

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

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

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

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

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

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

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract

DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

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

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

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

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

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## Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

## INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 - September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 - March 31. If this report is due December 1, data should cover April 1 - September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
8. **D.** The amounts in items 8(A)-8(H) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including professional or consultant services, construction purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to DBEs during this reporting period.
- 8(E). From the total dollar awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentages to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

\*\*Submit your completed report to your Regional or Division Office.

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**UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS**

\*Please refer to the instructions sheet for directions on filling out this form\*

1. Submitted to:  FHWA  FTA - Vendor Number: \_\_\_\_\_

2. AP Number (FAA Recipients Only): \_\_\_\_\_

3. Federal fiscal year in which reporting period falls: FY \_\_\_\_\_

4. Date This Report Submitted: \_\_\_\_\_

5. Reporting Period:  Paper on-line June 1 for earlier Oct. 1-Mar. 31  Report due Dec. 1 for period April 1-Sept. 30

6. Name of Recipient: \_\_\_\_\_

7. Annual DBE Goal: \_\_\_\_\_ % Overall Goal: \_\_\_\_\_ %

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total Dollars and contracts awarded or committed during the reporting period.)	Race Conscious Goal			Race Neutral Goal			OVERALL Goal		
	A	B	C	D	E	F	G	H	I
8. Prime contracts awarded this period	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
9. Subcontracts awarded/committed this period									
TOTAL									
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E	F	G	H	I
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation				
13. Prime Contracts									
14. Totals									
15. Submitted by (Print Name of Authorized Representative):				16. Signature of Authorized Representative:					
17. Phone Number:				18. Fax Number:					

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[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

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### Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D) (1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting

of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

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#### **Appendix D to Part 26—Mentor-Protégé Program Guidelines**

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

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#### **Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage**

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

##### SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and

social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

#### ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

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## Appendix F to Part 26—Uniform Certification Application Form

### INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

**NOTE:** If you require additional space for any question in this application, please attach additional sheets or copies as needed, making care to indicate on each attached sheet the section and number of this application to which it refers.

#### Section 1: CERTIFICATION INFORMATION

##### A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/ review, indicate the most recent date of that review and the state UCP that conducted the review.

**NOTE:** If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined applications process for firms that are already certified under the 8(a) and SDB programs.

##### B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

#### Section 2: GENERAL INFORMATION

##### A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices — not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

##### B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

(4) State the date on which you and/or each other owner took ownership of the firm.

(5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

(6) Check the appropriate box that indicates whether your firm is "for profit."

**NOTE:** If you checked "No" then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

(10) Specify the total gross receipts of your firm for each of the past three years as declared in your firm's filed tax returns.

##### C. Relationships with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

(2) Check the appropriate box that indicates whether at present, or at any time in the past:

(a) Your firm has been a subsidiary of any other firm;

(b) Your firm consisted of a partnership in which one or more of the partners are other firms;

(c) Your firm has owned any percentage of any other firm; and

(d) Your firm has had any subsidiaries of its own.

(3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

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- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

**D. Immediate Family Member Businesses**

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

**Section 3: OWNERSHIP**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

**A. Background Information**

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

**B. Ownership Interest**

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

**C. Disadvantaged Status**

**NOTE:** You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

**Section 4: CONTROL**

**A. Identify your firm's Officers and Board of Directors:**

- (1) In the space provided, state the name, title, date of appointment, ethnicity and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

**B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:**

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- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf.
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**  
State the type, make and model and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
- (2) **Vehicles**  
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
- (3) **Office Space**  
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
- (4) **Storage Space**  
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**  
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
- (a) State the name of your firm's bank.
- (b) State the main phone number of your firm's bank branch.
- (c) State the address of your firm's bank branch.
- (2) **Bonding Information**
- (a) State your firm's Bonder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) State your agent's/broker's phone number.
- (d) State your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**  
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**  
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**  
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**  
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**  
For each active job listed state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**  
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
49 C.F.R. PART 26**

**UNIFORM CERTIFICATION APPLICATION**

**ROADMAP FOR APPLICANTS**

**D Should I apply?**

- o Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- o Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- o Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- o Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

**Q2 Is there an easier way to apply?**  
If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.  
**NOTE:** You must still meet the requirements for the DBE program, including undergoing an on-site review.

**Q3 Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

**Q4 Where can I find more information?**

- o U.S. DOT - [http://osdbweb.dot.gov/business\\_dbe/index.html](http://osdbweb.dot.gov/business_dbe/index.html) (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- o SBA - <http://www.sba.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexibleofsize.html> (provides a listing of NAICS codes)
- o 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29. Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

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**Section 1: CERTIFICATION INFORMATION**

**A. Prior/Other Certifications**

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ___ / ___ / ___ State: <input type="checkbox"/> No
	<input type="checkbox"/> 8(a)	<b>⊗ STOP!</b> If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
	<input type="checkbox"/> SDB	

**B. Prior/Other Applications and Privileges**

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

Yes, on \_\_\_ / \_\_\_ / \_\_\_  No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

**Section 2: GENERAL INFORMATION**

**A. Contact Information**

(1) Contact person and Title		(2) Legal name of firm	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail	(7) Website <i>(if have one)</i> :		
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State: Zip:
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State: Zip:

**B. Business Profile**

(1) Describe the primary activities of your firm:	(2) Federal Tax ID <i>(if any)</i> :
(3) This firm was established on ___ / ___ / ___	(4) I/We have owned this firm since: ___ / ___ / ___
(5) Method of acquisition <i>(check all that apply)</i> :	
<input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>	
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>⊗ STOP!</b> If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

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(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: \_\_\_\_\_

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?  
 Yes  No  
 If Yes, explain: \_\_\_\_\_

(9) Number of employees: Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years: Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	

**C. Relationships with Other Businesses**

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff with any other business, organization, or entity?  
 Yes  No  
 If Yes, identify: Other Firm's name: \_\_\_\_\_  
 Explain nature of shared facilities: \_\_\_\_\_

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past?  Yes  No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

Name	Address	Type of Business
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

**D. Immediate Family Member Businesses**

Do any of your immediate family members own or manage another company?  Yes  No  
 If Yes, then list (attach extra sheets if needed):

Name	Relationship	Company	Type of Business	Own or Manage?
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

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**Section 3: OWNERSHIP**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below. (If more than one owner, attach separate sheets for each additional owner):

**A. Background Information**

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number): _____ City: _____ State: _____ Zip: _____		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian	
<input type="checkbox"/> Other (specify) _____		

**B. Ownership Interest**

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$

(5) Shares of Stock:	Number	Percentage	Class	Date acquired	Method Acquired

(6) Does this owner perform a management or supervisory function for any other business?  Yes  No  
If Yes, identify: Name of Business: \_\_\_\_\_ Function Title: \_\_\_\_\_

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?  Yes  No  
If Yes, identify: Name of Business: \_\_\_\_\_ Function Title: \_\_\_\_\_  
Nature of Business Relationship: \_\_\_\_\_

**C. Disadvantaged Status — NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)**

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of the application; attach additional sheets if more than one owner is applying)

(2) Has any trust been created for the benefit of this disadvantaged owner(s)?  Yes  No  
If Yes, explain (attach additional sheets if needed):

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**Section 4: CONTROL**

**A. Identify your firm's Officers & Board of Directors** (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business?  Yes  No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?  Yes  No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Identify your firm's management personnel who control your firm in the following areas** (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(excludes for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

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(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business?  Yes  No  
 If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?  
 Yes  No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):**

**(1) Equipment**

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(2) Vehicles**

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(3) Office Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**(4) Storage Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**D. Does your firm rely on any other firm for management functions or employee payroll?  Yes  No**

If Yes, explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

**E. Financial Information**

**(1) Banking Information:**  
 (a) Name of bank: \_\_\_\_\_ (b) Phone No: ( ) \_\_\_\_\_  
 (c) Address of bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: \_\_\_\_\_  
 (b) Name of agent/broker \_\_\_\_\_ (c) Phone No: ( ) \_\_\_\_\_  
 (d) Address of agent/broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 (e) Bonding limit: Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

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**J. List the three largest active jobs on which your firm is currently working:**

	<b>Name of Prime Contractor and Project Number</b>	<b>Location of Project</b>	<b>Type of Work</b>	<b>Project Start Date</b>	<b>Anticipated Completion Date</b>	<b>Dollar Value of Contract</b>
1.						
2.						
3.						

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**DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST**  
 In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

**All Applicants**

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

**Partnership or Joint Venture**

- Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

**Trucking Company**

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

**Regular Dealer**

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

**NOTE:** The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

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**AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female      Black American Hispanic American  
Native American      Asian-Pacific American  
Subcontinent Asian American  
Other (specify) \_\_\_\_\_

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I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on \_\_\_\_\_ (Date)

Signature \_\_\_\_\_  
(DBF Applicant)

**NOTARY CERTIFICATE**

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[68 FR 35559, June 16, 2003]

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For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

## ATTACHMENT 2

## SPECIAL PROVISION

000--1966

### Disadvantaged Business Enterprise in Federal Aid Contracts

1. **Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal Aid Contracts", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

#### A. Article A. Disadvantaged Business Enterprise in Federal Aid Contracts.

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:
  - a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.
  - b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
  - c. The requirements of this Special Provision shall be physically included in any subcontract.
  - d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days,

## 2. Definitions.

- a. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.
- b. "Disadvantaged Business Enterprise" or "DBE" is defined in the standard specifications, Article 1, Definition of Terms.
- c. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- d. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- e. "Federal Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.
- f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- g. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."
- h. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- i. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.
- j. "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.

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 ad hoc 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.

- k. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

**3. Contractor's Responsibilities.** These requirements must be satisfied by the Contractor.

- a. After conditional award of the contract, the Contractor shall submit a completed Form SMS.4901 "DBE Commitment Agreement", Form SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 10<sup>th</sup> business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.
- b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902.
- c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. 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.
  - Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. 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.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 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.

- If the Program Manager of the OCR determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the OCR.
- d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.
  - e. The preceding information shall be submitted directly to the Office of Civil Rights, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.
  - f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a, of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.
  - g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form 4901 "DBE Commitment Agreement", Form SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.
  - h. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
  - i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.
- 4. Eligibility of DBEs.**
- a. 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.
  - b. The Department 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 the Department's OCR. An update of the Directory can be found on the Internet at <http://www.dot.state.tx.us/business/tucp/default.htm>.

- c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.
  - d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.
5. **Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:
- a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. 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 a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - b. A Contractor may count toward its 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.
    - (1) A Contractor may count toward its 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 CUF 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 CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

**In all cases, prime or other non-DBE subcontractor assistance will not be credited toward the DBE goal.**

- (2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF

- (3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF 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 1 fully licensed, insured, and operational truck used on the contract.
- (a) The 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 an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
  - (c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. 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 the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement
  - (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.
- (4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.
- (5) Project materials or supplies acquired from an affiliate of the prime contractor can not directly or indirectly (2<sup>nd</sup> or lower tier subcontractor) be used for DBE goal credit.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.  
(Definition of a DBE manufacturer found at 1A.c.(1) of this provision.)

For purposes of this Section (1.A.c.(1)), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- (2) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

- (3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any

portion of the cost of the materials and supplies themselves toward DBE goals.

- (4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The 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 the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

- e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.
- f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

## **6. Records and Reports.**

- a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form SMS.4903, "DBE Progress Report," is to be used for monthly reporting. Form SMS.4904, "DBE Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report

- b. 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.
  - c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.
  - d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c of this Special Provision, must be submitted with the "DBE Final Report."
  - e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months 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.
7. **Compliance of Contractor.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

When a DBE subcontractor named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

Forward Form 2371, "DBE Trucking Credit Worksheet," completed by the DBE trucker every month DBE credit is used.

- B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**SPECIAL PROVISION**

**003—020**

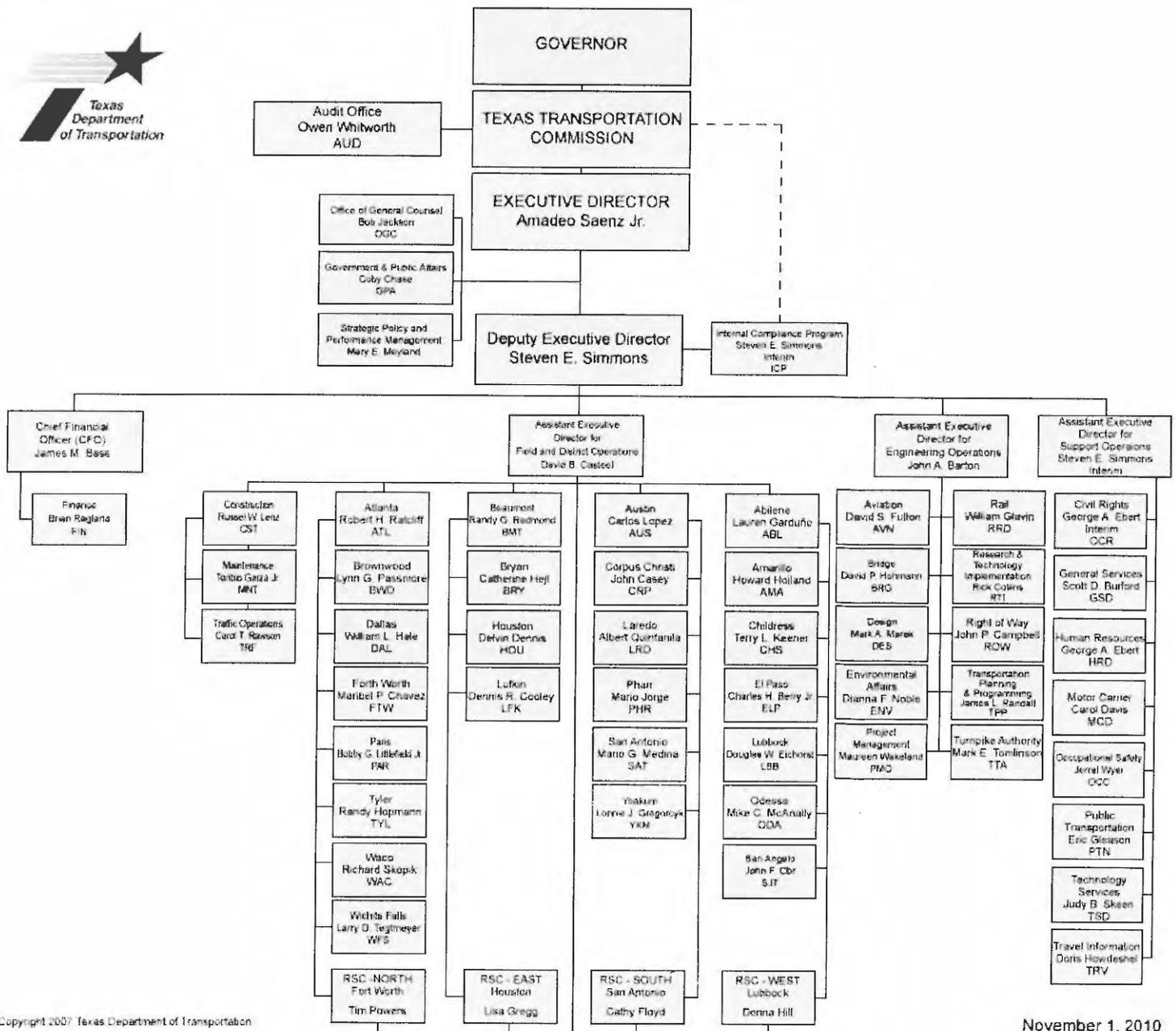
**Award and Execution of Contract**

For this project, Item 003, "Award and Execution of Contract," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 3.4, Execution of Contract, Section B, Bonds** is supplemented by the following:

Provide a retainage bond in the amount of 10% of the total amount paid on the contract. The retainage bond is to be used as a guaranty for the protection of any claimants and the Department for overpayments, liquidated damages, and other deductions or damages owed by the Contractor in connection with the Contract.

# ATTACHMENT 3



# ATTACHMENT 4

## ATTACHMENT 4

2004 Specifications

### SPECIAL PROVISION

009--007

#### Measurement and Payment

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 9.6. Progress Payments, Section A, Retainage** is voided and replaced by the following:

**A. Retainage.** Retainage will not be withheld on this project.

**Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors** is voided and replaced by the following:

**B. Payment Provisions for Subcontractors.** For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected and approved by the Department and the final quantities of the subcontractor's work have been determined and agreed upon.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department 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 has complied with contractual obligations as described in this Article.

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

# ATTACHMENT 5

## ATTACHMENT 5



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## TUCP DBE Alphabetic Listing - A

Last Update: Monday, June 12, 2006

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z | 0-9

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**A & A CONSTRUCTION COMPANY**      \*Certified by: NCTRCA  
P.O. BOX 202212                              Region of: NCTRCA  
ARLINGTON, TX 760060000                Email: irene@aaconstructionco.com  
Phone: 817-267-2757                        Fax: 817-267-2887  
**Types of Work Performed:**            Highway, Street, and Bridge Construction(237310)  
Other Construction Material Merchant Wholesalers(423390)  
Site Preparation Contractors(238910)  
**District(s):**                                STATEWIDE DISTRICTS

---

**A & A OFFICE PRODUCTS**                \*Certified by: HOUSTON  
P.O. BOX 20292                              Region of: HOUSTON  
HOUSTON, TX 772250292                Email: antoniochua@pdq.net  
Phone: 713-664-4849                        Fax: 713-554-4173  
**Types of Work Performed:**            Furniture Stores(442110)  
**District(s):**                                STATEWIDE DISTRICTS

---

**A & B COLLEGE EXPOSURE PROGRAM**      \*Certified by: CCRTA  
P.O. BOX 260952                              Region of: CCRTA  
CORPUS CHRISTI, TX 784260000        Email: r21650@aol.com  
Phone: 361-387-1702                        Fax: 361-767-6630  
**Types of Work Performed:**            Educational Support Services(611710)  
**District(s):**                                STATEWIDE DISTRICTS

---

**A & B DELIVERY SERVICES**                \*Certified by: NCTRCA  
5429 CHERRY GLEN LANE                    Region of: NCTRCA  
DALLAS, TX 752320000                    Email:  
Phone: 214-371-1756                        Fax: 214-375-8938  
**Types of Work Performed:**            General Freight Trucking, Local(484110)  
**District(s):**                                STATEWIDE DISTRICTS

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**A & B ENVIROMENTAL SERVICES, INC.**      \*Certified by: HOUSTON  
10100 EAST FREEWAY, SUITE 100        Region of: HOUSTON  
HOUSTON, TX 77029                        Email: kittu2@hal-pc.org  
Phone: 713-453-6060                        Fax: 713-453-6091  
**Types of Work Performed:**            Testing Laboratories(541380)  
**District(s):**                                STATEWIDE DISTRICTS

---

**A & D INSPECTIONS**                        \*Certified by: HOUSTON  
P. O. BOX 11106                              Region of: HOUSTON  
HOUSTON, TX 77293                        Email: leep\_south@yahoo.com

# ATTACHMENT 6



# Overall Annual DBE Goal for Highway Design and Construction

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Fiscal Year 2014-2016

Office of Civil Rights

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## Executive Summary

The Texas Department of Transportation (“TxDOT”) submits this report on our Disadvantaged Business Enterprise (“DBE”) goal and the methods used to calculate them to the United States Department of Transportation (“DOT”) Federal Highway Administration (FHWA) for review in accordance with 49 Code of Federal Regulations (“CFR”) Section §26.45, as amended by Docket No. OST-2010-0021.

This report on the DBE Goal and Methodology covers the period FY 2014–2016 and justifies a FY 2014–2016 overall DBE goal of 11.7%. TxDOT plans to satisfy this overall goal by a 6.4% component using race-neutral means and a 5.3% component using race-conscious means. TxDOT proposes the adoption of these goals.

TxDOT’s goal methods consist of two steps:

- Establish the base figure for the relative availability of DBEs.
- Make adjustments to the base figure on the basis of available evidence.

TxDOT used the 2009 Texas Disparity Study to determine the relative availability of DBEs to establish the base figure. Then, TxDOT made adjustments to the base figure according to evaluation of available data derived from Census self-employment data, TxDOT past participation, comments received from public consultation, and the results of a DBE online survey. Finally, TxDOT analyzed the past participation data to determine both the race-neutral and race-conscious components of the proposed overall DBE goal. The DBE goal and description of the methodology is to be submitted to the U.S. Department of Transportation’s Federal Highway Administration (FHWA) no later than August 1, 2013.

TxDOT will monitor DBE participation for federal-aid highway design and construction projects throughout the FY 2014-2016 period and will make annual evaluations to determine whether market conditions warrant adjustments to the overall DBE goal. Also, TxDOT will monitor race-conscious and race-neutral achievements toward the DBE goal and will make necessary adjustments as needed on the basis of DBE program guidelines.

As required by FHWA, through a Memorandum of Understanding (MOU), subrecipients of TxDOT’s highway design and construction federal pass-through funds are required to adopt TxDOT’s federally approved DBE Program. As part of this requirement, subrecipients adopt TxDOT’s methods to establish the DBE Goal and are required to report DBE awards, commitments, and payments.

## Methods

The methods to be used in calculating an overall DBE goal are detailed in 49 CFR §26.45. The section establishes August 1 as the deadline for submitting to FHWA the proposed overall DBE goal. (See §26.45(f)(1)).

TxDOT's methods include the following items:

- A description of the methods used to establish the goal
- The base figure and evidence used for its calculation
- A summary and rationale for available evidence used to make adjustments to the base figure
- Projections for the portions of the goal to be met through race-neutral and race-conscious means. See §26.45(f)(3).

Consistent with § 26.45 (c)(3), TxDOT has used data from the most recent State of Texas Disparity Study (2009) from the Texas Comptroller's Office to obtain the base figure.<sup>1</sup> Specifically, that HUB disparity study provides detailed tables, figures, and methods used in calculating aspirational goals.<sup>2</sup> These aspirational goals considered both the relative availability of ready, willing, and able DBE firms as well as past utilization on federally funded State of Texas contracts and TxDOT-only contracts. Then, additional data specific to TxDOT past utilization within the Disparity Study (2009) was used to modify these aspirational goals.

Next, TxDOT assessed the appropriateness of several sources of the most readily available data that could be used in adjusting the base figure. TxDOT determined that the following three sources of information should be considered:

- Updated DBE participation figures on TxDOT federally funded contracts
- A combination of Census economic and employment data and population projections
- Public participation survey results obtained through TxDOT's public consultation effort.

Consistent with §26.45 (d)(1)(ii), TxDOT assessed evidence from disparity studies conducted within our jurisdiction that have not already been accounted for in the base figure. Specifically, the City of Houston published a disparity study in 2012<sup>3</sup> and the City of Austin published a disparity study in 2008. TxDOT determined that the City of Houston disparity study, although recent, does not adequately reflect the same target construction firms.

---

<sup>1</sup> § 26.45 (c)(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

<sup>2</sup> State of Texas Office of the Comptroller. "A Historically Underutilized Business (HUB) Disparity Study of State Contracting 2009 Final Report"

<sup>3</sup> NERA Economic Consulting. "The State of Minority- and Women-Owned Business Enterprise in Construction: Evidence from Houston Prepared for the City of Houston." April 18, 2012; available at: <http://www.houstontx.gov/obo/disparitystudyfinalreport.pdf>.

Specifically, TxDOT federally funded contracts utilize firms that are classified as Heavy Construction and fall under the NAICS code "237###" as well as several Professional Services NAICS codes. However, the City of Houston disparity study does not include Professional Services firms, and the construction categories are not limited to the type of "heavy" construction contracts that TxDOT receives through the FHWA. Further, since the City of Houston study includes many types of construction, employing a similar methodology would substantially inflate projections by including DBEs that are not ready, willing, and able to bid and work on Heavy Construction contracts, that do not employ TxDOT certified individuals, and those who are unwilling to become TxDOT certified or compete for TxDOT contracts and subcontracts. TxDOT also determined that the City of Austin disparity study should not be utilized as more current data is readily available through the State of Texas (2009) Disparity Study. Although the City of Austin is in the process of planning and/or conducting a 2013 disparity study, these preliminary data are not yet available.

Finally, TxDOT will consider additional adjustments as well as revisions to the current methods by extending public comment on the proposed methods (see §26.45(g)).

It should be noted that TxDOT's overall goal provides for the participation of all certified DBEs. The overall goal is *not* subdivided into group-specific goals (see §26.45(h)). Further, TxDOT is not required to have the FHWA's concurrence to implement the DBE goal; however if FHWA's review suggest that there are concerns regarding the methods, it may, after consulting with TxDOT, adjust the overall goal or require TxDOT to do so. (§26.45(f)(4))

## **Step 1. Establishing Base Figure**

In determining the base figure, TxDOT considered evidence such as the latest available 2009 Texas Disparity Study and the estimated weight of expenditures for the relevant procurement categories. TxDOT began the goal-setting process by determining the base figure relative to the availability of DBE's (§26.45(c)). As previously stated in the methods section, the Disparity Study (2009) provides the best available data as described in §26.45(c)(3). However, TxDOT determined that it would be more appropriate to narrowly tailor the procurement category aspirational goals articulated in the Disparity Study (2009) by incorporating the TxDOT-only utilization figures, which were also reported in that study. TxDOT also considered the type of contracts anticipated for the upcoming year and determined that the relative allocation across the Heavy Construction and Professional Services categories has remained consistent. This Disparity Study (2009) also provides the most current combination of availability and utilization figures published on behalf of TxDOT's relevant market area. This calculation resulted in a base figure of 11.18%.

The State of Texas HUB procurement goals produced in the Disparity Study (2009), mirrored the same two-step process outlined in Title 49, Section 26.45 of the Code of Federal Regulations. That is, baseline HUB availability percentages for the six procurement categories of the State HUB program were established. Census data was obtained from the most recent available Survey of Business Owners (2002) at the time of the study. Then, past spending on both HUB prime contracts and HUB subcontracts was taken into account by relying on a weighted average of the percentage HUB utilization over the study period and the baseline HUB availability from step one. Past HUB utilization was given a weight of 80 percent, and baseline availability was given a weight of 20 percent. Past HUB utilization was

given a greater weight than HUB availability because past HUB utilization takes HUB capacity and business opportunities for HUB firms into consideration. The formula and final figures used in the calculation of aspirational goals and the base figure is shown in the following section. For additional information regarding the availability figures, the Disparity Study (2009) is available online from the Texas Comptroller of Public Accounts (CPA) at: [www.window.state.tx.us/procurement/proj/hub/disparity](http://www.window.state.tx.us/procurement/proj/hub/disparity).

**Texas Disparity Study (2009) Original Aspiration Goals by Procurement Category**

On the basis of the preceding availability data and the prior year’s utilization, the Disparity Study calculates aspiration goals in Texas as follows:

**Formula 1: Aspiration Goal Calculation**  
 Aspiration goal = (Baseline percentage availability \* 20%) +  
 (Past utilization percentage \* 80%)

This formula was then repeated with the data for each of the six procurement categories as shown in Table 1 below.

Table 1. Disparity Study (2009) State of Texas Original HUB Aspirational Goals

Procurement Category	HUB Utilization FY2006 through FY2008	Disparity Study original Proposed Goal
Heavy Construction	7.32	11.2
Building Construction	18.46	21.1
Special Trade Construction	30.02	32.7
Professional Services	16.11	23.6
Other Services	15.84	24.6
Commodities	12.28	21.0

Source: Texas Disparity Study (2009) Exhibit 9-6

The initial Disparity Study (2009) goals were calculated for each of the six procurement categories, of which the Heavy Construction category had a proposed goal of 11.2% and the Professional Service category had a proposed goal of 23.6% (see Formula 2 & Formula 3). However, since Heavy Construction and Professional Services categories are the only categories which apply to TxDOT contracts funded with federal FHWA funds, the remaining categories were not included in the TxDOT goal calculation.

**Formula 2: Heavy Construction Aspiration Goal**  
 = (Baseline percentage availability \* 20%) + (Past utilization percentage \* 80%)  
 = (26.72 \* 20%) + (7.32 \* 80%)

$$= 11.2\%$$

### Formula 3: Professional Service Aspiration Goal

$$\begin{aligned} &= (\text{Baseline percentage availability} * 20\%) + (\text{Past utilization percentage} * 80\%) \\ &= (53.58 * 20\%) + (16.11 * 80\%) \\ &= 23.6\% \end{aligned}$$

## TxDOT Specific Aspirational Goals by Procurement Category, 2014–2016

In establishing the base figure for fiscal years 2014–2016, TxDOT determined that it is more accurate to calculate the base figure by using the TxDOT specific utilization amounts listed in the Disparity Study (2009) in place of the previous HUB utilization figures and percentages based on the entire state. Therefore, TxDOT recalculated the aspirational goals by procurement category for Heavy Construction and Professional services accordingly. Attachment A displays the detailed prime and subcontractor utilization amounts by each relevant subcategory and resulting HUB utilization percentages. While Formulas 1 and 2 above provide aspirational goals for the entire state, Formulas 4 and 5 display the revised aspirational goals, which account for this more accurate source of data as they are specific to TxDOT.

### Formula 4: Heavy Construction Aspiration Goal

$$\begin{aligned} &= (\text{Baseline Percentage Availability} * 20\%) + (\text{Past Utilization Percentage} * 80\%) \\ &= (26.72 * 20\%) + (6.96 * 80\%) \\ &= 10.92\% \end{aligned}$$

### Formula 5: Professional Service Aspiration Goal

$$\begin{aligned} &= (\text{Baseline Percentage Availability} * 20\%) + (\text{Past Utilization Percentage} * 80\%) \\ &= (53.58 * 20\%) + (16.64 * 80\%) \\ &= 24.02\% \end{aligned}$$

## Estimated Weight of Expenditures

To more accurately define the relative availability of DBEs in TxDOT-assisted contracts, TxDOT considers the different types of contracts anticipated in the upcoming year against the relative availability of DBEs.

When comparing the projected funding categories and regions where these projects are taking place, we continue to see the highest concentration of projects and activities in and around the major metropolitan areas (Houston, Austin, Dallas, Fort Worth and San Antonio).

TxDOT identifies two types of federal-aid contracts: highway construction contracts and engineering and architecture contracts. The ratio of contract types and the estimated weight of expenditures indicate the same projections for highway construction and engineering and

architecture work in the upcoming years. The proportion of federal aid for highway construction contracts and engineering and architecture contracts remains the same for FY 2014-2016.

Table 2: Estimated Weight of Expenditures

	Industry	Percent
	Highway Construction	98%
	Engineering/Architecture	2%

### Calculation of Base Figure

The base figure is calculated by combining the proportion of the relative availability of DBEs in highway construction and the proportion in engineering and architecture. The proportion of relative availability of DBEs in highway construction was identified through the heavy (highway) construction analysis from the 2009 Texas Disparity Study. The disparity study identified a heavy (highway) construction aspirational goal of 11.2%. The same evaluation is performed on the relative availability of DBEs in engineering and architecture work. The Study identified a professional service (engineering and architecture) aspirational goal of 23.6%. However, formulas 4 and 5 used the same methods to recalculate the aspirational goals to be 10.92% and 24.02% for heavy (highway) construction and professional service (engineering and architecture), respectively. Using the Disparity Study's same methods and calculating the new aspirational goals by relying on TxDOT-only utilization figures, previously established availability, and TxDOT's estimated weight of expenditures, the base figure calculation (see Formula 6) results in a base figure of 11.18%.

#### Formula 6: Base Figure Calculation-Overall

Base figure = (Weighted highway construction relative availability + Weighted Professional service relative availability)

$$\begin{aligned}
 \text{Base Figure} &= [0.98(\text{Heavy Construction Relative Availability}^*) + 0.02(\text{Professional Service Relative Availability}^*)] \\
 &= [0.98(10.92\%) + 0.02(24.02\%)] \\
 &= [10.697\% + 0.480\%] \\
 &= 11.178\%
 \end{aligned}$$

\* Note: the relative availability for Heavy Construction and Professional Service was determined by the FY 2009 Disparity Study utilizing the methodology and TxDOT specific figures reported therein.

Base Figure  
**11.18%**

## Step 2. Adjustments to the Base Figure

TxDOT examines all available evidence to determine adjustments needed to the base figure.

As available evidence is evaluated and weighed, adjustments to the base figure will be made according to the outcomes from analyses of Census economic/employment data and population projections, TxDOT updated utilization demonstrated by DBE participation figures on TxDOT federally funded contracts, and participation survey results obtained through TxDOT's public consultation efforts. Evidence compiled from analyses of Census self-employment or population data and TxDOT past participation or utilization data is presented in a relative availability ratio. However, public participation and consultation survey data is reviewed on the basis of significance and strength within -1 percentage point to +1 percentage point. The positive or negative symbol indicates whether the evidence suggests an increase or decrease of the goal. For example, a factor of positive 0.75 percentage point indicates that the evidence was strong in favor of increasing the goal and therefore it would be relevant to increase the goal by 0.75 percentage point.

Table 3: Chart of Evidence

	Adjustment Evidence	Consideration	Explanation
	<b>#1 Employment/Population Census Data</b>		
		Yes	Self-employment estimates combined with changing populations permit adjustments to the relative availability assuming no lingering effects of discrimination were in existence.
	<b>#2 Past Participation</b>		
		Yes	Past participation is a relatively good gauge of anticipated participation and it takes capacity into consideration.
	<b>#3 Public Consultation</b>		
	Physical Evidence	No	No physical evidence was available
	Anecdotal Evidence	Yes	Anecdotal evidence can be analyzed, but not measured. This evidence was considered in Race-Neutral considerations.

## Adjustment 1: Census Data Self-Employment Projections

Data about self-employment can be appropriately related to the opportunities for DBEs to perform in TxDOT's FHWA program, given the projected changes in population occurring within the relevant market area. This adjustment approach is based on guidance provided through §26.45 (d)(2)(ii), which states that:

“(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:... (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.”

Since the Disparity Study completed by the Texas Comptroller in 2009 has not yet been updated, the base goal calculation does not capture shifts in relative availability that have occurred since the study's publication and does not capture shifts that are projected to occur during the 2014–2016 fiscal years. Therefore, TxDOT has utilized data and methods available through the Texas State Data Center's Texas Population Projections Program to identify the proportional increases in Anglo females and minorities (males and females) relative to Anglo males for the 2014–2016 years, compared to 2010 baseline Census data.<sup>4</sup> The Texas State Data Center's Texas Population Projections Program data and methods provide three different growth projections based on how much “in-migration” is expected.<sup>5</sup> TxDOT elected the “Zero Migration” since the accuracy of the projection is based entirely on known values rather than assumptions regarding future migration patterns. The growth in population projected for women plus minorities was calculated during the selected time frame and subtracted from the Anglo male growth percentage to produce a relative growth projection of 7.07% (see Table 4).<sup>6</sup>

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<sup>4</sup> The three-year average population projections for years 2014–2016 were compared against the 2010 actual population to produce individual growth or decline estimates by ethnic-gender combination and by Anglo males versus all others.

<sup>5</sup> The Zero Migration (0.0) Scenario assumes that immigration and outmigration are equal (i.e., net migration is zero), resulting in growth only through natural increase (the excess or deficit of births relative to deaths). The One-Half 2000–2010 Migration (0.5) Scenario is an approximate average of the zero (0.0) and 2000–2010 (1.0) scenarios. The 2000–2010 Migration (1.0) Scenario assumes that the trends in the age, sex, and race-ethnicity net migration rates of the post-2000 decade will characterize those occurring in the future of Texas. See also <http://txsdc.utsa.edu/Data/TPEPP/Projections/Methodology.pdf>.

<sup>6</sup> Because these population projections are being used to estimate changes in self-employment by procurement category, it was determined that the population estimates would be restricted to the 25- to 64-year-old study sample.

Table 4: Migration Scenario 0.0—Texas Population Growth Projections (Ages 25-64 only)

Year	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)	Anglo Female + Minority Totals
2010	13,104,882	3,153,645	3,166,501	1,534,471	4,497,855	752,410	9,951,237
2014-16 Avg	3,548,979	3,091,132	3,105,081	1,606,515	4,950,426	795,825	10,457,847
Projected Growth %	3.39%	-1.98%	-1.94%	4.70%	10.06%	5.77%	5.09%
Total Change (% Increase in Anglo Females/Minorities minus % Increase Anglo Males)							7.07%

Next, TxDOT determined population estimates for all of Texas, self-employed individuals in Texas, and self-employment by NAICS procurement category. Specifically, TxDOT relied on the U.S. Census Bureau's 5-Year 2007–2011 American Community Survey Summary File (ACSSF) to produce State of Texas population estimates (see Attachment B). Table 5 provides a subset of the results presented in Attachment C. After the total Texas population estimates were produced, the relative proportions of self-employed individuals by procurement category were calculated. The gender and ethnic categorical growth rates were then used to project the new categorical Texas population estimates. Then, the previously obtained self-employment category proportions were used to project the 2014–2016 self-employed population estimates. Then, the proportion of initial ACS base population for nonminority females and minorities by self-employment procurement category was subtracted from the newly projected nonminority female and minority self-employed population estimates.

Table 5: ACS Texas Population Projections for Self-Employed by NAICS Codes.

Census ACS Population Estimate Category	Total	Anglo Male	Anglo Female + Minority Totals	Proportion of Anglo-Female + Minority to Total Population
Total ACS Texas Estimate	24,774,187	5,610,007	19,164,180	77.36%
Construction^ (Self-employed)	210,149	157,905	52,244	24.86%
Prof Services (Self-employed)	116,252	45,611	70,641	60.77%
<b>Relative % of TX Estimate</b>				
Construction (Self-employed)	0.85%	2.81%	1.06%	
Prof Services (Self-employed)	0.47%	0.81%	1.77%	
<b>0.0 Migration Growth Rate</b>	3.39%	-1.98%	5.09%	
<b>Estimated Self-Employment (projected for 2014–16 average)</b>				
Total ACS Texas Estimate	25,613,732	5,498,803	20,191,901	78.83%
Construction (Self-employed)	217,271	154,775	55,465	25.53%
Prof Services (Self-employed)	120,192	44,707	71,160	59.21%
<b>Construction (Self-employed) projected relative increase</b>			<b>6.17%</b>	
<b>Prof Services (Self-employed) projected relative increase</b>			<b>0.73%</b>	

Note: Due to the limitations of the NAICS coding available through the ACS Public Use Microdata Sample (PUMS) data files, construction codes included all 23//// and professional services included 5413//, 524///, and 62////. While there is some deviation from those previously included in the Texas Disparity Study (2009) availability figures, this represents the best available data to produce these self-employed population estimates both by NAICS code as well as gender and ethnic combinations.

Upon calculation of each self-employment proportional increase, this proportional percentage point increase in non-minority female and minority self-employed individuals for the relevant procurement categories was added to the original ready, willing, and available DBE percentage presented in Formula 4 and Formula 5 for the respective procurement category. These projections represent the best proxy data available for the proportional increases that should be expected in comparison to nonminority male availability of ready, willing, and able firms assuming the absence of any effects of discrimination.

The new resulting aspirational goals are calculated in Formulas 7 and 8 for the two TxDOT federally contracted procurement categories, resulting in an adjusted goal of 12.4%. Then, these aspirational goals were used to recalculate the base figure reported in Formula 6 by replacing the previous aspiration goals reported in Formula 4 and Formula 5.

#### Formula 7: Heavy Construction Aspiration Goal

$$\begin{aligned}
 &= ((\text{Baseline percentage availability} + \text{Adjustment}) * 20\%) + (\text{Past utilization percentage} * 80\%) \\
 &= ((26.72 + 6.17) * 20\%) + (6.96 * 80\%) \\
 &= 12.15\%
 \end{aligned}$$

### Formula 8: Professional Service Aspiration Goal

$$\begin{aligned} &= ((\text{Baseline percentage availability} + \text{Adjustment}) * 20\%) + (\text{Past utilization percentage} * \\ &\quad 80\%) \\ &= ((53.58 + 0.73) * 20\%) + (16.64 * 80\%) \\ &= 24.17\% \end{aligned}$$

### Formula 9: Adjusted Base Figure #1 Calculation

Adjusted Base Figure #1 = (Weighted highway construction relative availability + weighted Professional service relative availability)

$$\begin{aligned} \text{Adjusted Base Figure \#1} &= \left[ \begin{array}{l} 0.98(\text{Adjusted Heavy Construction Relative Availability} *) + \\ 0.02(\text{Adjusted Professional Service Relative Availability} *) \end{array} \right] \\ &= [0.98(12.15\%) + 0.02(24.17\%)] \\ &= [11.906\% + 0.483\%] \\ &= 12.389\% \end{aligned}$$

Adjusted Base Figure #1  
**12.4%**

The overall adjusted goal of 12.39% represents an increase in the base goal of 1.21 percentage points. However, it should also be noted that the base goal of 11.18% is 0.27 percentage points lower than the previous goal established within the Disparity Study (2009). Thus, the adjustment of 1.21 percentage points results in a net increase of 0.94 percentage point.

### Adjustment 2: Past Participation

TxDOT determined that an adjustment for past participation is appropriate and utilizes goal-setting guidelines (“Tips for Goal-Setting in the DBE Program”) from the Office of Small and Disadvantaged Business Utilization (OSDBU) website, which includes a method for evaluating an adjustment on the basis of past participation. This adjustment considers past participation as a relative gauge for the anticipated participation for FY 2014–2016.

The adjustment to the base figure is determined with the median of past participation. The median is used instead of the mean because it excludes outliers—that is, abnormally high or low numbers. TxDOT uses four completed years of past participation (see Table 6) in computing the median value; therefore, the value is determined by averaging the two middle values. The resulting calculation yields a median value of 11.71% (see Formula 10).

Table 6: Recent Past DBE Participation

	Fiscal Year	Federal Awards	DBE Awards	DBE % Achieved
	2007	\$2,656,532,841	\$307,091,081	11.56%
	2008	\$1,984,081,620	\$291,922,772	14.71%
	2009	\$2,389,290,441	\$290,826,669	12.17%
	2010	\$2,148,941,356	\$233,251,123	10.85%
	2011	\$2,114,030,193	\$250,709,260	11.86%
	2012	\$2,097,770,603	\$177,364,591	8.45%

$$\begin{aligned}
 &\text{Formula 10: Median Value} \\
 &= (11.56 + 11.86) \div 2 \\
 &= 11.71\%
 \end{aligned}$$

Median Value of Past DBE Participation  
**11.7%**

We determined that past participation is a good indicator of anticipated DBE participation because it is close to the calculation reported in the base figure. The median participation is 0.53 percentage point higher than the relative availability base figure; however, it is 0.68 percentage point lower than the calculation reported in adjusted figure #1. The evaluation of past participation evidence alone suggests that an increased adjustment should be considered. However, when taken in consideration with the previous adjustment, this evidence of past participation indicates that the current adjustment could burden the existing capacity of ready, willing, and able DBEs. When considering past participation adjustments to the base figure, USDOT tips for goal-setting recommend calculating the mean of the base figure and the median of the past participation figure.<sup>7</sup> Therefore, the adjusted goal using past participation results in 11.4% (see Formula 11 below). Next, TxDOT determined that the adjusted figure presented in Formula 10 provides an accurate goal estimate based solely on the changing availability of DBEs in our relevant market area, and that the figure presented in Formula 11 provides an accurate goal estimate based solely on past participation. Therefore, TxDOT determined that it is appropriate to consider both adjusted figures in the calculation of a final recommended annual goal.

<sup>7</sup> Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program: III. Step Two; A. Adjustments Based on Past Participation; 5. If you feel that an adjustment for past participation is necessary, how should you calculate the adjustment? b. Adjusting the Step One Base Figure with the Median Past Participation. With these principles in mind, you may calculate your median past participation percentage and use that figure to adjust your Step One Base Figure by taking the average of your median past participation figure and your Step One Base Figure. It is important that past participation not be given disproportionate weight and therefore, you should not simply average your Step One Base Figure with a whole list of past years' participation. Instead, you should average the Step One Base Figure with the median of your past years' participation rates. (<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>)

### Formula 11: Adjusted Base Figure #2 Calculation

$$\begin{aligned}\text{Adjusted Base Figure \#2} &= (\text{Base Figure} + \text{Median Value of Past Participation}) \\ &= [(11.18\% + 11.71\%) / 2] \\ &= [(22.89\%) / 2] \\ &= 11.445\%\end{aligned}$$

Adjusted Base Figure #2  
**11.4%**

### Adjustment 3: Public Consultation Evidence

The purpose of the public consultation meetings was to assist in the development of the FY 2014–2016 DBE Goals and consult with “minority, women, and general contractor groups, community organizations, and other officials or organizations which would be expected to have information concerning the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and TxDOT’s efforts to establish a level playing field for the participation of DBEs (see §26.45(g)(1)).” TxDOT utilized its Business Networking & Development Guide of minority chambers, Texas Unified Certification Program (TUCP) DBE Directory, business development organizations, and newspapers as a viable resource for outreach and public input to the process.

As part of this goal-setting process, roughly 20 public consultation meetings and conference calls were held in March, June and July 2013: (See Attachment D: Public Consultation Meeting Invitees). Business development organizations, chambers of commerce, and professional associations were emailed an invitation and a detailed agenda to participate in an exchange aimed at gathering information about establishing the overall DBE goal. To ensure the participation of those organizations, follow-ups were emailed to assess whether or not they have relevant information to the goal-setting process.

In an effort to provide opportunities for minority groups, community organizations, and other officials to provide input and feedback about TxDOT’s proposed goal methods and DBE goal, TxDOT provided multiple opportunities:

- Public input meetings through local and regional resources that capitalize on existing audience participation
- Public input meetings specific to contract opportunities, input regarding goal-setting methods, and opportunities to discuss barriers and concerns about contract opportunities with TxDOT.
- DBE goal-setting webinars
- Outreach event surveys and online surveys that offered opportunities for input and feedback

Table 7. TxDOT's Goal-Setting Public Participation Events

Date	Event	Location
March 20, 2013	Small Business Briefing	Arlington
June 10, 2013	Women Contractors Association	Austin
June 10, 2013	Texas Association of African American Chamber of Commerce	Austin
June 10, 2013	Texas Association of Mexican American Chamber of Commerce	Austin
June 11, 2013	Greater Houston Business Procurement Forum	Houston
June 11, 2013	Houston Minority Supplier Development Council	Houston
June 12, 2013	Association of General Contractors	Austin
June 17, 2013	American Indian Chamber of Commerce	TxDOT-Austin
June 18, 2013	El Paso Hispanic Chamber of Commerce	TxDOT-Austin
June 18, 2013	Great Austin Asian Chamber of Commerce	Austin
June 18, 2013	Childress Chamber of Commerce	TxDOT-Austin
June 19, 2013	Association of General Contractors	Austin
June 19, 2013	Women's Business Council	TxDOT-Austin
June 20, 2013	Greater Dallas Asian Chamber of Commerce	Dallas
June 20, 2013	Arlington Chamber of Commerce	Arlington
June 21, 2013	Dallas/ Ft Worth Minority Supplier Development Council	Dallas
June 21, 2013	Government Contracting Small Business Development Contractors	Dallas
June 24, 2013	Austin Black Contractors Association	Austin
June 24, 2013	Marshall Chamber of Commerce	TxDOT-Austin
June 25, 2013	Greater Houston Business Procurement Forum	Houston
June 27, 2013	Webinar (Session 1 & 2)	TxDOT-Austin
June 28, 2013	Killeen Chamber of Commerce	Killeen
June 28, 2013	Webinar (Session 3)	TxDOT-Austin
July 1, 2013	Webinar (Session 4 & 5)	TxDOT-Austin
July 2, 2013	Texas National Association for the Advancement of Colored People	Austin
July 2, 2013	Webinar (Session 6)	TxDOT-Austin
July 16, 2013	Houston-Galveston Area Council	Houston

In March, June and July, 2013, TxDOT conducted a DBE Program Input Survey (Attachment G). The survey was sent to women and minority-owned business owners; minority, women's, and general contractor groups; community organizations; public officials; and small and minority business development organizations. These surveys were conducted to ascertain whether additional information received from the surveys provided compelling evidence regarding lingering effects of past discrimination that serve as barriers to DBE contracting opportunities with TxDOT. In addition to serving as a basis for a potential adjustment to goals, the survey results are also useful in making modifications to our DBE Program

Supportive Services. Attachment E shows the results of the surveys collected. As shown in Attachment E, the survey items represent three major subsets of questions: items focused on DBE availability, items focused on effects of discrimination, and items focused on TxDOT's performance-related to attainment of goals. With respect to the DBE availability items, no noteworthy results justified an increase in the relative availability of DBEs on TxDOT federally funded contracts. Specifically, a large majority of those indicating that they are a DBE also indicated that they are DBE certified. However, obtaining mixed results with no clear consensus on the remaining availability subset suggests that TxDOT could benefit from conducting follow-up activities designed to bring greater clarity on this topic. Next, for each of the TxDOT performance subset items, no clear consensus was provided. Since the results for these items were fairly mixed, TxDOT has determined that there is not enough evidence to substantiate either a positive or a negative adjustment on the basis of this survey subset.<sup>8</sup> However, TxDOT can use this information to improve its outreach and other DBE programming and to conduct follow-up inquiries about specific survey items.

Last, several items included on the survey were designed to assess the extent to which lingering effects of discrimination serve as barriers to DBEs in the TxDOT market area on federally funded contracts. When asked, "What, if any, are the lingering effects that indicate that past or current discrimination still exists?" more than 90 percent of respondents identified at least one listed effect. However, more than 60 percent of respondents indicated that only three or fewer effects of discrimination, of the nine effects that were listed, still exist. The most frequently identified lingering effect was "inaccurate assumptions regarding DBE capacities." The next most frequent effect identified was "diverting DBEs to training or mentoring programs rather than awarding contracts." Further, nearly three-fourths of the respondents stated that "there is still preferential treatment concerning contracting [and] subcontracting." However, upon review of the open-ended responses and comments, consensus indicates that this effect is mostly due to the lack of relationships with prime contractors and other indirect forms of discrimination, such as lower materials costs available to larger businesses that make bulk purchases. Next, when asked to identify the "possible barriers that limit opportunities to do business with TxDOT," less than three percent of respondents stated that there are no barriers. The two barriers identified most frequently were respondents not being "sure how to be in the process of working with TxDOT" and "information on opportunities is not readily available." As such, TxDOT acknowledges that this available evidence serves to support a positive adjustment to the base figure.

Since this available evidence cannot be directly applied to the availability and utilization components of the goal formula, this evidence must be allocated a specific level of significance and strength within the -1 percentage point to +1 percentage point range. The maximum adjustment that could be attributed to this evidence is +1 percentage point. By performing additional statistical analyses on the discrimination subset of survey items, it was determined that the survey results merit a +0.173 percentage point increase on this scale of -1 to +1 percentage point. Specifically, responses provided to the eight

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<sup>8</sup> Survey question # 12 was eliminated from consideration as the wording of the item was deemed to be unclear by both the analysis team as well as through anecdotal comments provided by respondents.

discrimination subset items were first recoded to fit along this standard scale for each item.<sup>9</sup> Table 8 below provides summary statistics for each item as well as all items combined to produce a single standardized average. As shown, the standardized average across all items results in a mean of +0.173.

Table 8. Public Participation Survey Discrimination Subset Analysis

Question #	N	Minimum	Maximum	Sum	Mean	Std. Error	Std. Deviation	Variance
Q9	132	-1.000	1.000	-31.500	-.239	.054	.619	.383
Q10	132	-1.000	1.000	9.500	.072	.043	.491	.241
Q11	132	-1.000	1.000	40.500	.307	.046	.527	.277
Q13	131	-1.000	1.000	35.000	.267	.039	.444	.197
Q14	130	-1.000	1.000	-8.000	-.062	.055	.626	.392
Q16	123	-1.000	1.000	56.000	.455	.046	.512	.262
Q17	117	-1.000	1.000	28.778	.246	.040	.428	.183
Q18	120	.000	1.000	31.778	.265	.019	.212	.045
<b>Index Sum</b>	<b>134</b>	<b>-2.111</b>	<b>6.000</b>	<b>162.056</b>	<b>1.209</b>	<b>.127</b>	<b>1.468</b>	<b>2.155</b>
<b>Standardized Index Value</b>	<b>134</b>	<b>-.302</b>	<b>.857</b>	<b>23.151</b>	<b>.173</b>	<b>.018</b>	<b>.210</b>	<b>.044</b>

TxDOT determined that it is appropriate to add the standardized average scale score across all discrimination subset items to the Base Figure. As shown in Formula 12, the resulting adjusted base figure #3 is 11.4%.

**Formula 12: Adjusted Base Figure #3 Calculation**

$$\begin{aligned} \text{Adjusted Base Figure \#3} &= (\text{Base Figure} + \text{Discrimination Survey Subset Adjustment}) \\ &= [(11.18\% + 0.173\%)] \\ &= 11.353\% \end{aligned}$$

**Adjusted Base Figure #3**  
**11.4%**

<sup>9</sup> For the six “agree/ disagree” items, “strongly agree” was coded to +1.0, “agree” was coded to +0.5, “not familiar/not applicable” was coded to 0.0, “disagree” was coded to -0.5, and “strongly disagree” was coded to -1.0. Question #16 and Question #18 provided either a list of lingering effects of discrimination or barriers preventing DBEs from obtaining contracts. Each item was recoded where a value of -1.0 was assigned to a selection of the no discrimination/ no barriers options. A value of 0.0 was assigned to the “not familiar/ not applicable” option. Then, a value of 1 was assigned to each substantive discrimination or barrier option. Next, all responses were added together and averaged by item for each respondent where a value of -1.0 to +1.0 became the new range.

TxDOT then determined that it is also appropriate to consider Adjusted Base Figure #3 as part of the calculation of a final recommended annual goal.

## Final Adjusted Goal

All available evidence is taken into consideration to determine the adjustments to the base figure. An initial adjustment was applied to the base figure to account for the increasing availability of ready, willing, and able DBEs on the basis of Census self-employment data by procurement category and ethnicity-gender. Next, the initial base figure was combined with past participation to calculate the mean of these two figures producing a second potential adjustment. Finally public consultation survey data results revealing lingering effects of past discrimination was accounted for by adding a final increase to the base figure resulting in a third potential adjustment. Giving equal weight to each of these three adjusted figures, TxDOT determined that the final adjusted goal, and proposed DBE annual goal, should be the mean of the adjusted goals produced in Formula 9, Formula 11, and Formula 12. Therefore, the base figure was adjusted with consideration given to all available evidence to reveal the recommended adjusted goal (see Formula 13). The recommended DBE Goal for FY 2014–2016 is 11.7%.

### Formula 13: Final Adjusted Goal Calculation

$$\begin{aligned}\text{Final Adjusted Base Figure} &= (\text{Adjusted Base Figure \#1} + \text{Adjusted Base Figure \#2} + \\ &\quad \text{Adjusted Base Figure \#3})/3 \\ &= [(12.39\% + 11.45\% + 11.35\%)/3] \\ &= [(35.19\%)/3] \\ &= 11.73\%\end{aligned}$$

**Final Adjusted Base Figure & Proposed DBE Goal**  
**11.7%**

## Race-Neutral and Race Conscious Participation

The goal methods are used to calculate the DBE goal and a determination of how TxDOT plans to meet the goals through race-neutral and race-conscious measures (see §26.45(f)(3) and §26.51(c)). TxDOT plans to meet the “maximum feasible portion of [the] overall goal by using race-neutral means. (see §26.51(a)).”

TxDOT examined the race-neutral attainment for the past six complete years (see Table 9) to determine the maximum race-neutral participation. On average, TxDOT achieved 6.6% (see Formula 14) of the goal through race-neutral means. The calculation for

the average Race-Neutral participation is determined with the median of race-neutral participation. The median is used instead of the average or mean because it excludes outliers—that is, abnormally high or low numbers. TxDOT uses six completed years of race-neutral participation (see Table 9) in computing the median value; therefore, the value is determined by averaging the two middle values. The median race-neutral achievement is calculated using the 2007 achievement of 6.64% and 2010 achievement of 6.55%.

Table 9: Race-Neutral and Race-Conscious Goal vs. Achievement

Fiscal Year	Goals			Achievement		
	Race-Neutral	Race-Conscious	Overall	Race-Neutral	Race-Conscious	Overall
2007	6.12%	6.00%	12.12%	6.64%	4.92%	11.56%
2008	6.12%	6.00%	12.12%	10.53%	4.18%	14.71%
2009	6.00%	5.00%	11.00%	5.81%	6.36%	12.17%
2010	7.50%	4.12%	11.62%	6.55%	4.30%	10.85%
2011	6.50%	5.20%	11.70%	8.24%	3.62%	11.86%
2012	6.50%	5.20%	11.70%	4.93%	3.52%	8.45%

TxDOT also considered the amount by which past goals were exceeded as well as past history of inability to achieve goals in determining the race-neutral and race-conscious proportion consistent with USDOT goal-setting tips. Specifically, USDOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years' goals that was not met or increasing the race-neutral portion to account for exceeding goals.<sup>10</sup> Therefore, TxDOT first determined the median as described above, and then determined the mean of the difference between the race-neutral achievement and goals for the two years used to calculate the median. The mean difference between achievement and goals for these two years was then added to the race-neutral median to account for exceeding and not meeting race-neutral goals. Since the mean difference of 2007 and 2010 was negative, this result in a decrease from the race-neutral median. The resulting calculation yields a median value of 6.6% and a mean race-neutral goal gap of -0.2%. TxDOT has set the proposed race-neutral goal for FY 2014–2016 as 6.4% accordingly (see Formula 14 below).

<sup>10</sup> Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program: IV. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split; A. Consider the Amount by Which You Exceeded Your Goals in the Past. & F. Consider Past History of Inability to Achieve Goals. (<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>)

**Formula 14: Median Race-Neutral Value + Mean (Race-Neutral Difference in Median Years)**

$$\begin{aligned}
 &= (6.55 + 6.64) \div 2 + (((6.55 - 7.5) + (6.64 - 6.12)) \div 2) \\
 &= (13.19) \div 2 + (((-0.95) + (0.52)) \div 2) \\
 &= 6.595 + (-0.215) \\
 &= 6.38\%
 \end{aligned}$$

**Proposed Race-Neutral Allocation**

**6.4%**

TxDOT will establish race-conscious measures and contract goals to meet the balance (see Formula 15) of the overall goal (see §26.51(d)). The proposed Race-Conscious Goal for FY 2014–2016 is 5.3%.

**Formula 15: Race-Conscious Calculation**

$$\begin{aligned}
 &RaceConscious + RaceNeutral = OverallGoal \\
 &RaceConscious = OverallGoal - RaceNeutral \\
 &= 11.7\% - 6.4\% \\
 &= 5.3\%
 \end{aligned}$$

**Proposed Race-Conscious Allocation**

**5.3%**

**Public Participation: Review and Comment**

In accordance with § 26.45(g)(2), TxDOT published a Public Notice, announcing the proposed overall goal and methods in general circulations, the Texas Register, and minority and trade focus papers statewide (see Attachment F: Public Comment Notifications) on August 9, 2013 inviting public review for 30 days and comment for 45 days. The public was afforded the opportunity to review the goal and the calculation methods until September 9, 2013 and to submit comments by September 24, 2013.

## Attachments

- Attachment A: TxDOT Prime and Subcontractor Utilization
- Attachment B: Texas State Data Center's Census Data Projections
- Attachment C: Census ACS Self-Employment Estimates
- Attachment D: Public Consultation Meeting Invitees
- Attachment E: DBE Program Input Survey Results
- Attachment F: Public Comment Notifications
- Attachment G: DBE Program Blank Survey

**Attachment A. TxDOT Disparity Study (2009) Exhibit 4-7 for Prime Utilization and 5-11 for Subcontractor Utilization**

<b>TxDOT Disparity Study (2009) Exhibit 4-7 for Prime Utilization and 5-11 for Subcontractor Utilization</b>					
<b>Procurement Type</b>	<b>HUB Groups</b>	<b>Prime Contractor Utilization</b>	<b>Subcontractor Utilization</b>	<b>Combined Prime and Subcontractor Utilization</b>	<b>HUB Utilization</b>
<b>Heavy Construction</b>	African Americans	\$5,213,764	\$73,535,781	\$78,749,545	
	Asian Americans	\$11,594,801	\$36,520,059	\$48,114,860	
	Hispanic Americans	\$194,923,835	\$297,105,266	\$492,029,101	
	Native Americans	\$822,262	\$17,932,248	\$18,754,510	
	Nonminority Women	\$117,925,230	\$340,944,411	\$458,869,641	
	HUB-Total	\$330,479,892	\$766,037,766	\$1,096,517,658	6.96%
	Non-minority	\$15,413,296,367	\$46,793,860	\$15,460,090,227	
	<b>Total</b>	<b>\$15,743,776,259</b>	<b>\$812,831,626</b>	<b>\$16,556,607,885</b>	
<b>Procurement Type</b>	<b>HUB Groups</b>	<b>Prime Contractor Utilization</b>	<b>Subcontractor Utilization</b>	<b>Combined Prime and Subcontractor Utilization</b>	<b>HUB Utilization</b>
<b>Professional Services</b>	African Americans	\$2,272,782	\$6,008,429	\$8,281,211	
	Asian Americans	\$51,263,315	\$8,033,432	\$59,296,747	
	Hispanic Americans	\$64,980,976	\$23,726,714	\$88,707,690	
	Native Americans	\$0	\$21,308	\$21,308	
	Nonminority Women	\$17,314,286	\$12,958,128	\$30,272,414	
	HUB-Total	\$135,831,359	\$50,748,012	\$186,579,371	16.64%
	Non-minority	\$985,717,169	\$18,530,476	\$1,004,247,645	
	<b>Total</b>	<b>\$1,121,548,528</b>	<b>\$69,278,488</b>	<b>\$1,190,827,016</b>	

**Attachment B. State of Texas Projected Population Percentage Change through 2016 for Migration Scenario 2 (using 2010 Census Baseline Data)**

Migration Scenario <sup>11</sup>	Year	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)
0.0 Scen	2010	13,104,882	3,153,645	3,166,501	1,534,471	4,497,855	752,410
0.0 Scen	2011	13,241,567	3,156,450	3,172,066	1,552,770	4,595,946	764,335
0.0 Scen	2012	13,321,701	3,138,343	3,155,200	1,567,147	4,687,289	773,722
0.0 Scen	2013	13,393,469	3,119,792	3,136,628	1,579,744	4,775,322	781,983
0.0 Scen	2014	13,469,781	3,105,162	3,121,071	1,592,553	4,861,386	789,609
0.0 Scen	2015	13,547,327	3,090,495	3,104,844	1,606,411	4,949,693	795,884
0.0 Scen	2016	13,629,829	3,077,740	3,089,327	1,620,581	5,040,200	801,981
0.0 Scen	Avg 2014-16	13,548,979	3,091,132	3,105,081	1,606,515	4,950,426	795,825
<b>Projected Growth % (2010 to 3- year average 2014-16)</b>		<b>3.39%</b>	<b>-1.98%</b>	<b>-1.94%</b>	<b>4.70%</b>	<b>10.06%</b>	<b>5.77%</b>
<b>Total Change (%Increase in Anglo Females/Minorities minus %Increase Anglo Males)</b>							

Source: Texas State Data Center's Texas Population Projections Program available at: <http://txsdc.utsa.edu/Resources/TPEPP/Projections/2012/2012allcntymigtot.zip> ; Accessed July 15, 2013.  
**State of Texas Projected Population Percentage Change through 2016 for Migration Scenario 2 (using 2010 Cen**

<sup>11</sup> The Zero Migration (0.0) Scenario assumes that immigration and outmigration are equal (i.e., net migration is zero) resulting in g increase (the excess or deficit of births relative to deaths). The One-Half 2000-2010 Migration (0.5) Scenario is an approximate av 2000-2010 (1.0) scenarios. The 2000-2010 Migration (1.0) Scenario assumes that the trends in the age, sex and race/ethnicity net n decade will characterize those occurring in the future of Texas. See also: <http://txsdc.utsa.edu/Data/TPEPP/Projections/Methodolog>

Migration Scenario	Year	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)
0.5 Scen	2010	13,104,882	3,153,645	3,166,501	1,534,471	4,497,855	752,410
0.5 Scen	2011	13,308,575	3,162,268	3,177,240	1,561,358	4,630,691	777,018
0.5 Scen	2012	13,459,375	3,149,839	3,165,443	1,584,417	4,759,794	799,882
0.5 Scen	2013	13,604,916	3,136,755	3,151,760	1,605,690	4,888,352	822,359
0.5 Scen	2014	13,757,977	3,127,347	3,140,883	1,627,213	5,017,605	844,929
0.5 Scen	2015	13,915,332	3,117,748	3,129,186	1,649,873	5,151,648	866,877
0.5 Scen	2016	14,081,181	3,109,901	3,118,070	1,673,007	5,290,925	889,278
0.5 Scen	Avg 2014-16	13,918,163	3,118,332	3,129,380	1,650,031	5,153,393	867,028
<b>Projected Growth % (2010 to 3-year average 2014-16)</b>		<b>6.21%</b>	<b>-1.12%</b>	<b>-1.17%</b>	<b>7.53%</b>	<b>14.57%</b>	<b>15.23%</b>
<b>Total Change (%Increase in Anglo Females/Minorities minus %Increase Anglo Males)</b>							

State of Texas Projected Population Percentage Change through 2016 for Migration Scenario 3 (using 2010 Cen

Migration Scenario	Year	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)
1.0 Scen	2010	13,104,882	3,153,645	3,166,501	1,534,471	4,497,855	752,410
1.0 Scen	2011	13,375,572	3,168,097	3,182,396	1,569,939	4,665,447	789,693
1.0 Scen	2012	13,598,367	3,161,393	3,175,711	1,601,780	4,832,937	826,546
1.0 Scen	2013	13,820,459	3,153,804	3,166,937	1,631,986	5,003,425	864,307
1.0 Scen	2014	14,054,675	3,149,688	3,160,787	1,662,547	5,178,148	903,505
1.0 Scen	2015	14,298,125	3,145,250	3,153,689	1,694,459	5,361,206	943,521
1.0 Scen	2016	14,555,616	3,142,412	3,147,065	1,727,108	5,553,582	985,449
1.0 Scen	Avg 2014-16	14,302,805	3,145,783	3,153,847	1,694,705	5,364,312	944,158
Projected Growth % (2010 to 3- year average 2014-16)		9.14%	-0.25%	-0.40%	10.44%	19.26%	25.48%
Total Change (%Increase in Anglo Females/Minorities minus %Increase Anglo Males)							

Population projection change sources:

<http://txsdc.utsa.edu/Data/TPEPP/Projections/Index.aspx>

<http://txsdc.utsa.edu/Data/TPEPP/Projections/Methodology.pdf>

<http://txsdc.utsa.edu/Resources/TPEPP/Projections/2012/2012allcntymigtot.zip>

## Attachment C. Texas Projected Self Employed Population Estimates and Projections by C Procurement Type (using 2007-2011 ACS Data)

Census Population Estimate Category	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)
Total ACS Texas Estimate	24,774,187	5,610,007	5,743,563	2,852,985	9,213,223	1,354,409
Self-employed only	1,381,277	530,675	286,842	76,963	408,172	78,625
Construction (all)	939,208	656,152	71,651	45,334	148,429	17,642
<b>Construction (Self-employed)</b>	<b>210,149</b>	<b>157,905</b>	<b>12,458</b>	<b>6,984</b>	<b>28,949</b>	<b>3,853</b>
Construction (not self-employed)	729,059	498,247	59,193	38,350	119,480	13,789
PS (all)	1,590,289	310,033	824,977	255,827	96,596	102,856
<b>Prof Services (Self-employed)</b>	<b>116,252</b>	<b>45,611</b>	<b>48,297</b>	<b>8,807</b>	<b>6,089</b>	<b>7,448</b>
PS (not self-employed)	1,474,037	264,422	776,680	247,020	90,507	95,408
<b>Relative % of TX Estimate</b>						
Self-employed only	5.58%	9.46%	4.99%	2.70%	4.43%	5.81%
Construction (all)	3.79%	11.70%	1.25%	1.59%	1.61%	1.30%
<b>Construction (Self-employed)</b>	<b>0.85%</b>	<b>2.81%</b>	<b>0.22%</b>	<b>0.24%</b>	<b>0.31%</b>	<b>0.28%</b>
Construction (not self-employed)	2.94%	8.88%	1.03%	1.34%	1.30%	1.02%
PS (all)	6.42%	5.53%	14.36%	8.97%	1.05%	7.59%
<b>Prof Services (Self-employed)</b>	<b>0.47%</b>	<b>0.81%</b>	<b>0.84%</b>	<b>0.31%</b>	<b>0.07%</b>	<b>0.55%</b>
PS (not self-employed)	5.95%	4.71%	13.52%	8.66%	0.98%	7.04%

Census Population Estimate Category	Total	Anglo Male	Anglo Female	Black (Male + Female)	Hispanic (Male + Female)	Other (Male + Female)
<b>O.O Migration Growth Rate</b>	3.39%	-1.98%	-1.94%	4.70%	10.06%	5.77%
<b>Estimated Self-Employment</b>						
Total ACS Texas Estimate	25,613,732	5,498,803	5,632,156	2,986,934	10,140,252	1,432,559
Self-employed only	1,428,086	520,156	281,278	80,576	449,242	83,162
Construction (all)	971,036	643,146	70,261	47,462	163,364	18,660
<b>Construction (Self-employed)</b>	217,271	154,775	12,216	7,312	31,862	4,075
Construction (not self-employed)	753,765	488,371	58,045	40,151	131,502	14,585
PS (all)	1,644,181	303,887	808,975	267,838	106,315	108,791
<b>Prof Services (Self-employed)</b>	120,192	44,707	47,360	9,220	6,702	7,878
PS (not self-employed)	1,523,989	259,181	761,615	258,618	99,614	100,913
<b>Construction (Self-employed) projected relative increase (%)</b>						
<b>Professional Services (Self-employed) projected relative increase (%)</b>						

## Attachment D. Invitees to Public Consultation Meetings

The following minority, women's, and general contractor groups, community organizations, and other officials and organizations were invited to attend the Public Consultation Meetings:

Abilene Black Chamber of Commerce  
Acres Home Center for Business and Economic Development  
African American Chamber of Commerce of San Antonio  
African American News & Issues  
African Chamber of Commerce, D/FW  
African-American Chamber of Commerce  
AGC of Texas  
American Indian Chamber of Commerce of Texas  
Beaumont Chamber of Commerce  
Bee County Area Hispanic Chamber of Commerce  
Bryan-College Station Chamber of Commerce  
Capital City African American Chamber of Commerce  
Childress Chamber of Commerce  
Construction Information Network (CIN)  
Corpus Christi Bay Area Minority Business Opportunity Center  
Corpus Christi Hispanic Chamber of Commerce  
Corpus Christi Minority Business Development Center  
Dallas Black Chamber of Commerce  
Dallas Black Contractors Association  
Dallas/ Ft. Worth – MBDC  
Dallas/Ft. Worth/Arlington/ MBDC  
DFW Native American Chamber of Commerce  
East Texas Council on African-American Affairs  
El Paso Black Chamber of Commerce  
El Paso Hispanic Chamber of Commerce  
El Paso MBDC  
El Paso Minority Business Development Center  
Fort Worth Hispanic Chamber of Commerce  
Fort Worth Metropolitan Black Chamber of Commerce  
Greater Austin Hispanic Chamber of Commerce  
Greater Dallas Asian American Chamber of Commerce  
Greater Dallas Hispanic Chamber of Commerce  
Greater Killeen Chamber of Commerce  
Greater Marshall Chamber of Commerce  
Greater Orange Area Chamber of Commerce  
Greater San Antonio Chamber of Commerce  
Greater Waco Chamber of Commerce  
Hispanic Chamber of Greater Baytown

Hispanic Contractors Association of Dallas/Ft Worth  
Houston Citizens Chamber of Commerce  
Houston Hispanic Chamber of Commerce  
Houston MBDC  
Kilgore Chamber of Commerce  
Lamar County Chamber of Commerce  
Laredo Chamber of Commerce  
Longview Metro Black Chamber of Commerce  
Lubbock Hispanic Chamber of Commerce  
Lufkin/Angelina County Chamber of Commerce  
McAllen Chamber of Commerce  
McAllen Hispanic Chamber of Commerce  
Mexican American Network of Odessa, Inc. (MANO)  
Midland Hispanic Chamber of Commerce  
NAACP (Austin Office)  
NAACP (San Antonio Office)  
National Association of African American Chamber of Commerce  
National Association of Women in Construction  
Pampa Chamber of Commerce  
Pharr Chamber of Commerce  
Professional Women's Association  
Rio Grande City Chamber of Commerce  
Round Rock Chamber of Commerce  
San Angelo Chamber of Commerce  
San Antonio Hispanic Chamber of Commerce  
San Antonio MBDC  
San Antonio Women's Chamber of Commerce  
San Marcos Hispanic Chamber of Commerce  
San Saba County Chamber of Commerce  
Seguin-Guadalupe County Hispanic Chamber of Commerce  
Seminole Area Chamber of Commerce  
Smithville Chamber of Commerce  
South Texas MBDC  
Texarkana Chamber of Commerce  
Texas Asian Chamber of Commerce  
Texas Association of African-American Chamber of Commerce  
Texas Association of Mexican-American Chamber of Commerce  
Texas State Conference of NAACP  
Texas Tech University Small Business Development Center  
Texas Workforce Center of El Paso  
Tulia Chamber of Commerce  
Tyler Area Chamber of Commerce  
Tyler Metropolitan Chamber of Commerce  
Victoria Hispanic Chamber of Commerce  
Women's Business Council – Southwest  
Women's Chamber of Commerce of Texas

## Attachment E. DBE Program Input Survey Results

### Availability Subset Results

What kind of entity do you represent? (Choose One)	Frequency	Percent
Business: DBE	59	35.76%
Business: Other Minority - or Woman-Owned Business	46	27.88%
Business: Prime Contractor	6	3.64%
Business: Small Business	16	9.70%
Community Organization	4	2.42%
General Contractor Group	2	1.21%
Individual	19	11.52%
Minority or Women's Contractor Group	9	5.45%
Other Officials or Organizations	4	2.42%
Subtotal	165	100.00%
System Missing	2	1.20%
<b>Total</b>	<b>167</b>	<b>100.00%</b>

In what area is your entity located? (Choose One)	Frequency	Percent
East Texas	16	9.76%
North Texas	72	43.90%
Out-of-State	1	0.61%
South Texas	29	17.68%
Texas (Statewide)	38	23.17%
West Texas	8	4.88%
Subtotal	164	100.00%
System Missing	3	1.80%
<b>Total</b>	<b>167</b>	<b>100.00%</b>

Are you DBE certified?	Frequency	Percent
No	55	43.65%
Yes	71	56.35%
Subtotal	126	100.00%
System Missing	41	24.55%
Total	167	100.00%

Are you a disadvantaged business enterprise?	Frequency	Percent
No	34	26.77%
Yes	93	73.23%
Subtotal	127	100.00%
System Missing	40	23.95%
Total	167	100.00%

There is little interest in highway construction/design, aviation construction/design or public transit work. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	18	13.95%
"Disagree" or "Strongly Disagree"	72	55.81%
"Not Familiar/Not Applicable"	39	30.23%
Total	129	100.00%
System Missing	38	22.75%
Total	167	100.00%

There are firms that qualify for DBE certification, but are not getting certified? (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	62	47.33%
"Disagree" or "Strongly Disagree"	12	9.16%
"Not Familiar/Not Applicable"	57	43.51%
Total	131	100.00%
System Missing	36	21.56%
Total	167	100.00%

What kind of entity do you represent? (Choose One)	Frequency	Percent
Highway Construction	27	16.2
Professional Services (Highway)	26	15.6
Professional Services (Other)	85	50.9
Aviation (Construction)	8	4.8
Aviation (Design)	7	4.2
Public Transportation	13	7.8
Building Construction	30	18.0
Commodity Goods and Services	51	30.5

### Lingering Effects of Discrimination Subset Results

The sub-contracting opportunities for disadvantaged and non-disadvantaged businesses are the same or similar. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	35	26.52%
"Disagree" or "Strongly Disagree"	73	55.30%
"Not Familiar/Not Applicable"	24	18.18%
Total	132	100.00%
System Missing	35	20.96%
Total	167	100.00%

The pre-certification/pre-qualification requirements for prime contractors are reasonable. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	53	40.15%
"Disagree" or "Strongly Disagree"	28	21.21%
"Not Familiar/Not Applicable"	51	38.64%
Total	132	100.00%
System Missing	35	20.96%
Total	167	100.00%

Firms that are ready, willing, and able to do work on TxDOT projects are not given sufficient opportunities for contracts. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	77	58.33%
"Disagree" or "Strongly Disagree"	19	14.39%
"Not Familiar/Not Applicable"	36	27.27%
Total	132	100.00%
System Missing	35	20.96%
Total	167	100.00%

There is no reason to become DBE certified because the opportunities for DBE are so rare. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	46	35.38%
"Disagree" or "Strongly Disagree"	62	47.69%
"Not Familiar/Not Applicable"	22	16.92%
Total	130	100.00%
System Missing	37	22.16%
Total	167	100.00%

There is still preferential treatment concerning contracting/sub-contracting. (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	89	72.36%
"Disagree" or "Strongly Disagree"	12	9.76%
"Not Familiar/Not Applicable"	22	17.89%
Total	123	100.00%
System Missing	44	26.35%
Total	167	100.00%

What, if any, are the lingering effects that indicate that past or current discrimination still exists? (Choose all that apply.)	Frequency	Percent
Zero	9	7.69%
1 to 3	71	60.68%
4 to 6	27	23.08%
7 to 9	10	8.55%
Subtotal	117	100.00%
System Missing	50	29.94%

Total	167	100.00%
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There are firms that qualify for DBE certification, but are not getting certified? (Choose One)	Frequency	Percent
"Strongly Agree" or "Agree"	62	47.33%
"Disagree" or "Strongly Disagree"	12	9.16%
"Not Familiar/Not Applicable"	57	43.51%
Total	131	100.00%
System	36	21.56%
Total	167	100.00%

The following are possible barriers that limit opportunities to do business with TxDOT: (Choose all that apply.)	Frequency	Percent
Zero	3	2.50%
1 to 3	72	60.00%
4 to 6	27	22.50%
7 to 9	3	2.50%
"Not Familiar/Not Applicable"	15	12.50%
Subtotal	120	100.00%
System Missing	47	28.14%
Total	167	100.00%

### TxDOT Performance Subset Results

TxDOT efforts to provide contract/business opportunities. (Choose One)	Frequency	Percent
"Excellent" or "Good"	26	20.97%
"Neutral"	34	27.42%
"Poor" or "Bad"	41	33.06%
"Not Familiar/Not Applicable"	23	18.55%
Subtotal	124	100.00%
System Missing	43	25.75%
Total	167	100.00%

What is your position on TxDOT's efforts to reach out to and certify DBEs? (Choose One)	Frequency	Percent
"Excellent" of "Good"	33	26.40%
"Neutral"	36	28.80%
"Poor" or "Bad"	36	28.80%
"Not Familiar/Not Applicable"	20	16.00%
Subtotal	125	100.00%
System Missing	42	25.15%
Total	167	100.00%

What is your position on the appropriateness of TxDOT DBE goals on contracts? (Choose One)	Frequency	Percent
"Excellent" of "Good"	27	21.95%
"Neutral"	28	22.76%
"Poor" or "Bad"	38	30.89%
"Not Familiar/Not Applicable"	30	24.39%
Subtotal	123	100.00%
System Missing	44	26.35%
Total	167	100.00%

What is your position on TxDOT efforts to provide firms with training on becoming more effective contractors? (Choose One)	Frequency	Percent
"Excellent" of "Good"	18	14.75%
"Neutral"	32	26.23%
"Poor" or "Bad"	36	29.51%
"Not Familiar/Not Applicable"	36	29.51%
Subtotal	122	100.00%
System Missing	45	26.95%
Total	167	100.00%

What is your position on TxDOT's efforts to monitor and assist DBE firms on existing contracts? (Choose One)	Frequency	Percent
"Excellent" of "Good"	16	13.11%
"Neutral"	36	29.51%
"Poor" or "Bad"	34	27.87%
"Not Familiar/Not Applicable"	36	29.51%
Subtotal	122	100.00%
System Missing	45	26.95%
Total	167	100.00%

What is your position on TxDOT's efforts to partner with other organizations? (Choose One)	Frequency	Percent
"Excellent" of "Good"	20	16.39%
"Neutral"	36	29.51%
"Poor" or "Bad"	28	22.95%
"Not Familiar/Not Applicable"	38	31.15%
Subtotal	122	100.00%
System Missing	45	26.95%
Total	167	100.00%

## Open-Ended Response and Comments Subset

The sub-contracting opportunities for disadvantaged and non-disadvantaged businesses are the same or similar. What is your position on TxDOT's efforts to partner with other organizations? (Choose One)	Frequency	Percent
	153	91.6
I believe there are more sub-contracting opportunities for disadvantaged businesses however not as many prime opportunities. I also believe there is substantial competition for the sub-contracting opportunities for such small percentages for work.	1	.6
I never get contacted for any subcontracting opportunities.	1	.6
I think in some areas like Galveston they don't pay much attention to disadvantaged businesses. And the largest companies that could have significant impact consider that they have met the criteria when they contract with a "women's" own business which too often is a front for the husband.	1	.6
Many non-DBE firms have long standing relationships that helps them learn about opportunities sooner and these relationships help them receive direct opportunities from	1	.6

prime contractors		
Many time DBE firms cannot get the same pricing from material suppliers and thus DBE are at a disadvantage to other subcontractors	1	.6
My company specialized in DBE compliance. I feel that TxDOT should make it mandatory on large projects that primes use firms like mine to support TxDOT in it's efforts to reach its goals. Thus, making it a part of the bidding process.	1	.6
Non disadvantage has easier time marketing and getting foot in the door	1	.6
Non-disadvantaged (large corporate) businesses more likely to glean information from other sources, more likely to gain more timely or more accurate insight into requirements. Better able to absorb cost / cycle time delays.	1	.6
Not enough information about both to compare	1	.6
Our services are not put out for bid.	1	.6
There are programs and memorandum of cooperation, but very little actual awarding of contracts	1	.6
Very rarely do prime contractors use sub-contractors unless they are forced.	1	.6
We are a new MWBE certified company. We have not got any bid from TXDot.	1	.6
Would like to see more focus on DBE based firm opportunities	1	.6
Total	167	100.0

**The pre-certification/pre-qualification requirements for prime contractors are reasonable. (Comments)**

	Frequency	Percent
	158	94.6
However, DBE firms are not always familiar with the process. More education needs to be provided so DBEs understand and can gain assistance with the proccess. Not just referring DBE firms to a website or form.	1	.6
I have never been able to ascertain pre-qualifications for our services.	1	.6
Many times primes pre-quals rule out DBE's because DBE's are young growing companies	1	.6
Not none	1	.6
Past DBE subcontractor utilization requirements could be strengthened	1	.6
See final comment	1	.6
Sub-contractor useage percentage should be higher and held accountable in larger contracts.	1	.6
The requirements are reasonable; however, franchise owners get away with saying they are DBEs or minority firms even though they own 25+ franchises. It makes it difficult to complete against these larger companies because they can come in at a lower price.	1	.6
Women, we need more help	1	.6
Total	167	100.0

**Firms that are ready, willing, and able to do work on TxDOT projects are not given sufficient opportunities for contracts. (Comments)**

	Frequency	Percent
	154	92.2
DBE firms don't have all the knowledge, resources, and/or relationships to gain opportunities for contracts	1	.6
I have been monitoring TxDOT's opportunities and have never seen any efforts to make projects accessible or specific to DBE's.	1	.6
If the project is based on lowest price, then no, we aren't given sufficient opportunities. (example: training providers such as New Horizon's can provide lower prices on training because the franchise owner owns 24+ locations; however, there is a minority that is 51% owner, so the HUB or DBE gets the business because the individual franchise is allowed to claim being an individual business).	1	.6
Many times the primes are only willing to contract out the small crappy scopes to DBE instead of partnering with the DBE's to help grow capacity	1	.6
Not able to connect with the buyers -	1	.6
Not enough information	1	.6
Problem will exist until actions are taken by TxDOT to better develop business relationships between primes and potential subs. Human nature is that people like to work with people they know.	1	.6
Provide firms with additional help that is required, example is 15-day payments	1	.6
See comments on Question 11 & Question 12.	1	.6
See final comment	1	.6
TxDOT Rules preclude many minority contractors from receiving contracts (i.e. owning your own vehicles versus leasing)	1	.6
We need more help in order to compete	1	.6
Why limit to DBE only (What about MBE, WBENC, etc..)	1	.6
Total	167	100.0

**There is little interest in highway construction/design, aviation construction/design or public transit work. (Comments)**

	Frequency	Percent
	159	95.2
As a subcontractor, we are less inclined to bid on TxDOT projects than comparable non TxDOT projects due to bureaucracy involved, poor TxDOT project oversight, extremely, extremely slow speed of payment and inaccurate payment. We bid higher on TxDOT projects than any other projects we bid because we know the projects will be painful, and we know the state will drag their feet when it comes time to pay.	1	.6
Don't understand question. Interest on whose part?	1	.6
need to also focus on technology infrastructure	1	.6
not involved in construction	1	.6
Not sure what is being asked here. "Little interest" from whose perspective?	1	.6
RAMA targets high construction projects	1	.6

There is entry but little access	1	.6
Women, we need more help in this arena	1	.6
Total	167	100.0

**There are firms that qualify for DBE certification, but are not getting certified? (Comments)**

	Frequency	Percent
	160	95.8
Becoming DBE is not accessible	1	.6
Certification agencies are fair and the systems they use for certification are administered fairly.	1	.6
Certifying agencies look to deny versus approving applications, plus it takes too long to get certified. Agencies are wanting businesses to wait a year until applying but that is not in the guidelines to apply.	1	.6
Many firms are reluctant to share financial information and do the paperwork necessary to become certified. They are also turned off by different certifying agencies requesting different information for certification.	1	.6
No information	1	.6
Please contact me for additional info	1	.6
With a few notable exceptions, many minority-owned firms believe that the certification process is legal protection for the organization, that real opportunities don't exist for a DBE. Some DBEs conflate their personal interaction with staff with the repeatability / fairness of the certification process. If they have a bad or negative interaction with staff, they may think their "chances" of getting certified are lower.	1	.6
Total	167	100.0

**There is no reason to become DBE certified because the opportunities for DBE are so rare. (Comments)**

	Frequency	Percent
	152	91.0
Again, I do not think TxDOT does enough to work with DBEs with their program or on construction projects.	1	.6
DBE certification helps. The next step is to require the primes to not only utilize DBE firms, but to be willing to contract larger critical project scopes to DBE firms (Not just the trash work)	1	.6
For my services	1	.6
I 2, but again I think some DBEs don't recognize opportunities to subcontract to primes, including DBE primes.	1	.6
I assumed that a cert DBE would open doors, yet I still have to prove as if I wasn't certified	1	.6
I do feel it is not given enough weight in the selection process.	1	.6
I have yet to use mine.	1	.6

Mildly 1. Certification can potentially lead to non-TxDOT opportunities.	1	.6
Sometimes they are just fronts	1	.6
That is the concensus of most businesses.	1	.6
The information a firm can receive because of certification is valuable. More effective outreach needs to be made regarding how to position a firm on winning DBE contracts.	1	.6
The opporunities are there but because of the length and hassle to apply small businesses choose not to.	1	.6
There are no set-aside projects for DBE firms.	1	.6
We certified this year, But we did not get any opportunity	1	.6
Women need more assistance	1	.6
Total	167	100.0

**Please provide any additional comments you might have concerning the availability of disadvantaged and non-disadvantaged businesses:**

	Frequency	Percent
	120	71.9
All we need a change to do work or it but the same construction people are doing all the work.	1	.6
As a chamber official, I've heard more negatives than positives. Getting contracts have been difficult.	1	.6
As a Financial Advisor, there are not opporunities for me to provide workshops for employees	1	.6
As a Minority and Disadvantage Business Owner, I am very disappointed. I have submitted response to around 50-60 Texas state bids, since 2007, but never get an opportunity even if We have skills and resources. At the same time we have opportunities from State of NC.	1	.6
BOAZ Enterprises would like to work on a variety of TxDOT projects on an ongoing basis. We are graduates of the TxDOT mentor protege LINC program, and are DBE certified. We are looking forward to working on our first project with TxDOT.	1	.6
Construction is a difficult way to make a living. You cannot hand this way of life to someone they must want it and go after it to succeed.	1	.6
DBE firms need more interface with TxDOT departments and contractors that provide the contract opportunities DBEs can provide services for. Many DBE firms just have relationships with the DBE department and those relationships are not enough to gain the knowledge and relationships to win contract opportunities.	1	.6
Financial resources can separate disadvantaged businesses from being a successful bidder. The grading system for experienced and non experienced contractors. Being financially disadvantaged plays a large roll in the continuing exclusion of disadvantaged contractors. SDB's often do not have the financial ability to purchase goods from manufacturers at the same prices that large suppliers do.ie, Large suppliers may buy 1,000 True Temper Shovels for \$5 each. An SDB may be constrained by financial resources to buy in lesser quantities and therefore have to pay the manufacturer \$8 for the same shovel. When quoting for resale the large supplier with a 30 markup can sell the product well below the SDB if their markup is 20%. Large businesses have costs that SDB's never get to see.	1	.6

For the Asian American community, in my opinion, relationship is important. That doesn't mean a strong qualitative relationship is necessary, but regular communication. As a Board member of the Asian Chamber, I hear constantly from corporate supplier diversity execs "where are the APA businesses?" or "why don't they want to play?" or "we can't find them!" But T CPA lists almost 800 APA businesses. Just need to keep in touch regularly, advise often. Perhaps offer online or virtual walk-throughs, a bit more coaching or access to coaching for those who want it. (Several federal organizations, for example, offer a bidder's guide for DBEs, or suggest mentors, for all.)	1	.6
Franchises are stealing business away from true Small disadvantaged Businesses. The HUB and DBE programs really need to be reviewed to see the loop hole that is being provided to the benefit of larger businesses.	1	.6
HUB program can work well if the certified vendors receive contracts to show they can perform the services.	1	.6
I believe there is always a need for increased awareness to the available contracting opportunities.	1	.6
I don't know enough about that.	1	.6
I have not seen nor have I ever witnessed TxDot giving the upper hand one entity or the other. To me it's fair- however for small business set aside there should not be a requirement for providing audited financials..That drives the price up un-nessarisarily and eliminates most if not all SMB's from bidding the job.	1	.6
I have unsuccessfully attempted to obtain an opportunity for more than twenty years to provide service to the DOT, but it appears that continue to only allow the same company to service their needs in the area I service.	1	.6
I think that TXdot has a responsibility to be better stewards at finding minority participation greater than 11.7 percent.	1	.6
I think the process and paperwork is too difficult, time consuming and it takes to long to become certified as a DBE.	1	.6
I think TxDOT could use outside support to work with DBE's to educate them about the opportunities and get more certified. Small firms tend to be more open to other small firms. So, work with some to get others to work with you. This will help in increasing participation.	1	.6
I would like to see more opportunities for a staffing firm that is certified in construction mgmt and electrical services have opportunities.	1	.6
I am not familiar with these type of business terms	1	.6
Initiating and maintaining DBE and, specifically the TxDOT vendor registration process is difficult for many small businesses.	1	.6
It appears like this category cease to exist.	1	.6
It is my experience that the Prime Contractors do not want to work with Small Minority or Women Owned Businesses.	1	.6
MBE'S still have a hard time obtaining business, trying to compete with larger co is difficult.	1	.6
My company has never received any help from any state or federal minority set asides.	1	.6
Need to work with other entities in better process and handling of applications in an efficient and timely manner. More training needs to happen for small business to understand the process of working with TxDot.	1	.6
none	1	.6
NONE	1	.6
Potential disadvantage contractors are available, but have a long history of not receiving	1	.6

contracts therefore no longer respond to RFP/RFQ's etc...		
Professional services such as risk management and insurance related services needs to be included to meet or exceed DBE goals.	1	.6
The decision makers that select bids or contract does not follow their request for qualification or proposals. Especially as it relate to HUB bids.	1	.6
The definition and certification of DBE if vague. Some state DBE is Disabled Business Entity, some state DBE is Disadvantaged Business Entity.	1	.6
The Item that I have sell DOT have no interest in it.My company a additive that increase GAS/ DIESEL 2 MORE miles PER GALLION I have been try for 13 years NO interest But thank any way Arthur Chisolm OWNER	1	.6
The prime contractors should be given a list of active MBE/DBE subcontractors from the area where the projects are taking place.	1	.6
The time periods given for bids are too small for a small company to get it all done. Some of the recent ones I was interested in were requiring bid info all in within a week.	1	.6
The whole process is broken. So many of these companies are shell companies for guys who do it under their wives names and aren't MBE or disadvantage. Why doesn't someone audit without giving notice by dropping in multiple times a year to see who really runs the business?	1	.6
There are many DBE firms interested in providing services to TXDOT but TXDOT has shown little or no interest in DBEs. TXDOT's certification process is too complicated and much more involved than any other public agency. The process seems to be designed to discourage DBE firms from trying to propose on TXDOT projects, especially when one feels TXDOT does not want to work with DBEs anyway. Proposing on TXDOT projects seems to be a wast of time because there is ALWAYS no hope in being selected. TXDOT always favors large firms for Prime project selections.	1	.6
There are many engineering firms, including DBE's that can not successfully pursue work with TxDOT due to biases or issues in TxDOT's selection process.	1	.6
There does not appear to be any compliance auditing at the state level, like it is at the City level.	1	.6
There limited opportunities for minority smalll business in southeast texas. I have contacted several general contractors on attaining work for my companyhowever I was unsuccessful.	1	.6
There should be more professional services opportunities for CPA firms.	1	.6
There should be more workshops with instruction as to how to bid these jobs.	1	.6
We are not in construction industry. We do medical supply and equipment. Thank you.	1	.6
We never seen any DBE company get the TXDot job in our security industry.	1	.6
Women need more assistance an accessibility	1	.6
Would like contracts of value to be offered to DBE's.	1	.6
would like to see more info on professional services like Legal	1	.6
Total	167	100.0
<b>What, if any, are the lingering effects that indicate that past or current discrimination still exists? (Comments)</b>		
	Frequency	Percent
	156	93.4

How much more broken can it be?	1	.6
I don't know that I would label as intentional discrimination but I do think that clients tend to select the same firms over and over again as evidenced by published lists probably due to level of comfort and recognition of large, established firms.	1	.6
Inability of DBE's to grow to a size and scale that exceeds public contracting and programs and offers true profitability and job creation in the commercial/private sector	1	.6
No information	1	.6
Preference of TxDOT selection committees to award contracts to larger firms; most of which are non-minority.	1	.6
Smaller contracts awarded, even when the awardee is able to provide services on a much larger scale.	1	.6
The best way to see the "lingering" effects would be to review submitted bids that don't have any minority requirements attached to it. see how much minority participation is provided on a volunteer basis. See how many minority bidders are even invited.	1	.6
The meeting was waste of time	1	.6
This is an excellent, thought-provoking question. My guess is that "micro-discrimination" is probably less a function of "micro-racism" than of subtle differences in culture / communication style. Staff may assume that a Hispanic woman-owned business from Edinburgh, Texas, may be less able to communicate well with an Asian American owned prime from Dallas. There may also be real behavioral differences in the sales / bidding process that give TxDOT staff 'the wrong impression' about the willingness or capability of some DBEs.	1	.6
This is hard to measure without actual stats; requires research.	1	.6
TxDOT is one small entity within a system that is still discriminatory, so there should be no expectation for it to be different than the general society.	1	.6
Total	167	100.0

**There is still preferential treatment concerning contracting/sub-contracting. (Comments)**

	Frequency	Percent
	156	93.4
additional resources based on "Disdvanteaged Status" (with a rebuttable presumption for Minorities and Women) rather than size alone.	1	.6
Do you mean preferential treatment for or against DBE?	1	.6
Don't understand the question. "Preferential treatment" by whom?	1	.6
I have only anecdotal information that's one sided. I just don't know if there is still preferential treatment concerning contracting / sub-contracting.	1	.6
I still think that the large GC's are given preference when it comes to contracting with TxDOT, which is why the smaller firms do not participate. Furthermore, monitoring and tracking prompt payment and other metrics could make a difference.	1	.6
Many times either the company being chosen has been known longer in the industry and the Contracting officers choose vendors based off of that fact instead of considering other small businesses.	1	.6
new firms w/out the TxDOT experience aren't given the opportunities with the primes	1	.6
No information	1	.6

Preference as related to size of the entity and # of locations which automatically discriminates from small and minority owned businesses.	1	.6
SAME COMPANIES CHOSEN ALL THE TIME	1	.6
There are the same contractors that you see over and over again working these jobs.	1	.6
Total	167	100.0

**The following are possible barriers that limit opportunities to do business with TxDOT: (Comments)**

	Frequency	Percent
0	159	95.2
By definition "Disadvantaged" firms will not have the size and scale to support TxDOT projects independantly	1	.6
if your a white male you are discriminated against	1	.6
Primes wanting to self perform or looking only at best lowest price	1	.6
Subcontracting opportunities for a DBE are primarily dependent upon its relationship with successful TxDOT prime contractors.	1	.6
Too few published contract awards of the size or scope that small or minority firms can successfully compete for	1	.6
TxDOT needs to look at and consider selecting firms based off of Value Add and quality rather than lowest price.	1	.6
TxDOT pays slower than any other commercial client.	1	.6
TxDOT posts opportunities for prime contractors on website however it is hard for a subcontractor with no relationships with prime contractors to find out about subcontracting opportunities early	1	.6
Total	167	100.0

**Please provide any additional comments you might have concerning the efforts of discrimination on opportunities for DBEs.**

	Frequency	Percent
	142	85.0
- Low DBE or HUB contracting goals. - No goals for DBE's or HUBs as Prime - Regionalization favors larger firms with more resources to market multiple districts - repeated pattern of TxDOT selecting large firms to provide services on small projects (ie off system bridge designs)	1	.6
Great job putting this survey together! For the Greater Austin Asian Chamber, TxDOT has done a great job of staying visible / communicating frequently. Staff has done a great job at consistently reaching out and being present to potential APA contractors. One question to address is how to leverage existing DBEs to identify and certify more in the same community. Many DBE's who work with TxDOT / state agencies do feel like they have proprietary know-how when they've figured out how to work with a state agency as a DBE, and can be reluctant to share. Others of course are eager to mentor potential subs in the same community. I wonder how existing DBE contractor networks can be leveraged to spread the message of TxDOT's DBE programs, even if just a few key points. Perhaps, for example, a DBE panel could be done by DBEs in one area for DBE's in another, to avoid the perception that they are providing inside know-how to competitors.	1	.6

Help us women to compete and we will do a good job too	1	.6
I am convinced that there are many powerful groups who do not mind working together to block others from opportunities.	1	.6
I believe the employees of TxDot make every effort to work with DBE's. They seem to be motivated by upper management and in that regard do a good job. The disparity seems to be in the percentage of dollars spent with Non-DBE's compared to DBE's. The large contractors and primes need some motivation to account for a lack of effort to use DBE's to fulfill TxDot Contracts. The old school adage that Small Business does small things and Big Business does big things is no longer acceptable. Large Contractors need to be compelled to break up the supply line. If this is not then you will always face the same problem. DBE's have to be allowed to grow up. dot	1	.6
I think the changes in personnel and direction is a step in the right direction. So far, I like what I see and feel TxDOT is listening. However, I reiterate the point that TxDOT should use regional DBE consultants to help rebuild its program. I never run into DBE's seeking TxDOT work, due to the fact that most do not believe the opportunities are real. TxDOT needs to change that. It may be an expensive upfront proposition but could pay off in the long run.	1	.6
It appears the same firm has handled the service for over the past twenty years, even though they lost accounts due to servicing issues.	1	.6
It is understandable that professional service firms prefer to work with subs that they know. The work is license/expertise-driven and can be highly litigious. This fact, coupled with an inherent systematic discriminatory work atmosphere means that the solution to increasing DBE/prime work opportunities is tied to developing first-hand "personal" relationships between key prime and sub staff. Success will occur when primes feel they are selecting subs based on THEIR preference and the subs' expertise (that they "know" them and "like" them), rather than solely due to client solicitation requirements.	1	.6
It seems that non-minority women consistently receive the lion share of contracts in the DBE/Small Business category. The program was designed to grow businesses for all minority groups. However, it seems the African American contracts granted numbers seem to remain in the lowest percentage points. It would be greatly appreciated for our numbers to increase by a factor of 10 before the year 2015.	1	.6
Look at the disparity report summary that was done from 2006 thru 2008.	1	.6
Most small companies may not have resources as big companies in terms of insurance, paperwork, financial capabilities. Office of Civil Rights needs to consider MBE, WBENC, etc...not just DBEs.	1	.6
Need more professional service opportunities for DBE CPA firms	1	.6
Need to be proactive about upcoming opportunities	1	.6
New Horizon's needs to be looked at especially for their certifications.	1	.6
none	1	.6
Not in the construction field.	1	.6
Y	1	.6
Y	1	.6
Still fighting historical institutional discrimination - Lack of adequate education and access to capital based on lifetime and legacy relationships leading to the inability to overcome barriers to entry with regard to equipment and human resources.	1	.6
Texas DOT must consider DBEs MBE in IT projects	1	.6
The same Co's have more of the inside info on bids. They know the ropes of bidding. DBE's struggle with bids.	1	.6

There are services other than just construction projects, i.e. financial planning	1	.6
There should be a mentoring program, such as the one provided by NTTA, that actually allows the DBE firms to work with prime contractors on projects.	1	.6
TxDOT provides a lot of information online. However, prime contractors need to provide more online information about subcontracting opportunities early and make it easy for subcontractors to meet with prime contractors to discuss opportunities, qualifications and capabilities	1	.6
TxDOT seems to have a poor perception of DBE firms.	1	.6
Total	167	100.0

#### TxDOT efforts to provide contract/business opportunities. (Comments)

	Frequency	Percent
	158	94.6
1 for prime contracts, 3 for subcontract opportunities	1	.6
As compared to recent years, TxDOT has solicited a fair amount of work. However, a 1 number of the contracts are large and not feasible for small firms to pursue. That combined with minimal DBE participation goals and these larger firms competing on the smaller contracts, makes it near impossible to "break into" the TxDOT market as a new, small firm regardless of past experience and qualifications of staff.	1	.6
I hardly every see any staffing, consulting opportunities	1	.6
I think intent is 1 but results are 3.	1	.6
I think this could be better. Recently, I heard a TxDOT manager speak at a breakfast forum and she stated that TxDOT is putting goals on all of its contracts, I think this is a real effort to put small firms to work. But, it needs to go a step further in connecting with these firms and gaining their buy-in.	1	.6
More efforts can be made to provide contract/business opportunities.	1	.6
Not enough information	1	.6
on a 799 million project with a goal of 8% to minority firms not a 1 effort	1	.6
working as planned	1	.6
Total	167	100.0

#### What is your position on TxDOT's efforts to reach out to and certify DBEs? (Comments)

	Frequency	Percent
	156	93.4
I am impressed at the current attempts being made. However the end result will tell the tale.	1	.6
I think that they award more to foreign born minorities, which have not suffered the generations of discriminations that US born citizens have for decades.	1	.6
Meet at meetings and give information, but no contact afterwards.	1	.6
My firm was certified through the City of Austin. I have never seen any effort by TxDOT to certify firms. I think most firms are certified through the TUCP.	1	.6

needs work	1	.6
Not enough information	1	.6
Nothing wrong with sources already in place. We need to know how to be successful in place. We need more help/tools on how to won bids.	1	.6
The issue is not about certifying more firms, it is about providing enough opportunities for certified and qualified firms	1	.6
They go thru the motion but dont seek out and coach DBE on the process	1	.6
To our knowledge this is the first questionnaire we have been asked to provide info to	1	.6
TxDOT has programs in place however efforts could be increased and enhanced. Personnel assisting DBEs must have strong relationships with departments needing the contact work to better assist DBEs	1	.6
Total	167	100.0

**What is your position on the appropriateness of TxDOT DBE goals on contracts? (Comments)**

	Frequency	Percent
	154	92.2
As American Indian Businesses are the minority of the minority I will have to see the results of the Disparity studies to see if any real improvement has been made to bring those numbers up.	1	.6
AUDIT THE FIRMS WHO ARE WINNING THE BUSINESS!!!! A lot aren't real MBEs	1	.6
Can be better. Think some of the measures could be improved / better indicators of performance toward "true goals" of DBE initiatives.	1	.6
CHicken and the egg scenario - They aren't enough "ready, wiling and able" DBE's becuase we have not developed them - need to move beyond "inclusion" to "development" initiatives	1	.6
DBE goals are fair, should also add M/WBE and HUB goals. For example, a project could have the following goals which all need to be met: 10% DBE goal, 10% M/WBE goal and 5% HUB goal equaling a total 25% goal	1	.6
Even though historically TxDOTs efforts have been 3, I have noticed them trying to make changes to improve the DBE goals on contracts.	1	.6
Goal need to be determined on a case by case basis	1	.6
Goals are way below percent of population of minorities across state.	1	.6
I would have to take a look at the methodology and the number of DBE's getting opportunities versus the number that is available to have true insight to Goal Setting.	1	.6
Need to increase construction DBE goals to higher levels so that primes dont just try to "buy" DBE credit by purchasing materials. The way to increase available DBE's is to help increase the capacity of existing DBE firms not add more DBE firms	1	.6
not familiar with the goal	1	.6
We would appreciate more info from TxDot in the future regarding possible contracts	1	.6
What is meant by "appropriateness?"	1	.6
Total	167	100.0

What is your position on TxDOT efforts to provide firms with training on becoming more effective contractors? (Comments)		
	Frequency	Percent
	161	96.4
Again, I have only experienced contact within the last 30 days.	1	.6
It is nice TxDOT provided training however I don't know if the training has been successful in getting DBEs prepared and able to gain contracts with TxDOT	1	.6
Need more open	1	.6
TxDOT has a so-called Mentor-Protege Program that is the laughing stock of TX. Every DBE that has participated in this program jokes about it in other programs. This is supposed to be a training program but it is just like other capacity building programs with no follow up or opportunities to gain work. I true waste of time. Aside from that, I took a LGPP class and found it very valuable, but this class was not geared towards DBEs.	1	.6
TxDOTs mentor/protege program and LINX program need to be revamped so that the goal is to utilize ready, willing and able contractors where opportunities arise.	1	.6
Would appreciate more info on training necessary to become a more effective contractor	1	.6
Total	167	100.0

What is your position on TxDOT's efforts to monitor and assist DBE firms on existing contracts? (Comments)		
	Frequency	Percent
	158	94.6
Again, I have only experienced contact within the last 30 days.	1	.6
Did not know they did that.. we are a AI IT firm who would love to trobule shoot your computers, printers, servers, connectivity.. etc..	1	.6
Even though historically TxDOTs efforts have been 3. I have noticed them trying to make efforts to improve the monitoring of DBE firms on existing contracts.	1	.6
Help other who are not DBE get certified too	1	.6
I do not think this is happening.	1	.6
if a firm does not get a bid/business should be away to find out what they need to improve	1	.6
The is the first time we have received any request for feedback	1	.6
TxDOT needs to improve monitoring and assistance relating to DBE participation as a Prime as well as subs.	1	.6
We have not been awarded a TxDOT contract to date.	1	.6
Total	167	100.0

What is your position on TxDOT's efforts to partner with other organizations? (Comments)		
	Frequency	Percent
	160	95.8

Again, from the Austin Asian Chamber viewpoint, TxDOT has been outstanding. Not sure what TxDOT is doing with other orgs / partners.	1	.6
Again, I have only experienced contact within the last 30 days.	1	.6
I am not familiar with these efforts so it is not fair for me to comment.	1	.6
I hope they partner more with DFW MSDC	1	.6
Needs significant improvement if TxDOT really wants to make a difference	1	.6
They do not seem to be working with the right organizations and have specific goals/objectives in place. I think they should start from scratch like they are doing with personnel.	1	.6
TxDOT is currently partnering with TAAACC & TAMACC to enhance their DBE numbers	1	.6
Total	167	100.0

**Please provide any additional comments you might have concerning TxDOT efforts to establish a level playing field for the participation of DBEs.**

	Frequency	Percent
	147	88.0
Again, I think TxDOT is an organization that could make a difference and set a tone in the state of TX. I am grateful of the changes that are taking place and think TxDOT is starting to care. However, just putting goals on every contract is not enough. We need TxDOT to develop true and realistic training programs as well as mentor/protege programs. Then identify those firms who have the potential to be great and allow them the opportunity to work in a capacity where they could be the example. Again, TxDOT is making strides but has a long way to go. It needs to enlist the communities around the state to sell its program.	1	.6
At the end of the day, I think some of the weight falls on majority discrimination while some also falls on minority determination.	1	.6
do away with the 1 boy system.....	1	.6
Encourage TxDOT to conduct direct conferences or seminars with Minority Associations such as Regional Hispanic Contractor's Association, Hispanic Chamber of Commerce, Minority Design Professionals Council etc.	1	.6
For high ticket items like fuels and oils, TxDot does not appear to favor the disadvantaged companies.	1	.6
Have no idea.	1	.6
Help in making it possible for DBE's to have a level playing field	1	.6
If American Indians can rise above the 5% level to even make a dent in the disparity studies it will be successful.	1	.6
Large meetings to introduce primes to DBE's can be functional in terms of providing general info. Much better success can be gained by TxDOT having one-on-one introductory meetings with prime and select DBE(s). I realize this method takes more time and that the agency does not want any action to be perceived as giving "special favor" to any one party - but that method has proven results when utilized. Many DBE's do not attend the "mass meetings" because they know the only benefit is "general info" - not an activity where serious relationship-building can occur.	1	.6
Make sure they follow the procedures of their bid requests.	1	.6
More introductions to Prime contractors may assist in stronger relationships with the DBE	1	.6

to create stronger performance.		
More of the same effort, for which you should be proud. Just keep on keeping on. We will get there together.	1	.6
My company has been DBE since March 2013- We are Native American Indian owned and getting certified has not had one positive impact on our business.. I thought it would, but it has not. We offer IT services and support contracts. I would really like someone from TxDOT to reach out me and visit with us about some opportunities for IT support you may have on the horizon.. We could sure use the work.	1	.6
my product don't get change BUT thank	1	.6
NEED HIGHER PARTICIPATION GOALS	1	.6
Need to increase construction DBE goals to higher levels so that primes don't just try to "buy" DBE credit by purchasing materials. The way to increase available DBE's is to help increase the capacity of existing DBE firms not add more DBE firms. The larger scopes existing DBE's can perform the more capacity the DBE's will gain and the stronger their businesses will become.	1	.6
No effort to support my type of business.	1	.6
Post all contracts/subcontracts for the opportunity for DBE's to bid	1	.6
TxDOT should create a set-aside program similar to the Small Business Administration's 8(a) program. Include African American participation goals (that are in the double digit numbers) that have to be reached for African American contract wins. There also should be significant and sizable dollar amount contracts set aside for African American businesses. Forever remove the term, "1 faith effort" and the idea of it when it comes to African American businesses and TxDOT. Primes aren't expected to put forth a "1 faith effort" when it comes to providing services to TxDOT. The disparities start with the word, "effort." TxDOT should also start African American business capacity building program that would train African American businesses that have not had a single contract or have had a contract with TxDOT to win contracts. The LINC program is a 1 overview, however another program(s) should be in place to train us on how to win contracts. Thank you.	1	.6
We welcome the effort the survey makes in trying to attain information from DBE's prospective	1	.6
Total	167	100.0

## Attachment F. Public Comment Notifications

The following list names general circulation and minority-focused media that are contacted to post a public notice for the examination of the DBE Goal Methodology:

Texas Register  
Abilene Reporter News  
Austin American Statesman  
Amarillo Globe News  
Beaumont Enterprise  
Brownwood Bulletin  
Corpus Christi Caller Times  
Childress Index  
Dallas Morning News  
El Paso Times  
Fort Worth Star Telegram  
Houston Chronicle  
Laredo Morning News  
Longview News Journal  
Lubbock Avalanche Journal  
McAllen Monitor  
San Antonio Express News  
African American News & Issues  
La Prensa



Attachment G. DBE Program Blank Survey

**Three Year Annual DBE Goal Setting Survey**

**1. What kind of entity do you represent? (Choose One)**

- Individual
- Business: Prime Contractor
- Business: Small Business
- Business: DBE
- Business: Other Minority - or Woman-Owned Business
- Minority or Women's Contractor Group
- General Contractor Group
- Community Organization
- Other Officials or Organizations

**2. In what area is your entity located? (Choose One)**

- North Texas
- East Texas
- South Texas
- West Texas
- Texas (Statewide)
- Out-of-State

**3. Which industry field does your entity represent? (Choose all that apply)**

- Highway Construction
- Professional Services (Highway)
- Professional Services (Other)
- Aviation (Construction)
- Aviation (Design)
- Public Transportation
- Building Construction
- Commodity Goods and Services

**4. Would you be willing to participate in future surveys?**

Yes

No

**5. What is the best way to contact you?**

- Email
- Phone
- Fax
- Public Notice
- Other (Please specify)

Please enter the information for the method of contact you chose:

**6. Are you DBE certified?**

- Yes
- No

**7. Are you a disadvantaged business enterprise?**

- Yes
- No

**8. Contact Information (Please provide complete contact information.)**

Name/Company	<input type="text"/>
Address	<input type="text"/>
E-mail	<input type="text"/>
Phone	<input type="text"/>
Fax	<input type="text"/>
Other	<input type="text"/>

Information concerning the availability of disadvantaged and non-disadvanta...

**9. The sub-contracting opportunities for disadvantaged and non-disadvantaged businesses are the same or similar. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Applicable

Comments:

**10. The pre-certification/pre-qualification requirements for prime contractors are reasonable. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**11. Firms that are ready, willing, and able to do work on TxDOT projects are not given sufficient opportunities for contracts. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**12. There is little interest in highway construction/design, aviation construction/design or public transit work. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**13. There are firms that qualify for DBE certification, but are not getting certified? (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**14. There is no reason to become DBE certified because the opportunities for DBE are so rare. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**15. Please provide any additional comments you might have concerning the availability of disadvantaged and non-disadvantaged businesses:**

**Information concerning the effects of discrimination on opportunities for D...**

**16. What, if any, are the lingering effects that indicate that past or current discrimination still exists? (Choose all that apply.)**

- Inaccurate assumptions regarding DBE capabilities;
- Separate or more onerous standards applied to DBEs as opposed to others;
- Diverting DBE's to training or mentoring programs rather than awarding contracts;
- Preferential treatment in awarding contracts;
- Resources (like bonding) not available;
- Unfair contracting/bidding requirements;
- Disparity of contract awards amounts;
- Different hiring/firing practices for minority or women owned businesses;
- Fewer training or mentoring opportunities;
- There are no effects of discrimination

Comments:

**17. There is still preferential treatment concerning contracting/sub-contracting. (Choose One)**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Not Familiar / Not Applicable

Comments:

**18. The following are possible barriers that limit opportunities to do business with TxDOT:  
(Choose all that apply.)**

- Not sure how to begin the process of working with TxDOT;
- Other work commitments prevent firms from working with TxDOT;
- Information on opportunities is not readily available;
- TxDOT projects require too much paperwork;
- TxDOT projects require too many resources;
- Firms cannot make appropriate industry contacts;
- Not enough staff or business resources;
- Firms cannot attain adequate insurance;
- Firms cannot attain adequate bonding;
- There are no barriers that prevent firms from working with TxDOT;
- Not familiar/applicable.

Comments:

**19. Please provide any additional comments you might have concerning the efforts of  
discrimination on opportunities for DBE's.**

**TxDOT efforts to establish a level playing field for the participation of D...**

**20. TxDOT efforts to provide contract/business opportunities. (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**21. What is your position on TxDOT's efforts to reach out to and certify DBEs? (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**22. What is your position on the appropriateness of TxDOT DBE goals on contracts? (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**23. What is your position on TxDOT efforts to provide firms with training on becoming more effective contractors? (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**24. What is your position on TxDOT's efforts to monitor and assist DBE firms on existing contracts? (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**25. What is your position on TxDOT's efforts to partner with other organizations? (Choose One)**

- Bad
- Poor
- Neutral
- Good
- Excellent
- Not Familiar/Applicable

Comments:

**26. Please provide any additional comments you might have concerning TxDOT efforts to establish a level playing field for the participation of DBE's.**

# ATTACHMENT 10

ATTACHMENT 10

**TEXAS**

**MEMORANDUM OF AGREEMENT**

*for a*

**DISADVANTAGED BUSINESS  
UNIFIED CERTIFICATION PROGRAM**

**U.S. DEPARTMENT OF TRANSPORTATION PARTNERS**



**Texas Department of Transportation  
City of Houston  
City of Austin**

**Corpus Christi Regional Transportation Agency  
North Central Texas Regional Certification Agency  
South Central Texas Regional Certification Agency**

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**STATE OF TEXAS**  
**MEMORANDUM OF AGREEMENT**

**I UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of Texas in accordance with Title 49 Parts 26 and 23 of the Code of Federal Regulations (49 CFR Parts 26 and 23). The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA). Each Certifying Partner in Texas is required to administer a DBE Certification Program in accordance with 49 CFR Part 26 and Part 26.81. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

**A. Definitions**

1. TUCP Certifying Partner

A State of Texas recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients and can issue or revoke DBE certifications.

2. Non-certifying TUCP Partner

A State of Texas recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency or via a TxDOT Letter of Agreement an entity that agrees to utilize the DBEs listed in TUCP Directory for purposes of their program for certification and or compliance purposes. A Non-Certifying Partner can neither issue nor revoke DBE certification.

3. Recipient

Any public entity which receives direct USDOT financial assistance.

4. Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

5. Grantee

Any public entity that has received USDOT assistance.

**B. Organization**

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive committee will also be responsible for resolving any conflicts between certification actions between its members. The Standard Operating Procedures of the TUCP Section III-Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact person for the TUCP is the Texas Department of Transportation, DBE/HUB/SBE Section.

A Certifying TUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying TUCP Partner upon a six month notice to all TUCP Partners.

**C. Purpose**

The objectives of the Texas UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23.
- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
- Directives and guidance on DBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the U.S. DOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Certifying Partners.

- To provide a single DBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print. TxDOT shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

## **II TUCP PROGRAM DESCRIPTION**

### **A. Partners' Roles, Responsibilities & Obligations**

All TUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must comply with 49 CFR Parts 26 and 23.
- The TUCP Certifying Partners who are recipients or sub-recipients of federal funds must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.
- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures.
- If a TUCP certifying partner is no longer able or willing to uphold procedures outlined in this MOA and in the TUCP SOP, then that partner shall notify each partner in writing and submit to TxDOT all certification files within 30 days to maintain proper certification coordination.
- TUCP certifying partners agree to assist and comply with FHWA in conducting partner reviews outlined in the TUCP SOP.

- Any request received by a TUCP Partner by organizations and entities to become certifying members of the TUCP will be forwarded to each TUCP Partner for review. The TUCP Certifying partners will make a recommendation and forward the request to USDOT for review and a recommendation.

## **B. DBE Directory Management:**

TxDOT has agreed to manage the TUCP Directory and shall designate a Database Manager as agreed by signature of this MOA. Upon approval of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number/SSN;
- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);
- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;
- Original Certification Date;
- Name of TUCP Certifying Partner;
- Annual Review Date;

The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the electronic DBE database current;
- Make the electronic DBE database available to all TUCP Partners and other interested parties;
- Maintain the TUCP Website.

### **C. DBE Directory & Internet Access**

The DBE Directory will be located on the TUCP website. In accordance with 49 CFR Part 26.31 and 23.31(b), the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (3) digit NAICS code and description.

The TUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Annual Review Date
- Gender and Ethnicity

Each TUCP Partner by signature of this agreement agrees to submit the above information.

### **III TUCP PROGRAM COSTS AND FUNDING**

The cost of creating and establishing the TUCP website and the electronic DBE Directory will be the responsibility of the Texas Department of Transportation. Each TUCP Partner has agreed to coordinate responding to information request or open records request for certification list or copies of the data base as appropriate.

#### **A. Training and Resources**

The TUCP Partners will conduct ongoing in-service training. The TUCP Partners will agree to rotate the duties of hosting, planning and conducting training sessions amongst the TUCP Partners.

## **IV CERTIFICATION PROCEDURES AND PROCESS**

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. A Standard Operating Procedure (SOP) has been developed and will be utilized by all Certifying TUCP Partners. The SOP may be modified as needed and agreed upon by majority consensus of the Certifying TUCP Partners. If consensus can not be reached, the issue will be forwarded to FHWA – Texas Division for further guidance.

- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

### **A. Geographic & Industry Considerations**

The TUCP Certifying Partners have agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location and by industry. If a DBE applicant/firm works only in the highway construction industry, TxDOT agrees to process the application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner. If a firm is an applicant interested in airport DBE certification, the TUCP certifying partner agrees to forward the application to the appropriate TUCP agency based on geographical location or process within three to five business days.

**City of Austin:** Geographical: Bastrop, Caldwell, Hays, Travis and Williamson

**City of Houston:** Geographical: Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

**Corpus Christi Regional Transportation Authority:** Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

**North Central Texas Regional Certification Agency:** Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

**South Central Texas Regional Certification Agency:** Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, and Wilson.

**Texas Department of Transportation:** Geographical: All other remaining counties in Texas. All heavy highway construction categories indicating TxDOT only.

## **B. Quality Assurance (New Certifications)**

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying TUCP Partners. Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

## **C. Annual Review Process**

By signature of this agreement, DBEs certification updates will be conducted annually using the TUCP Annual Update "No Change" Affidavit as required in the SOP and following procedures outlined in 49 CFR Part 26.87. The TUCP Partner has agreed to conduct annual reviews of certified DBEs, conduct a DBE on-site review every three years in conjunction with the DBE firm's submittal of the Annual Update Affidavit per 49 CFR Part 26.83(h) or every five (5) years for corporations and partnerships and ten (10) years for sole proprietorships.

## **D. Decertification Procedures**

The TUCP Partner agrees to process decertifications in compliance to 49 CFR Part 26.87. Provisions exist in the TUCP Standard Operating Procedure for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm. The TUCP SOP outlines how those complaints will be coordinated by the receiving partner.

## **E. Appeals Process and Procedures**

An appeals procedure has been established as part of the TUCP SOP for appeals of denial of original certification, and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

- **Denials of Original Certifications and Decertification:** The DBE applicant has the opportunity to appeal to USDOT in accordance with 49 CFR Part 26.89. Firms that are decertified will have due process in accordance with 49 CFR Part 26.87.

## **F. Staff Training**

Each TUCP Partner agrees to:

- Participate in annual staff training; assist with the development and coordination of training modules that support the SOP.
- Recruit instructors and determine locations for training workshops.
- Schedule joint training sessions.
- Conduct staff training to assure that all staff are knowledgeable of certification regulations and procedures as updates and changes are made to the regulations.

## **G. Unified DBE Directory**

By signature of this MOA the TUCP Partners agrees to:

- Develop and complete parameters for Unified DBE Directory.
- Compare UCP Certifying Partners databases.
- Remove duplicate DBE firms.
- Develop common databases however nothing in this agreement excludes the certifying partners from creating and maintaining separate databases for other programmatic needs.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on TXDOT Website).

## **V. CHANGES TO THE MOA**

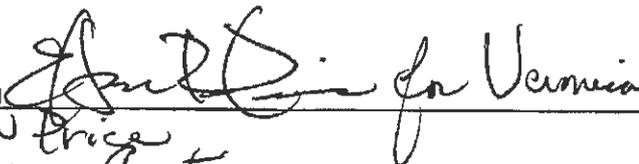
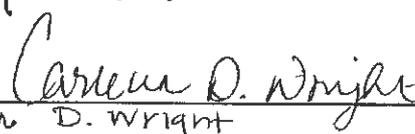
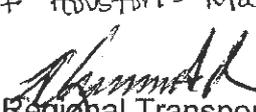
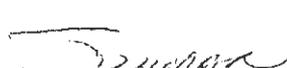
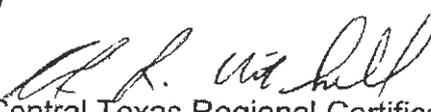
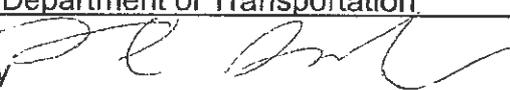
This MOA can be amended by approval of the majority of the TUCP Partners. Changes to this MOA shall require a majority agreement by the TUCP Certifying Partners. In cases where there is not a majority agreement, the issue will be forwarded to USDOT for resolution and the partners agree to execute the decision of USDOT by signature of this MOA.

**VI. SUMMARY**

As a result of the requirements set forth in 49 CFR Parts 26 and 23, we the undersigned, agree to participate in the STATE OF TEXAS'S Unified Certification Program in accordance with the provisions of this MOA and agree to abide by its contents

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

City of Austin		Breseno Lara
Name	Eitan Price	February 17, 2012
Agency	City of Austin	Title Certification Division Manager
City of Houston		
Name	Carleen D. Wright	February 17, 2012
Agency	City of Houston - Mayor's office of Business Opportunity	Title Director, DBELD
Corpus Christi Regional Transportation Authority		
Name	Jorge G. Cruz-Aedo	February 17, 2012
Agency		Title MANAGING DIRECTOR of ADMINISTRATION
North Central Texas Regional Certification Agency		
Name	Sheena Moran	February 17, 2012
Agency		Title Agency Director
South Central Texas Regional Certification Agency		
Name	Blaine R. Mitchell	February 17, 2012
Agency		Title Executive Director
Texas Department of Transportation		
Name		February 17, 2012
Agency		Title DBE/ MUB/ SBE Program Director



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

**Sale of City Property – 826 Beverly Drive to Sufi Properties, Inc.**

## Summary of Request/Problem

At the July 6, 2015 Work Session, Council considered the sale of a City owned property at 826 Beverly Drive to Sufi Properties, Inc. for \$20,226.58. Council approval is required to authorize the Mayor to execute a deed without warranty conveying the property to the buyer.

## Recommendation/Action Requested and Justification

Approve a Resolution authorizing the Mayor to sell the property and execute a deed without warranty conveying the residential property to Sufi Properties, Inc.

**Submitted By:**

**Michael C. Polocek  
Director of Engineering**

**Approved By:**

**Bryan L. Bradford  
City Manager**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING THE SALE OF REAL PROPERTY, 826 BEVERLY (THE "PROPERTY"); AUTHORIZING THE MAYOR OF THE CITY OF GARLAND TO EXECUTE A DEED CONVEYING THE PROPERTY TO SUFI PROPERTIES, INC ("THE BUYER"); AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City acquired certain real property, commonly known as 826 Beverly Drive, through tax foreclosure proceedings in Cause No. TX11-30135, Dallas County, et al. vs. Custom Single Ply Roofing, Inc., et al., Dallas County, Texas;

**WHEREAS**, the Buyer has offered to purchase the Property for \$20,226.58, less than the market value stated in the tax suit (\$42,140.00), and the other taxing entities have consented to the sale of the Property; and

**WHEREAS**, the City has determined that selling the property is in the public's best interest because it allows the Buyer to develop the Property and it eliminates the City's expenses associated with maintaining the Property.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**Section 1**

That the sale and conveyance of the Property by the City of Garland to the Buyer is hereby approved.

**Section 2**

That the Mayor is hereby authorized to execute a Deed Without Warranty, the form and substance of which is attached as Exhibit "A" and incorporated herein by reference, conveying the Property to the Buyer.

**Section 3**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Secretary

**DEED WITHOUT WARRANTY**

THE STATE OF TEXAS                    §  
  §                   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS                   §

That the **City of Garland**, a Texas home-rule municipality ("Grantor"), for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Grantor, the receipt and sufficiency of which is hereby acknowledged, paid in hand by **Sufi Properties, Inc.** ("Grantee"), has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee that certain lot, tract, or parcel of land, commonly known as **826 Beverly Drive**, situated in the City of Garland, County of Dallas, State of Texas, to wit:

**BEING LOT 19 OF THE MONICA PARK HEIGHTS NO. 2 ADDITION, SITUATED IN CITY BLOCK 4 IN THE CITY OF GARLAND, DALLAS COUNTY, TEXAS ACCORDING TO THE INSTRUMENT THEREOF RECORDED IN VOLUME 89083, PAGE 995 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS, MORE COMMONLY KNOWN AS 826 BEVERLY DRIVE (the "Property").**

This Deed Without Warranty is subject to:

- (i) any and all visible and apparent easements and encroachments, whether of record or not;
- (ii) any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interests, mineral leases, or other instruments of record applicable to the land or any part thereof;
- (iii) rights of the public to any portion of the above described property lying within the boundaries of dedicated or existing roadways or which may be used for road or street purposes;
- (iv) rights of parties in possession; and
- (v) any right of redemption as specified in Chapter 34, Subchapter B, Texas Property Tax Code.

It is understood and agreed that Grantor is not making any warranties or representations of any kind or character, express, implied or statutory, with respect to the Property, its physical condition or any other matter or thing relating to or affecting the Property and that the Property is being conveyed and transferred to Grantee "AS IS, WHERE IS, AND WITH ALL FAULTS." Grantor does not warrant or make any representations, express or implied, as to fitness for a particular purpose, merchantability, design, quantity, physical condition, operation compliance

with specifications, absence of latent defects or compliance with laws and regulations (including, without limitation, those relating to zoning, health, safety and the environment) or any other matter affecting the Property.

THIS DEED IS MADE WITHOUT WARRANTY, EXPRESS OR IMPLIED, AND GRANTOR EXPRESSLY DISCLAIMS, EXCEPTS AND EXCLUDES ANY AND ALL WARRANTIES OF TITLE OR OTHERWISE FROM THIS CONVEYANCE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES ARISING UNDER COMMON LOAW OR STATUTE.

The intent of this Deed Without Warranty is to transfer the Property foreclosed on by the Grantor taxing jurisdictions in Cause TX11-30135, *Dallas County, et al., vs. Custom Single Ply Roofing, Inc. et. al.*, consolidated with TX-11-40404.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto and in anywise belonging unto Grantee, his heirs, successors and assigns forever; **WITHOUT WARRANTY AND SUBJECT IN ALL RESPECTS TO THE DISCLAIMERS SET FORTH ABOVE.**

EXECUTED on the dates set forth in the acknowledgements below, to be EFFECTIVE on the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

**GRANTOR:**

CITY OF GARLAND, a Texas home-rule municipality

By: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS            §  
  §  
COUNTY OF DALLAS           §

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, in his capacity as Mayor of the City of Garland.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
PRINTED NAME OF NOTARY

MY COMMISSION EXPIRES:  
\_\_\_\_\_



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## Drainage Easement Abandonment – Winchester Commons, LLC

### Summary of Request/Problem

In anticipation of lots being developed in Winchester Commons subdivision near Apollo Road and Brand Road, the City agrees to abandon an existing drainage easement on said of land to Winchester Commons, LLC. Winchester Commons proposes street and underground drainage improvements with the dedication of a new drainage easement on a separate common area lot. The existing drainage easement will no longer be required when such improvements are constructed. The abandonment will also allow the developer to construct a residential home on an encumbered lot and better utilize the property.

This item was considered by Council at the July 6, 2015 Work Session.

City Attorney's Office has reviewed.

### Recommendation/Action Requested and Justification

Approve by Resolution authorizing the Mayor to abandon the drainage easement in the Winchester Commons subdivision to Winchester Commons, LLC.

**Submitted By:**

**Michael C. Polocek, P.E.**  
Director of Engineering

**Approved By:**

**Bryan L. Bradford**  
City Manager

**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ABANDONMENT OF EASEMENT INSTRUMENT FOR THE ABANDONMENT OF A DRAINAGE EASEMENT IN THE PROPOSED WINCHESTER COMMONS SUBDIVISION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Garland was conveyed that certain drainage easement by separate instrument in 1992 recorded in Volume 92071, Page 626 of the Deed Records of Dallas County, Texas.

**WHEREAS,** the City of Garland has determined that the drainage easement is no longer needed for public use and abandonment would allow for further development of the property.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**Section 1**

That the Mayor is hereby authorized to execute the abandonment of easement instrument, in the form and substance of that attached hereto as Exhibit AA@.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the \_\_\_\_ of July, 2015.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Secretary

**ABANDONMENT OF EASEMENT**

**STATE OF TEXAS**

§

§ **KNOW ALL BY THESE PRESENTS:**

**COUNTY OF DALLAS**

§

**THIS DOCUMENT** is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by the City of Garland, a Texas home-rule municipality (hereinafter “City”).

**WHEREAS**, that certain easement (more particularly described in Exhibit A as “TO BE ABANDONED” and hereinafter referred to as the “Easement”) is no longer needed by the City for any purpose, and is not required or convenient for any use or public purpose in the future and have no value to the City; and

**WHEREAS**, the City desires to release and abandon the Easement; and

**WHEREAS**, on July 21, 2015, the City of Garland City Council approved Resolution No. \_\_\_\_\_ authorizing the Mayor to execute this instrument abandoning ,releasing, and quitclaiming the Easement.

**WHEREAS**, upon the abandonment of the Easement, the Grantee, has acknowledged on behalf of itself, its successors and assigns, its sole and complete responsibility for the condition of the Easement as it currently exists and may exist in the future and has further agreed to hold the City, its officers, and agents and employees harmless from any and all claims concerning the Easement.

**NOW, THEREFORE**, the City has abandoned, and hereby grants, sells, and conveys the Easement hereinafter described to Grantee. The Easement hereby abandoned is that certain drainage easement conveyed to the City by separate instrument and recorded on April 8, 1992, in volume 92071, page 626, in the Dallas County Real Property Records, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “Property”). No easement, or portion thereof, is abandoned except as described in Exhibit A, and is located on real property of Grantee.

**THIS ABANDONMENT IS MADE WITHOUT WARRANTY, EXPRESS OR IMPLIED, AND THE CITY EXPRESSLY DISCLAIMS, EXCEPTS AND EXCLUDES ANY AND ALL WARRANTIES OF TITLE OR OTHERWISE FROM THIS ABANDONMENT, INCLUDING - WITHOUT LIMITATION - ANY WARRANTIES ARISING UNDER COMMON LAW OR UNDER SECTION 5.023 OF THE TEXAS PROPERTY CODE OR OTHER STATUTE.**

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto and in any wise belonging unto the Grantee, its heirs, successors and assigns forever; **AS-IS, WHERE-IS, WITHOUT WARRANTY AND SUBJECT IN ALL**

RESPECTS TO THE PROVISIONS AND DISCLAIMERS SET FORTH ABOVE.

**EXECUTED** this the \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF GARLAND, TEXAS**

By: \_\_\_\_\_  
Mayor

**Agreed upon by:**

**WINCHESTER COMMONS, LLC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS** §

§

**COUNTY OF DALLAS** §

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2015, by Douglas Athas, Mayor of the City of Garland, Texas, on behalf of the City.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission Expires: \_\_\_\_\_



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## 2015 Edward Byrne Memorial Justice Assistance Grant

### Summary of Request/Problem

At the July 20, 2015 Work Session, Council was scheduled to consider a request from the Police Department to apply for the 2015 Edward Byrne Memorial Justice Assistance Grant (JAG) program for reducing crime and improving public safety.

The Police Department is requesting Council's approval to apply for the 2015 Edward Byrne Memorial Justice Assistance Grant (JAG). The Director of the Bureau of Justice Assistance (BJA) has made funds available to units of local government under the 2015 Edward Byrne Memorial Justice Assistance Grant program for the purpose of reducing crime and improving public safety.

The Garland Police Department is eligible to apply to BJA for an estimated direct award of \$39,477.00 under this grant program. However, the Attorney General of the State of Texas has "certified" Garland as a disparate jurisdiction, thereby requiring us to enter into an agreement to share a portion of these funds with Dallas County. Currently, the agreement is for the City of Garland to share 30%, or approximately \$11,843.10, with Dallas County, which results in an award to the City of Garland in the amount of approximately \$27,633.90. From this amount, there will be a mandated 7% Administration Fee which is to be paid to the City of Dallas as they have designated as the area grant manager for all involved entities. The resulting estimated net award to the City of Garland will be approximately \$25,699.53. The Funds can be used to implement a wide variety of Police Department programs to reduce crime and improve public safety.

This grant program does not require matching funds or contributions.

### Recommendation/Action Requested and Justification

Approve a resolution authorizing the Police Department to apply for the 2015 Edward Byrne Memorial Justice Assistance Grant (JAG) program.

**Submitted By:**

**Mitch L. Bates  
Police Chief**

**Approved By:**

**Bryan L. Bradford  
City Manager**

**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE SUBMISSION AND ACCEPTANCE OF AN APPLICATION TO THE BUREAU OF JUSTICE ASSISTANCE FOR GRANT UNDER THE 2015 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**Section 1**

That the City of Garland Police Department, by and through Police Chief Mitch Bates, is hereby authorized to submit and application to, and subsequently accept a grant from, the Bureau of Justice Assistance under the 2015 Edward Byrne Memorial Justice Assistance Grant Program, for an estimated net amount of \$25,699.53.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the 21st day of July, 2015.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Secretary



# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## Contract to Purchase 14.4 Acres of Land Lookout Drive at Telecom Parkway

### Summary of Request/Problem

At the April 6, 2015 Work Session, Staff briefed Council on the purchase of vacant property needed for the construction of a Garland Power & Light (GP&L) substation. This proposed substation will provide transmission service to an ONCOR distribution substation, as well as provide distribution service to future Garland load. The property is located near the intersection of Lookout Drive and Telecom Parkway. At the April 6, 2015 briefing, it was anticipated that slightly more than five (5) acres of land would be needed for the GP&L substation. However, subsequent to the briefing, it has become apparent that due to sizable load growth opportunities in the proposed substation area, additional land will be needed to meet future service demands. Based on current load growth forecasts for the area, approximately fourteen (14) acres of land will be needed for both transmission and distribution electric service from the proposed GP&L substation. In addition to the substation, the land will contain the proposed site for the public safety radio system tower and communications building.

### Recommendation/Action Requested and Justification

The City Council is requested to approve a resolution authorizing the City Manager to execute a contract of sale with Texas Health Resources as seller.

#### Submitted By:

**Jeff Janke**  
**Garland Power & Light**  
**General Manager**

#### Approved By:

**Bryan L. Bradford**  
**City Manager**

**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT OF SALE WITH TEXAS HEALTH RESOURCES FOR APPROXIMATELY 14.4 ACRES OF LAND; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**Section 1**

That the City Manager is hereby authorized to execute a contract of sale with Texas Health Resources as seller in substantially the form and substance attached hereto together with such other documents as may be contemplated in that agreement or necessary to closing the acquisition of the property.

**Section 2**

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this the \_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Secretary

**CONTRACT OF SALE**

THE STATE OF TEXAS   §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS   §

This CONTRACT OF SALE (the “**Contract**”) is made by and between **Texas Health Resources** (hereinafter referred to as “**Seller**”), and **City of Garland, Texas**, a home-rule municipality (hereinafter referred to as “**Purchaser**”), upon the terms and conditions set forth herein.

1.    Purchase and Sale. Seller hereby sells and agrees to convey, and Purchaser hereby purchases and agrees to pay for two (2) tracts of land containing approximately 14.443 acres, more or less, situated in the Henry McCullough Survey, Abstract No. 901, Dallas County, Texas (hereinafter referred to as the “**Property**”), together with any improvements and fixtures situated on and attached to the Property, for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth. The Property is more particularly described as follows:

**SEE EXHIBITS “An” and “A-1” [proposed] Metes & Bounds Description, attached hereto and made a part hereof.**

2.    Consideration. Seller agrees to accept and Purchaser agrees to pay as consideration for the sale of the Property, a total sum to be calculated on the basis of five and no/100 Dollars (\$5.00) per square foot times the actual number of square feet shown on the Final Survey. The “**Total Consideration**” or “**Purchase Price**” will be paid in cash at the Closing, as hereinafter defined.

3.    Earnest Money. Within 5 days of delivery of a fully executed copy of this Contract to Chase Evans, Republic Title Company of Dallas, 2626 Howell Street, 10th Floor, Dallas, Texas 75024, Phone 214-754-7780 (“**Title Company**”), Purchaser will deliver to the Title Company as “**Earnest Money**” at its option either cash, cashier’s check, company draft or company check in the amount of \$30,000.00. At the Closing, the Earnest Money will be applied to the Total Consideration, or if Closing does not occur, the Earnest Money shall be disbursed to either Seller or Purchaser as provided under this Contract.

4.    Survey and Title Binder.

(a)   On or before thirty (30) days after the Effective Date of the Contract, Purchaser shall, at Purchaser’s expense, deliver or cause to be delivered to Seller and Purchaser a copy of a current on-the-ground land title survey (“**Survey**”) of the Property made by a duly licensed surveyor selected by the Purchaser. The Survey shall be in a form acceptable to the Title Company in order to allow the Title Company to delete the survey exception (except as to “shortages in area”) from the Title Policy to be issued by the Title Company. The Survey shall show the location of all improvements on the

Property, if any and shall set forth the total number of acres and square feet of the Property.

(a) Within thirty (30) days after the Effective Date of this Contract, Purchaser shall, at Purchaser's expense, deliver or cause to be delivered to Seller and Purchaser:

- (1) A title commitment ("**Title Binder**") covering the Property binding the Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance at the Closing in the full amount of the Purchase Price, and
- (2) True, correct, and legible copies of any and all instruments referred to in the Title Binder as constituting exceptions or restrictions upon the title of Seller, except that copies of any liens which are to be released at the Closing may be omitted.

5. Approval Period and Title.

(a) Purchaser shall have thirty (30) days from the receipt of the Survey and Title Binder to review them and to deliver in writing to Seller such objections as Purchaser may have to anything contained in them. Any such item to which Purchaser shall not object shall be deemed a "Permitted Exception". If there are objections by Purchaser, Seller shall in good faith attempt to satisfy them prior to Closing but Seller shall have no obligation to do so. If Seller delivers written notice to Purchaser on or before the Closing Date that Seller is unable or unwilling to satisfy such objections, or if, for any reason, Seller is unable to convey title in accordance with Section 9, Purchaser may either waive such objections and accept such title as Seller is able to convey or terminate this Contract by written notice to Seller. The lien for current taxes shall be deemed to be a Permitted Exception.

(b) Seller represents and warrants to Purchaser that at the closing, Seller will have and will convey to Purchaser good and indefeasible fee simple title to the Property free and clear of any and all encumbrances except the Permitted Exceptions. Delivery of the Title Policy pursuant to Section 9 shall be deemed to fulfill all duties of Seller as to sufficiency of title required hereunder; provided however, Seller shall not thereby be released from the warranties of the Deed.

(c) Seller, at Closing, shall also deliver to Purchaser or the Title Company the following:

- (1) State Law Disclosures. Such disclosures and reports, required by applicable state and local law in connection with a conveyance of real property.

- (2) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser or the Title Company may proceed with withholding provisions as provided by law.
- (3) Additional Documents. Any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.

6. Casualty Loss. All risk of loss to the Property shall remain upon Seller prior to the Closing. If, prior to the Closing, the Property shall be damaged or destroyed by fire or other casualty to a material extent, Purchaser may either terminate this Contract by written notice to Seller within ten (10) days after Purchaser receives written notice from Seller of the occurrence of such casualty or close. If Purchaser elects to close, despite said material damage or destruction, there shall be no reduction in the Purchase Price, and Seller shall assign to Purchaser Seller's right, title and interest in and to all insurance proceeds resulting or to result from said damage or destruction. Unless otherwise provided herein, the term "material" shall mean damage or destruction, the cost of repairing which exceeds ten (10%) percent of the Purchase Price. In the event of less than material damage or destruction to the Property prior to the Closing, Seller shall either repair the same prior to the Closing, at Seller's expense, or reimburse Purchaser for the cost of repairing the same by assigning any insurance proceeds resulting therefrom to Purchaser and/or by allowing Purchaser to deduct such cost from the cash payable to Seller at the Closing. If the extent of damage or the amount of insurance proceeds to be made available is not able to be determined prior to the Closing Date specified in Section 12 below, or the repairs are not able to be completed prior to said date, either party, by written notice to the other, may postpone the date of the Closing to such date as shall be designated in such notice, but not more than thirty (30) days after the Closing Date specified in Section 12 below.

7. Warranties and Representations by Seller. Seller makes the following representations and warranties, all of which will be true and correct as of the date of the Closing and will survive the Closing:

- (a) Seller has received no notice (and has no current actual knowledge) of condemnation or contemplated condemnation proceedings affecting the Property or any part thereof.
- (b) No person, firm or entity, except as set forth herein, has any rights in or right to acquire the Property or any part thereof.
- (c) There is no litigation or to the current actual knowledge of Seller, threatened litigation affecting Seller or the Property which would in any way constitute a lien, claim or obligation of any kind against the Property.

8. Express Covenants of Seller. Between the date hereof and the Closing, Seller expressly covenants and agrees that:

(a) Seller will not commit waste of the Property and will keep the Property in a good state of repair and condition, reasonable and ordinary wear and tear excepted.

(b) Seller will allow, upon execution of this Contract, Purchaser the right to conduct an engineering survey and an environmental audit of the Property, and in this connection, Purchaser or Purchaser's designated agents may enter upon the Property for purposes of soil analysis, core drilling, or other tests which may be deemed necessary to Purchaser or Purchaser's engineer; provided, however, without first obtaining Seller's prior written consent, Purchaser shall only conduct a visual inspection, with no right to conduct any physical testing, boring, sampling or removal (collectively, the "**Physical Testing**") of any portion of the Property. At least twenty-four (24) hours prior to any entry of the Property, Purchaser shall: (i) deliver to Seller written notice of its intention to enter the Property, and Seller shall have the right to have one or more of its agents and/or representatives accompany the Purchaser and (ii) provide Seller sufficient evidence to show that Purchaser and its agents, representatives and contractors who entered the Property are adequately covered by policies of insurance, issued by a carrier reasonably acceptable to Seller, insuring Purchaser and Seller as an additional insured against any and all liability arising out of Purchaser's or Purchaser's agents', representatives' or contractors' entry upon and investigation respecting the Property. If it should be determined by Purchaser in Purchaser's sole judgment that the Property is not suitable for the intended purposes, then and in this event, Purchaser may, on written notice to Seller received prior to one hundred twenty (180) days from the Effective Date hereof (the "Inspection Period"), terminate this Contract and it shall be null and void for all purposes and the Earnest Money shall be forthwith returned by the Title Company to Purchaser. Purchaser hereby agrees to hold harmless, protect, defend (by counsel acceptable to Seller) and indemnify, and hereby releases Seller and its officers, directors, employees, contractors, agents and affiliates, and its and their respective successors and assigns and the Property from and against any and all claims, demands, causes of action, losses, liabilities, liens, encumbrances, costs or expenses (including without limitation reasonable attorney's fees and litigation costs) arising out of, connected with or incidental to (a) any injuries to persons (including death) or property (personal or real) or (b) any mechanics', workers' or other liens on the Property related to the work or activities conducted on the Property by Purchaser or its agents, representatives or contractors. The indemnity contained in this Section 8 shall expressly survive the termination of this Contract.

9. Seller's Obligations at Closing. At Closing, in addition to the other items herein required to be delivered to Purchaser by Seller, Seller, at Purchaser's sole cost and expense, will deliver to Purchaser the following:

(a) Seller's executed Special Warranty Deed (the "**Deed**"), substantially in the form as attached hereto as Exhibit "B", conveying the Property to Purchaser, duly acknowledged and in form for recording, which Deed will convey to Purchaser good, indefeasible fee simple title to the Property, free and clear of all liens, encumbrances, covenants, conditions, restrictions, rights-of-way, easements and other matters affecting title to the Property except for the Permitted Exceptions approved by Purchaser pursuant to paragraph 5 above or otherwise waived in writing.

(b) An owner's policy of title insurance required under the Title Binder; (i) with the standard exception concerning discrepancies or conflicts in boundary lines, encroachments or any overlapping of improvements and the exception for parties in possession deleted; and (ii) with the exception as to the lien for taxes shall be limited to the year of Closing and shall be endorsed "Not Yet Due and Payable".

10. Purchaser's Obligation at Closing. At the Closing, Purchaser will pay in cash by wire transfer of good funds the balance of the Total Consideration.

11. Prorations. All taxes, general and special and all assessments, including state, county, school, municipal, and all other taxes whatsoever (exclusive of rebates, penalties or interest) in connection with the Property will be prorated at Closing with an effective proration date being as of the date of the Closing. In the event taxes for the current year are computed and prorated at Closing hereunder on the basis of an estimate using taxes for the calendar year prior to the Closing and taxes for the calendar year of the Closing are in excess of or less than such estimate, then Seller or Purchaser, as the case may be, will pay its prorated share of such difference in taxes to the other party in cash when such actual tax is determined and within ten (10) days after written notice thereof by the other party. Taxes for the years prior to the year of Closing will be paid by Seller.

12. Closing. The Closing shall be held at the office of Republic Title Company of Dallas, 2626 Howell Street, 10th Floor, Dallas, Texas 75024, Phone Attn: Chase Evans, 214-754-7780, (Fax) 214-855-8848, on the date that is thirty (30) days after the expiration of the Zoning, Platting and Governmental Approvals Period (Paragraph 17) (the "**Closing Date**") unless the time, date and place for Closing is changed pursuant to written agreement of Seller and Purchaser. Closing shall be contingent upon a simultaneous closing between Oncor Electric Delivery Company LLC ("**Oncor**") and Seller with regard to the 5.558 acre tract Oncor is or will be under contract to purchase from Seller contemporaneously with Purchaser's purchase of the Property.

13. Delivery of Possession. On the date of Closing, Seller will deliver possession of the Property to Purchaser in its present condition, ordinary wear and tear excepted.

14. Remedies.

(a) In the event Seller tenders full performance of its obligations hereunder and this transaction is not consummated through default on the part of the Purchaser, then Seller may, as Seller's sole and exclusive remedy (in addition to Seller's rights under Section 17 below), terminate this Contract and receive the Earnest Money as liquidated damages for Purchaser's breach. All parties hereto agree that Seller's actual damages, in event of default by Purchaser, would be very difficult to ascertain because of the uncertainties of the real estate market and fluctuating property values between the date of this Contract and date of breach, and the difference of opinion with reference to such matters; consequently, the parties have thus agreed upon the liquidated damages as provided herein.

(b) In the event Purchaser tenders full performance of its obligations hereunder and this transaction is not consummated because of default or breach by Seller, then the Purchaser, if an exclusive remedy or right is expressly provided elsewhere herein for such default or breach, will be limited exclusively to the right or remedy therein provided for such default, and if specific exclusive remedies are not provided for such default, then Purchaser, at Purchaser's option and as Purchaser's sole remedy, either (i) will be entitled to a return of the Earnest Money and this Contract will be null and void, or (ii) may pursue enforcement of specific performance.

(c) In the event either party hereto becomes entitled to the Earnest Money as liquidated damages or upon cancellation of this Contract in accordance with its terms, Purchaser and Seller covenant and agree to deliver a letter of instruction to the Title Company directing the disbursement of the Earnest Money to the party entitled thereto. In the event either party hereto fails or refuses to sign or deliver such an instruction letter when the other party is entitled to a disbursement of the Earnest Money, the party so failing or refusing to sign or deliver such letter will pay, upon the final order of the court with appropriate jurisdiction that such other party is entitled to a disbursement of the Earnest Money, all reasonable attorney's fees and other costs incurred by the party so entitled to the Earnest Money in connection with its recovery thereof.

15. Closing Costs. Seller agrees to pay:

(a) Seller's own attorney's fees incurred in regard hereto; and

(b) All charges incurred by Seller for the procurement, preparation and recording of any releases, waivers or other instruments required to clear Seller's title for conveyance of the Property in accordance with the provisions hereof.

**Purchaser agrees to pay:**

- (a) All charges for tax certificates;
- (b) The cost of the deed and owner policy of title insurance, described above, including the cost of amending the boundaries exception and deleting the parties in possession exception;
- (c) Purchaser's own attorney's fees incurred in regard hereto; and
- (d) All escrow and recording fees charged by the Title Company pursuant hereto.

16. Condemnation Prior to Closing. If, prior to Closing, all or any portion of the Property will be taken for any public or quasi-public purpose by a lawful power of authority by the exercise of the right of condemnation or eminent domain or by agreement in lieu thereof, Purchaser will have the option of; (i) canceling this Contract, in which event the Earnest Money will be returned to Purchaser and all parties will be relieved of all further obligations under this Contract, or (ii) proceed to close this Contract, in which event Seller will assign to Purchaser all of Seller's right, title and interest in and to any award or other payment in lieu thereof for such condemnation, eminent domain or other taking by any governmental authority, and Purchaser and Seller will otherwise proceed to close this Contract as provided herein.

17. Zoning Platting and Governmental Approvals. It is understood by Purchaser and Seller that Purchaser intends to utilize the Property for an electric transmission/distribution substation. Accordingly, Purchaser shall not be obligated to close this transaction unless Purchaser shall have obtained from all applicable governmental authorities a final plat of the Property, a site plan and all other applicable development approvals, permits, licenses, and easements, including special use permit or zoning change, in order to construct and operate its substation and/or switching station on the Property. Purchaser shall have one hundred eighty days (180) from the Effective Date of this Contract to obtain such zoning, platting and governmental approvals (the "**Zoning, Platting and Governmental Approvals Period**"). In consideration for said Zoning, Platting and Governmental Approvals Period, within five (5) days of the delivery of a fully executed copy of this Contract to the Title Company, Purchaser shall deliver payment in the amount of \$5,000.00 to Seller as a non-refundable Review Period Fee. Seller agrees to cooperate fully with Purchaser, without expense to Seller, to enable Purchaser to apply for and obtain all applicable approvals (the "**Zoning, Platting and Governmental Approvals**"). Seller shall, if requested by Purchaser, execute all documents required for the approval process including the appointment of Purchaser as its agent or nominee to obtain any Zoning and Governmental Approvals. Seller shall appear at public hearings, city staff meetings, or other meetings related to the approval of Purchaser's applications as may be reasonably requested by Purchaser.

Purchaser shall be entitled to terminate this Contract by delivering written notice to Seller on or before the expiration of the Zoning, Platting and Governmental Approvals Period, if Purchaser has not received the necessary Zoning, Platting and Governmental Approvals from the City of Garland. If Purchaser terminates this Contract in accordance with Paragraph 17, then Seller will retain the Review Period Fee but all Earnest Money shall be returned to Purchaser and neither Party shall have any further obligations under this Contract.

Notwithstanding anything contained herein to the contrary, (i) Purchaser shall not file a replat of the Property until the Closing, and (ii) if a zoning change of the Property is effectuated prior to the Closing and Purchaser thereafter fails to close this transaction, Purchaser shall, promptly upon request of Seller, change the zoning designation back to its current zoning designation on the Effective Date. This provision will survive the termination of this Contract.

18. Seller's Approvals. Seller shall not be obligated to close this transaction unless Seller shall have obtained approval of this transaction from Seller's Board of Directors or the appropriate committee(s) of such Board, in the Board or committee(s)'s sole and absolute discretion. If such approval is not obtained prior to Closing, then Seller may terminate this Contract by delivering written notice to Purchaser prior to the Closing Date. Upon such termination by Seller under this Section 18, all Earnest Money shall be returned to Purchaser and neither party shall have any further obligations under this Contract.

19. Environmental. Seller has no current actual knowledge of any violation of Environmental Laws related to the Property or the presence or release of Hazardous Materials on or from the Property. Seller has not manufactured, introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), and Seller has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials, in violation of any Environmental Laws. The term "**Environmental Laws**" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the Effective Date of this Contract together with their implementing regulations and guidelines as of the Effective Date of this Contract, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term "**Hazardous Materials**" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Laws.

20. Assignment of Contract. This Contract may not be assigned by either party without the prior written consent of the other party.

21. Notices. Any notice to be given by either party to this Contract will be given in writing and may be effected by personal delivery, facsimile or email with confirmation of delivery and receipt, or by placing such notice in the U.S. Mails, certified mail, return receipt requested, postage prepaid, and addressed as follows:

- (a) To Purchaser: City of Garland  
PO Box 469002  
Garland, TX 75046-9002  
Attention: Brian C. England  
Office: 972-205-2380  
Fax: 972-205-2389  
Email: bengland@garlandtx.gov
- (b) To Seller: Texas Health Resources  
612 E. Lamar Blvd.  
Suite 200  
Arlington, Texas 76011-4131  
Telephone: 682-236-6133  
Fax: 682-236-7124  
Email: jonsullivan@TexasHealth.org  
Attn: Jon M. Sullivan Jr., CCIM

with copy to: Diana J. Bearden  
Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, TX 75202-3794  
Office: 214-651-4400  
Fax: 214-651-4330  
Email: diana.bearden@strasburger.com

22. Real Estate Commission. Said real estate commission shall be borne entirely by Seller under a separate agreement between Seller and Seller's Agent, Paxon B. Glenn Commercial Real Estate. Other than the real estate commission set forth in a separate agreement between Seller and Seller's Agent hereinabove, Seller and Purchaser hereto warrant and represent to the other that no other real estate brokers', agents' or finders' fees or commissions are due arising in conjunction with the sale of the property, from the execution of this Contract and the consummation of the transactions contemplated herein. Seller and Purchaser hereby agree, to the extent allowed by law, that they will at all times hereafter indemnify and hold harmless one another and their successors and assigns, from and against any and all claims, losses, costs, expenses, liabilities and/or damages, including reasonable attorneys' fees, which the other, its successors or assigns, may hereafter incur, suffer or be required to pay to any individual or entity by reason of a real estate commission due by the indemnifying party in connection with the purchase and sale contemplated under this Contract. Notwithstanding any language to the contrary found within this Agreement, the Parties do not intend to, and have no obligation or implied duty to, assess and collect annually a

sufficient sum to (1) pay any interest to fund the indemnification provisions found herein, or (2) create a sinking fund to fund any indemnification provision found herein.

23. Modification of this Agreement. This Contract may not be modified or amended except by a subsequent agreement in writing signed by the Seller and the Purchaser. The Purchaser and Seller may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver will be effective only if in writing and signed by the party waiving such condition or obligation.

24. Binding Effect. This Contract will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

25. Entire Agreement. This Contract constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No statements, agreements, understandings, representations, warranties or conditions not expressed in this Contract will be binding upon the parties hereto, or will be effective to interpret, change or restrict the provisions of this Contract unless such is in writing signed by both parties hereto and by reference made a part hereof.

26. Survival. All covenants and agreements contained herein and intended to be performed subsequent to any Closing hereunder will survive the execution and delivery by Seller of the Deed, and other closing documents required hereby and will specifically not be deemed to be merged into or waived by any instrument of Closing, but will expressly survive and be binding upon the Seller for a period of one (1) year after the Closing. Any liability of the Seller for misrepresentation or breach of warranty will survive the execution and delivery of said Deed and other closing documents required hereby, will specifically not be deemed to be merged into or waived by any instruments of Closing, and such liability will expressly survive and be binding upon the Seller for a period of one (1) year after the Closing.

27. Governing Law. This Contract will be construed and interpreted in accordance with the laws of the State of Texas and venue for any legal proceedings instituted regarding this Contract will be in Dallas County, Texas.

28. Captions. The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any provisions hereof.

29. Time Of The Essence. Time is of the essence of the performance of Seller's and Purchaser's obligations hereunder.

30. Gender and Number. Words of any gender used in this Contract will be construed to include any other gender and words in the singular number will be construed to include the plural, and vice versa, as the context may require herein.

31. Multiple Counterparts. This Contract Of Sale may be executed in multiple counterparts, each of which shall constitute an original, but none of which shall be binding on any party unless and until all parties have executed a counterpart. For purposes of this provision, signatures delivered via facsimile transmission or electronic mail shall be deemed good as an original for all purposes.

32. Effective Date. The Effective Date of this Contract is the later date it is signed by Seller or Purchaser.

33. "AS IS". IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, OR GOVERNMENTAL APPROVALS. SELLER IS SELLING AND CONVEYING TO PURCHASER AND PURCHASER IS ACCEPTING THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS". SELLER WILL NOT BE LIABLE FOR OR BOUND BY ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ANY OTHER PARTY ON BEHALF OF SELLER. PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY AS PURCHASER HAS DEEMED NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND HAS RELIED SOLELY UPON SAME.

(REMAINDER OF PAGE LEFT BLANK)

This instrument has been executed by Purchaser on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

PURCHASER:

City of Garland, Texas, a home-rule  
municipality

By: \_\_\_\_\_  
Martin E. Glenn, Deputy City Manager

This instrument has been executed by Seller on this the \_\_\_\_ day of \_\_\_\_\_, 2015.

SELLER:

**TEXAS HEALTH RESOURCES**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

## TITLE COMPANY ACKNOWLEDGMENT

The Title Company has joined herein for the purposes of (i) acknowledging unto Seller that it has received the Earnest Money required hereunder, and (ii) evidencing its agreement to act as the Title Company for both Purchaser and Seller in accordance with the terms of this Contract.

Title Company:

Republic Title Company of Dallas

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Special Warranty Deed



# Planning Report

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**Mit Patel**

**Southeast corner of Saturn Road and Marketplace Drive**

## **REQUEST**

Approval of 1) an amendment to Planned Development (PD) District 12-16 for General Business Uses (Community Retail Uses under Ordinance 6773 – Garland Development Code), 2) a Detail Plan and Specific Use Permit for Hotel/Motel, Limited Service and 3) a variance to Section 10-100 of Ordinance No. 4647 regarding parking.

## **OWNER**

Garland Eastgate II, LP.

## **PLAN COMMISSION RECOMMENDATION**

On June 22, 2015 the Plan Commission, by a vote of seven (7) to zero (0), recommended approval of 1) an amendment to Planned Development (PD) District 12-16 for General Business Uses (Community Retail Uses under Ordinance 6773 – Garland Development Code), 2) a Detail Plan and Specific Use Permit for Hotel/Motel, Limited Service for a period of 30 years and 3) a variance to Section 10-100 of Ordinance No. 4647 regarding parking per Staff recommendation.

Additionally, Plan Commission approved a variance as requested to Section 34.20(B)(1) of the IH 635 Development Standards regarding landscape buffers.

## **STAFF RECOMMENDATION**

Approval of 1) an amendment to Planned Development (PD) District 12-16 and 2) a Detail Plan and Specific Use Permit for Hotel/Motel, Limited Service for a period of thirty (30) years.

Approval of a variance to Section 10-100 of Ordinance No. 4647 to reduce the number of required parking spaces to not less than seventy (70).

The proposed use is consistent with the overall redevelopment efforts and land uses in the surrounding area. The established development pattern of retail,

restaurant and personal services would be compatible with the proposed hotel use.

## **BACKGROUND**

In 2012 City Council approved Planned Development (PD) District 12-16 to allow the construction of an LA Fitness and a multi-tenant building, currently occupied by Starbucks and a dental office. While Planned Development (PD) District 12-16 does encompass the subject property, the subject property was excluded from the approved Concept and Detail Plans. The subject property consists of two lots that were previously used as part of the parking lot that served the now demolished Mervyn's store. The applicant proposes the development of a three-story La Quinta hotel with limited service.

## **SITE DATA**

The subject property contains approximately 1.476 acres in area, with approximately 410 lineal feet of frontage along Marketplace Drive and 157 lineal feet of frontage along Saturn Road. The site will be accessed from both Marketplace Drive and Saturn Road.

## **USE OF PROPERTY UNDER CURRENT ZONING**

The subject property is zoned Planned Development (PD) District 12-16 which allows those General Business Uses listed in the IH 635 Overlay District. Although Hotel/Motel, Limited Services was not permitted in the General Business District within the IH 635 Overlay under Zoning Ordinance No. 4647, under the Garland Development Code Hotel/Motel, Limited Services is permitted with approval of a Specific Use Permit. It should be noted that the proposed development was designed and reviewed per the Development Standards that were in effect prior to the adoption of the Garland Development Code. Furthermore, Planned Development (PD) District 12-16 required approval of a Detail Plan prior to any development occurring on the subject property.

## **CONSIDERATIONS**

### Detail Plan and Specific Use Permit

1. The applicant seeks approval of a Detail Plan and a Specific Use Permit to develop a three-story limited service hotel with 38,231.81 square feet of floor area. The hotel will provide 65 guest rooms and 700 square feet of meeting space. The hotel provides the required amenities including internal hallways, a swimming pool and porte cochere. The subject property is part of a larger area bounded by Saturn Road, Marketplace Drive, and Centerville Road that has

recently experienced redevelopment with the demolition of the Mervyn's building and the construction of an LA Fitness and a two-tenant building currently occupied by Starbucks and a dental clinic.

2. Both the IH 635 Development Standards and the Hotel/Motel Development Standards stipulate that exterior walls shall be composed of a minimum of 50% primary masonry product and either a maximum of 50% secondary masonry product or no more than 20% other non-masonry materials, excluding doors, windows or window walls. The intent of these façade material requirements is to establish minimum standards that foment development with architecture and the level of quality that highlights the importance of sites along and near IH 635. The elevations of the proposed hotel meet the aforementioned material percentages with stone veneer as the primary masonry material and EIFS as the second material.

3. The applicant proposes attached signage on the west elevation and one monument sign along each street frontage. Both attached signage and monument signage comply with the sign regulations of the IH 635 Development Standards.

4. With the exception of Section 34.20(B)(1), to which the applicant has secured a variance from the Plan Commission to allow a 10-foot wide landscape buffer along Marketplace Drive, the proposed landscape plan meets all applicable screening and landscape requirements of the IH 635 Development Standards.

5. The applicant requests approval of a Specific Use Permit for a period of thirty (30) years.

6. Section 10-100 of Ordinance No. 4647 establishes a parking requirement of 1.25 parking spaces for each guest room plus 1 parking space for every 200 square feet of conference floor area. The proposed hotel, with 65 guest rooms and 700 square feet of meeting space, requires a minimum of 85 parking spaces. The applicant seeks relief from the parking requirement contending that the site constraints, due to the 10-foot wide right-of-way dedication and other site components, limit the parking to the proposed 70 parking spaces.

The applicant has provided Staff with a report with empirical data that deems the parking requirement excessive and recommends a parking requirement of 1 parking space for each guest room. This recommended parking ratio, according to the report, is an industry standard that is applied throughout the United States to hotels offering limited services. The 1 to 1 ratio plus the parking requirement for the conference room would yield a total parking demand of 69 parking spaces which the applicant will provide.

Although it is not applicable to the proposed development and included in this report for the sole purpose of supporting the variance request, the Garland Development Code is in accordance with the recommendation made in the

abovementioned report as it requires parking to be provided at a ratio of 1 parking space per room plus 1 parking space for every 200 square feet of conference area.

## **COMPREHENSIVE PLAN**

The Envision Garland Future Land Use Map depicts the subject property as a Community Center within the Activity Center Building Block. Community Centers are described as areas with compact development, primarily non-residential, serving a collection of neighborhoods. This type of development consists of a mix of uses including retail, services, office use, multi-family residential and entertainment. In addition, the Envision Garland Plan identifies this property as part of the Centerville Marketplace Catalyst Area and states that the City's overall strategy for this area is to redevelop underutilized properties to increase density and quality. Redevelopment with the proposed La Quinta Hotel is consistent with the vision and recommendations set forth by the Envision Garland Plan.

## **COMPATIBILITY OF REQUEST WITH SURROUNDING ZONING AND LAND USES**

The subject property is located within a large area of established and developing retail, restaurant and personal and professional service uses, and has proximity to existing and proposed multi-family residential development. It has frontage along a major thoroughfare (Saturn Road) which provides direct access to IH 635, making the site highly accessible to visitors entering the City. The proposed use is compatible with the surrounding zoning and land uses. Additionally, it will provide a needed support service to other industries.

Prepared By:

Josue De La Vega  
Development Planner

Date: July 8, 2015

Reviewed By:

Will Guerin, AICP  
Director of Planning

Date: July 9, 2015

Reviewed By:

Bryan L. Bradford  
City Manager

Date: July 13, 2015

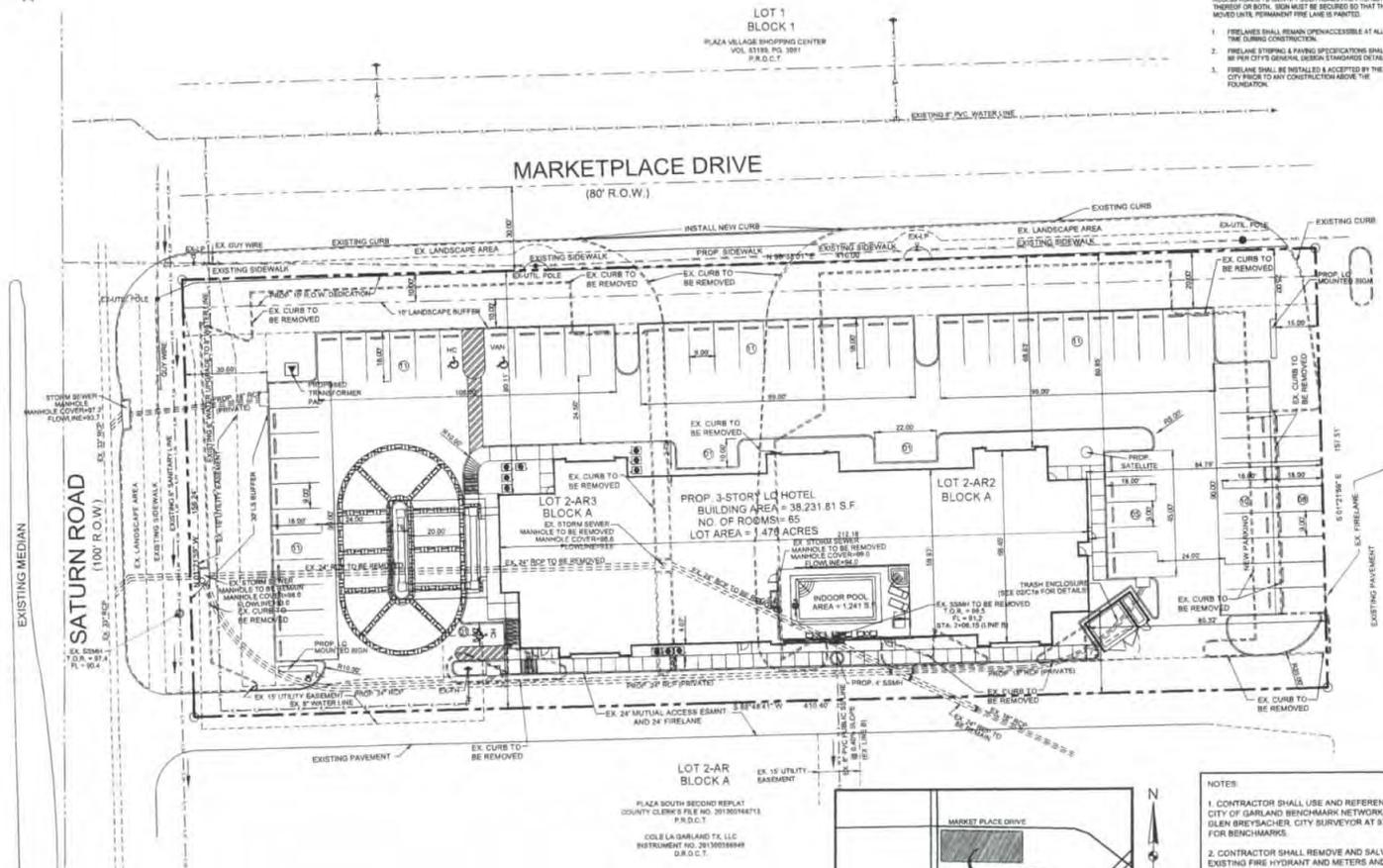


## PLANNED DEVELOPMENT CONDITIONS

### ZONING FILE 15-07

#### Southeast corner of Saturn Road and Marketplace Drive

- I. **Statement of Purpose:** The purpose of this Planned Development District is to permit Hotel, Limited Service subject to conditions.
- II. **Statement of Effect:** This Planned Development District shall not affect any regulation found in the Garland Development Code, Ordinance No. 6773, as amended prior to adoption of this ordinance, except as specifically provided herein.
- III. **General Regulations:** All regulations of the Community Retail (CR) District as set forth in Chapter 2 of the Garland Development Code are included by reference and shall apply, except as otherwise specified by this ordinance.
- IV. **Development Plans:**
  - A. Detail Plan: Development shall be in general conformance with the Detail Plan. (Exhibit C)
- V. **Specific Regulations:**
  - A. Guest Rooms and Meeting Space: A minimum of sixty-five (65) guest rooms shall be provided as well as a minimum of 700 square feet.
  - B. Screening and Landscaping: Screening and landscaping shall be in general conformance with the approved landscape plan labeled Exhibit D. The landscape buffer along Marketplace Drive shall have a minimum depth of ten (10) feet.
  - C. Exterior Elevations: The exterior elevations of the building shall be provided as generally shown Exhibit E.
  - D. Signage: One monument sign shall be permitted along each street frontage.
  - E. Parking: A minimum of seventy (70) parking spaces shall be provided.



PROPOSED 3 STORY LQ HOTEL  
BUILDING HEIGHT = 60'-4"  
NO. OF ROOMS = 65  
TOTAL PARKING REQUIRED = 85 SPACES

PARKING	LQ HOTEL	MEETING ROOM	TOTAL
BUILDING AREA	38,231.81 S.F.	700.00 S.F.	38,931.81 S.F.
PARKING REQUIRED	75 SPACES/ROOM UNIT = 81 25 SPACES	1 SPACE/200 S.F. = 3 1/2 SPACES	85 SPACES
PARKING FURNISHED	70 SPACES		70 SPACES
H.C. PARKING REQUIRED	3 SPACES (1 VAN)		3 SPACES (1 VAN)
H.C. PARKING FURNISHED	3 SPACES (2 VANS)		3 SPACES (2 VANS)



NOTES:

1. CONTRACTOR SHALL USE AND REFERENCE THE CITY OF GARLAND BENCHMARK NETWORK. CONTACT GLEN GREYSACHER, CITY SURVEYOR AT 972-205-2157 FOR BENCHMARKS.
2. CONTRACTOR SHALL REMOVE AND SALVAGE ALL EXISTING FIRE HYDRANT AND METERS AND RETURN TO WATER DEPARTMENT.

CASE NO. 141216-1

GENERAL CONSTRUCTION NOTES

OWNERSHIP AND USE OF DRAWINGS

THIS DRAWING AND ALL RIGHTS IN IT ARE RESERVED BY THE ENGINEER AND WILL REMAIN HIS PROPERTY. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF THE ENGINEER IS PROHIBITED. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED BY HIM OR HER AND DOES NOT INCLUDE THE DESIGN OF STRUCTURES OR OTHER WORK NOT SPECIFICALLY IDENTIFIED HEREON. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

**FIRE LANE STRIPING SPECIFICATIONS AND REQUIREMENTS**

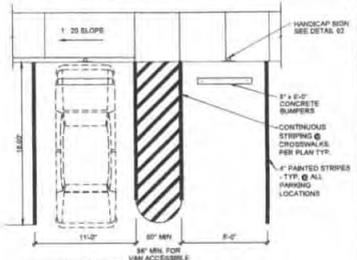
THE ACCESS ROADWAY AND/OR FIRE LANE SHALL BE STRIPED ON A PAVED SURFACE AND BE CLEARLY MARKED ON THE PAVEMENT WITH A RED LINE AT LEAST FOUR INCHES WIDE. "NO PARKING" AND "FIRE LANE" IN NOT LESS THAN FOUR INCH LETTERS BY WHITE SHALL BE PLACED EVERY OTHER FIFTEEN (15) FEET ON THE STRIP. WHERE THE FIRE LANE IS ADJACENT TO A CURB, THE FIRE CURB SHALL BE PAINTED A REDLINE STRIPING. "NO PARKING - FIRE LANE" OF A MINIMUM OF EIGHTEEN (18) INCHES PAINTED IN YELLOW SHALL BE PLACED AT ALL ENTRANCES TO THE FIRE LANE. LETTERING MAY BE LARGER, BUT IF A MINIMUM. ALL FIRE LANES SHALL CONNECT AT BOTH ENDS TO A DESIGNATED STREET OR BE CONSTRUCTED WITH TURNAROUND AREAS AT THE DEAD-END WITH A MINIMUM WIDTH OF FIFTY (50) FEET. ALL PAINT REFERRED TO SHALL BE A TRAFFIC-MARKING PAINT.

WHEN REQUIRED DURING CONSTRUCTION OR OTHER TEMPORARY USE, APPROVED SIGNS SHALL BE PROVIDED AND MAINTAINED FOR FIRE APPROVAL ACCESS ROADS TO IDENTIFY BLOCK REARDS AND PROHIBIT THE OBSTRUCTION THEREOF OR SIGN. SIGNS MUST BE SECURED SO THAT THEY CANNOT BE MOVED UNTIL PERMANENT FIRE LANE IS PAINTED.

1. FIRE LANES SHALL REMAIN OPEN ACCESSIBLE AT ALL THE DURING CONSTRUCTION.
2. FIRE LANE STRIPING & PAVING SPECIFICATIONS SHALL BE PER CITY OF GARLAND, TEXAS STANDARD SPEC. 110.
3. FIRE LANE SHALL BE INSTALLED & ACCEPTED BY THE CITY PRIOR TO ANY CONSTRUCTION ABOVE THE FOUNDATION.

**GENERAL NOTES:**

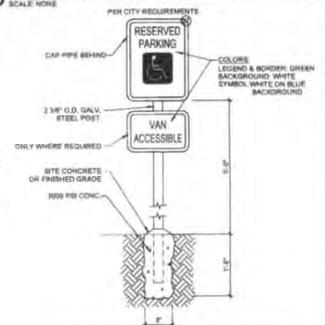
1. ALL CONSTRUCTION SHALL CONFORM TO THE REQUIREMENTS OF THE STANDARD SPECIFICATIONS OF GARLAND, TEXAS.
2. CONTRACTOR SHALL PROVIDE A 6" x 6" x 1" PLANE TO THE ENGINEER SO THAT THE REQUIREMENTS OF THE ENGINEERING PLANS MAY BE CORRECTED TO REFLECT "AS BUILT" CONDITIONS.
3. THE CONTRACTOR SHALL BE REQUIRED TO PROVIDE AND MAINTAIN ALL NECESSARY WARNING AND SAFETY DEVICES (FLARE AND LIGHTS, BARRICADES, SIGNS, ETC.) TO PROTECT THE PUBLIC SAFETY AND HEALTH UNTIL THE WORK HAS BEEN COMPLETED AND ACCEPTED BY THE CITY.
4. THE LOCATIONS OF EXISTING UTILITIES SHOWN ON THESE PLANS ARE APPROXIMATE. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE AND VERIFY IN THE FIELD ANY UTILITIES THAT MAY COMPLY WITH HIS CONSTRUCTION. AT LEAST 24 HOURS PRIOR TO BEGINNING CONSTRUCTION IN THE VICINITY OF UNDERGROUND UTILITIES, NOTIFY THE FOLLOWING APPLICABLE:



ACCESSIBLE ROUTE NOTES:

1. MAXIMUM LONGITUDINAL SLOPE: 1:20
2. MAXIMUM CROSS SLOPE, INCLUDING PARKING ASIDE: 1:50

**03 DETAIL - HANDICAP PARKING GRAPHICS**



**02 DETAIL - HANDICAP SIGN**

**EISENHOUR**  
Consulting, LLC

Landscape Architecture     Building Design

1300 MARKETPLACE DRIVE  
CITY OF GARLAND, TEXAS 75042

---

PROJECT NAME: **SITE PLAN  
PROPOSED 3 STORY LQ HOTEL**  
1300 MARKETPLACE DRIVE  
CITY OF GARLAND, TEXAS  
1.476 ACRES

PREPARED BY: **TIYA LODGING LLC**  
1102 ST. CHARLES DR.  
ROWLETT, TEXAS 75088  
CELL: 409.865.3888

DESIGNED BY: **E.M. FAGGET ENGINEERING**  
P.O. BOX 17088  
FORT WORTH, TEXAS 76182

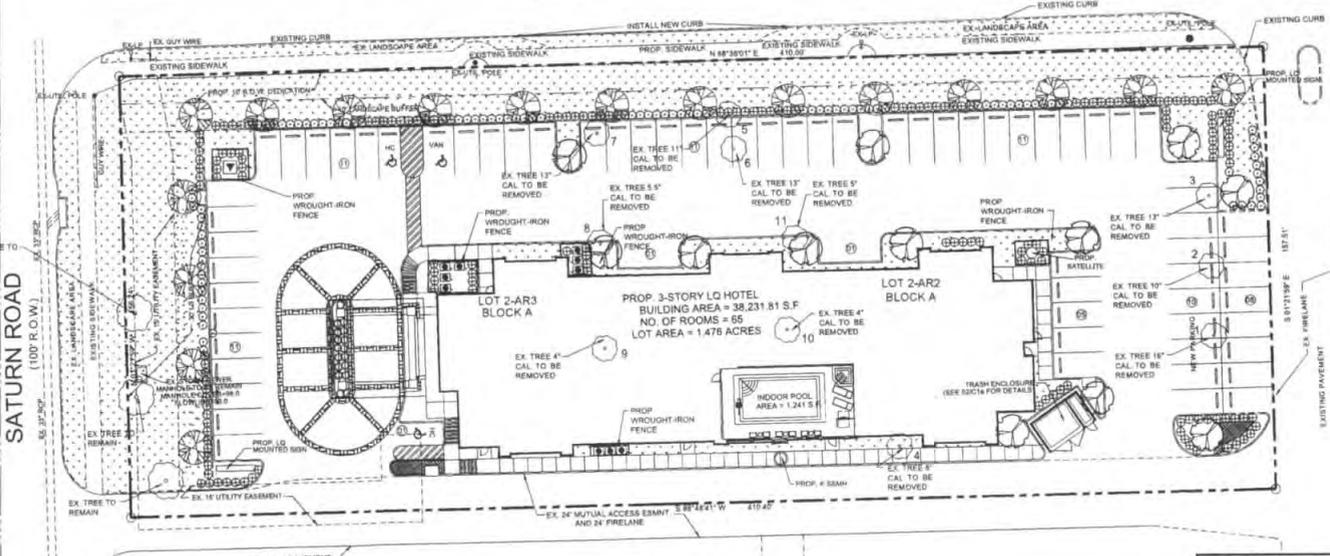
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DATE: 08/20/21  
SCALE: AS SHOWN

OWNER: TIYA LODGING LLC  
PROJECT: PROPOSED 3 STORY LQ HOTEL  
SHEET: **C1**

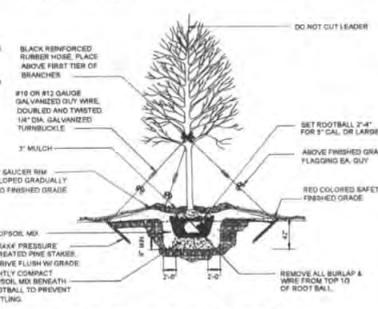
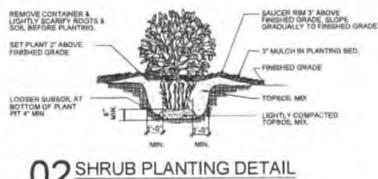
LANDSCAPING			
LOT AREA	REQUIRED (10% OF SITE)	84,294.58 S.F.	
OPEN SPACE	PROVIDED (18.8% OF SITE)	8,428.45 S.F.	
PARKING SPACES & DRIVEWAY AREA (18,811.28 S.F.)	REQUIRED (1.3% OF PARKING & DRIVEWAY AREA)	1,524.23 S.F.	
	PROVIDED (4.3% OF PARKING SPACES & DRIVEWAY AREA)	3,351.66 S.F. (1.5 ISLAND)	
PARKING LOT TREES	REQUIRED (1 TREE/5 PARKING SPACES)	28 - 3" MIN. CALIPER	
	PROVIDED	12 - 3" MIN. CALIPER	
		17 - 3" MIN. CALIPER	
		12 - 3" MIN. CALIPER	
STREET TREES	REQUIRED (1 PER 100' OF FRONT)	17 - 3" MIN. CALIPER	
	PROVIDED	12 - 3" MIN. CALIPER	
		17 - 3" MIN. CALIPER	
		12 - 3" MIN. CALIPER	
SCREEN SHRUBS	REQUIRED (10% OF FRONT)	105 - 5 GALLON	
	PROVIDED	57	
		105 - 5 GALLON	
		105 - 5 GALLON	

MARKETPLACE DRIVE  
(80' R.O.W.)



- GENERAL LANDSCAPE NOTES**
1. ALL PLANT MATERIALS SHALL CONFORM TO THE STANDARDS OF THE APPROVED PLANT LIST FOR THE CITY OF GARLAND, TEXAS.
  2. AS UNDERGROUND AUTOMATIC LANDSCAPE IRRIGATION SYSTEM SHALL BE INSTALLED TO WATER ALL LANDSCAPE AREAS, INCLUDING RIGHT-OF-WAY AREAS, UNLESS NOTED OTHERWISE.
  3. ADDITIONAL PLANT MATERIAL MAY BE INSTALLED ON SITE AT OWNERS DIRECTION AND ACCORDING TO CITY REQUIREMENTS.
  4. ALL PLANT MATERIAL SHALL BE MAINTAINED BY OWNERS IN A HEALTHY AND SOUND CONDITION, AND REPLACED WITH PLANT MATERIAL OF SIMILAR SIZE AND VARIETY IF DAMAGED, DETERIORED, OR REMOVED.
  5. LANDSCAPE AREAS SHALL BE KEPT FREE OF TRASH, LITTER, AND WEEDS.
  6. ALL LANDSCAPE AREAS SHALL BE CONSTRUCTED, INSTALLED AND MAINTAINED SO AS NOT TO OBSTRUCT VIEW OF MOTORIST BETWEEN THE STREET AND ACCESS DRIVE. VISIBILITY EASEMENTS SHALL REMAIN UNOBSTRUCTED AT ALL TIMES.
  7. ALL PERMEABLE SURFACES NOT OCCUPIED BY TREES, SHRUBS, PLANTING BEDS OR OTHER PERMITTED TEAR OR FIXTURES SHALL BE BERM A DEGREE LARGER UNLESS OTHERWISE NOTED.
  8. ALL TREES TO BE INSTALLED OUTSIDE FIRE HYDRANT, SANITARY INLET AND UTILITY EASEMENTS.
  9. REFERENCE ENGINEERING PLANS FOR PROPOSED GRADES.

- TREE NOTES**
1. AT THE TIME OF PLANTING, TREES SHALL BE A MINIMUM OF THREE INCHES (3") CALIPER, MEASURED 12" ABOVE GROUND AND A MINIMUM OF SEVEN FEET (7') IN HEIGHT.
  2. APPLY THREE INCHES (3") LAYER OF MULCH ON TOP OF ROOT BALL AFTER PLANTING. KEEP MULCH NINE INCHES (9") FROM BASE OF THE TRUNK.
  3. PRUNE EACH TREE TO CORRECT STRUCTURAL DEFECTS AND REMOVE WIDEN BRANCHES CAUSED DURING TRANSPORT AND PLANTING.



01 LANDSCAPE PLAN  
SCALE: 1" = 20'-0"



**PLANT LIST**

QTY	COMMON NAME	BOTANIC NAME	SIZES/PACING
17	SHUMARD OAK	QUERCUS SHUMARDI	3.5" CALIPER AT THE TIME OF PLANTING
1	LIVE OAK	QUERCUS VIRGINIANA	3.5" CALIPER AT THE TIME OF PLANTING
178	BURFORD HOLLY	ILEX CORNUTA 'BURFORD'	30" HEIGHT AT THE TIME OF PLANTING 36" O.C.
81	RED CEDAR	JUNIPERUS VIRGINIANA	30" HEIGHT AT THE TIME OF PLANTING 24" O.C.
83	EXISTING TREES		

**LANDSCAPE SUMMARY**

FRONT YARD L.S. AREA	6,740.41 S.F.
TOTAL L.S. AREA	12,833.83 S.F.
TOTAL LOT AREA	84,294.58 S.F.
% OF LOT FRONT YARD L.S.	16.43 %
% OF LOT TOTAL L.S.	18.81 %

**NOTES:**

1. CONTRACTOR SHALL USE AND REFERENCE THE CITY OF GARLAND BENCHMARK NETWORK, CONTACT GLEN BREYSSACHER, CITY SURVEYOR AT 972-705-2157 FOR BENCHMARKS.
2. CONTRACTOR SHALL REMOVE AND SALVAGE ALL EXISTING FIRE HYDRANT AND METERS AND RETURN TO WATER DEPARTMENT.

SHUMARD TREE - 17 TREES AT 3.5 IN CALIPER TO BE REPLANTED.  
LIVE OAK - 17 TREES AT 3.5 IN CALIPER TO BE REPLANTED.



CASE NO. 141216-1

**GENERAL CONSTRUCTION NOTES**

1. CONTRACTOR SHALL VERIFY ALL EXISTING UTILITIES AND RECORD THEM ON SITE. ALL UTILITIES SHALL BE DEEPER THAN THE FINISHED GRADE UNLESS OTHERWISE NOTED.

**OWNERSHIP AND USE OF DRAWINGS**

THIS DRAWING IS THE PROPERTY OF EISENHOUR CONSULTING, LLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF EISENHOUR CONSULTING, LLC.

03 TREE PLANTING DETAIL  
SCALE: NONE

**EISENHOUR Consulting, LLC**  
Landscape Architecture & Planning  
1101 S. GARDNER ST., SUITE 100  
GARLAND, TX 75042  
PHONE: 972.705.1111  
FAX: 972.705.1112

PROJECT NAME: **LANDSCAPE PLAN**  
**PROPOSED 3 STORY LQ HOTEL**  
108 MARKETPLACE DRIVE  
CITY OF GARLAND, TEXAS  
1.4 IN ACRES

OWNER: **TIYA LODGING LLC**  
8102 ST. CHARLES DR  
ROWLETT, TEXAS 75088  
CELL: 469.836.3889

DESIGNED BY: **E.M. FAGGET ENGINEERING**  
P.O. BOX 17888  
FORT WORTH, TEXAS 76182

DATE: 11/11/2024  
PROJECT: 141216-1  
SHEET: LP  
SCALE: 1" = 20'-0"



WEST ELEVATION

**COLOR SCHEDULE**

-  EIFS (FINE SAND TEXTURE)  
SW 6120 BELIEVABLE BUFF
-  STONE VENEER  
COUNTRY LEDGESTONE - MOJAVE COLOR
-  EIFS (LIMESTONE TEXTURE)  
SW 0055 LIGHT FRENCH GRAY
-  ALUMINUM (WINDOWS, STOREFRONT, &  
PTAC GRILLS) - WHITE
-  EIFS (FINE SAND TEXTURE)  
SW 6124 CARDBOARD

MATERIAL	DESIGNATION	WEST ELEVATION		SOUTH ELEVATION	
		AREA (S.F.)	PCT	AREA (S.F.)	PCT
EIFS (FINE SAND TEXTURE)	118.44	14.1%	894.1%	9.46%	
STONE VENEER	2115.68	68.93%	4022.32	56.41%	
EIFS (LIMESTONE TEXTURE)	436.00	13.62%	700.82	9.52%	
EIFS (FINE SAND TEXTURE)	522.64	16.33%	522.64	7.33%	
TOTAL AREA	3168.74	100%	7135.88	100%	

**NORTH ELEVATION**

MATERIAL	DESIGNATION	AREA (S.F.)	PCT
EIFS (FINE SAND TEXTURE)	3718.81 sq. ft.	47.17%	



SOUTH ELEVATION

**PREPARED BY:**  
  
 BISHOP & ASSOC.  
 CONSULTING ARCHITECTS  
 1200 JARVIS PLACE  
 CHANDLER, AZ 85226

**PROJECT:**  
 NORMAN PATTEN & ASSOC.  
 PROJECTS & PLANNING  
 1200 JARVIS PLACE  
 CHANDLER, AZ 85226  
 PHONE: 480.755.1234  
 FAX: 480.755.1235

**DATE:**  
 04/15/2015

**CLIENT:**  
 TIYA LODGING LLC  
 1200 JARVIS PLACE  
 CHANDLER, AZ 85226  
 PHONE: 480.755.1234  
 FAX: 480.755.1235

**PROJECT:**  
  
 LaQuinta Inn & Suites  
 1200 JARVIS PLACE  
 CHANDLER, AZ 85226

**PROJECT NO.:** 15-0046

**PROJECT NAME:** SPECIAL USE PERMIT

**DESIGNER:** GEORGE L. CALEA

**DESIGN COORDINATOR:**

**DATE:**

**SCALE:**

**DATE:**

**PROJECT NO.:**

**SHEET:**  
**A3.00**

**DATE:**  
 04/15/2015



EAST ELEVATION

**COLOR SCHEDULE**

	EIFS (FINE SAND TEXTURE) SW 6120 BELIEVABLE BUFF
	STONE VENEER COUNTRY LEDGESTONE - MOJAVE COLOR
	EIFS (LIMESTONE TEXTURE) PAINTED METAL AWNINGS AND PREFAB. BALCONY SW 0055 LIGHT FRENCH GRAY
	ALUMINUM (WINDOWS, STOREFRONT, & PTAC GRILLS) - WHITE
	EIFS (FINE SAND TEXTURE) SW 6124 CARDBOARD

MATERIAL	DESIGNATION	EAST ELEVATION AREA (SQ. FT.)	PCT	NORTH ELEVATION AREA (SQ. FT.)	PCT
EIFS (FINE SAND TEXTURE)		622.39	20.24%	1447.26	19.77%
STONE VENEER		1722.83	64.23%	6669.12	63.61%
EIFS (LIMESTONE TEXTURE)		473.30	18.43%	753.46	10.29%
EIFS (FINE SAND TEXTURE)				841.17	6.31%
<b>TOTAL AREA</b>		<b>3067.52</b>	<b>100%</b>	<b>7411.01</b>	<b>100%</b>

**NORTH ELEVATION**

FRONT FACADES	REAR FACADES	PERCENTAGE
6812.58 sq. ft.	3719.51 sq. ft.	42.7%



NORTH ELEVATION



ARCHITECT: **NORMAN PATTEN & ASSOC.**

INTERIOR DESIGNER: **TIYA LODGING LLC**

ARCHITECT: **LAQUINTA INN & SUITES**

SHEET

**A3.01**

04/15/2015



**EISENHOUR**  
Consulting LLC

Land Development • Building Design

4845 Montgomery Street • Suite 100 • Dallas, Texas 75244 • Phone: 972.333.1111 • Fax: 972.333.1112 • www.eisenhour.com



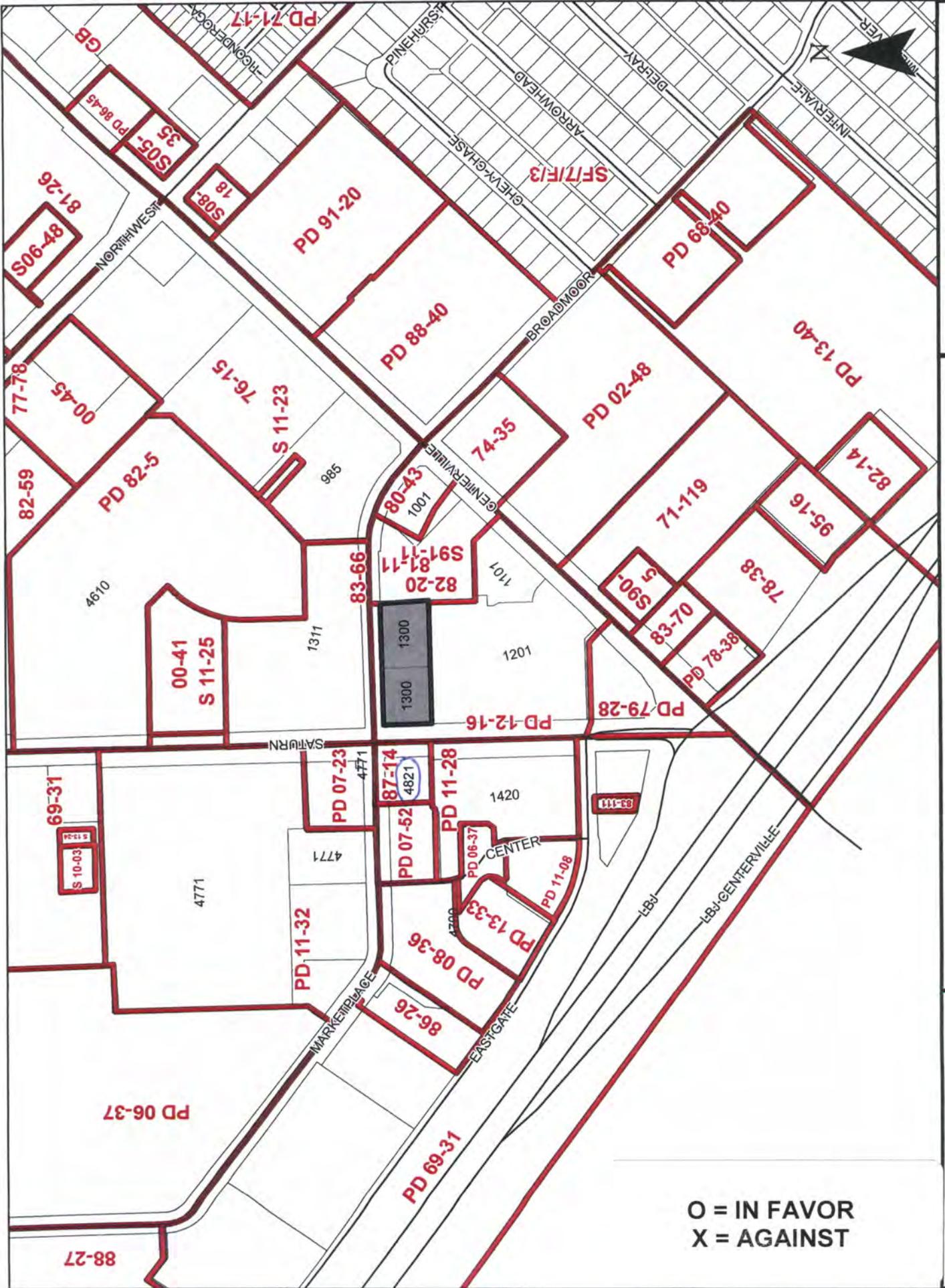
## REPORT & MINUTES

P.C. Meeting, June 22, 2015 (7 Members Present)

Consideration of the application of Mit Patel requesting approval of 1) an amendment to Planned Development (PD) District 12-16 for General Business Uses (Community Retail Uses under Ordinance 6773 – Garland Development Code), 2) a Detail Plan and Specific Use Permit for Hotel/Motel, Limited Service and 3) variances to Sections 34.20(B)(1) of the IH 635 Development Standards regarding landscape buffers and Section 10-100 of Ordinance No. 4647 regarding parking. This property is located at the southeast corner of Saturn Road and Marketplace Drive. (District 5) (File Z 15-07)

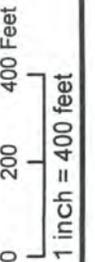
The applicant Mit Patel, 5102 St. Charles Drive, provided a brief overview of the request and remained available for questions.

**Motion** was made by Commissioner Welborn, seconded by Commissioner Dalton to approve the request per staff recommendation. **Motion carried: 7 Ayes, 0 Nays.**



INDICATES AREA OF REQUEST

# ZONING Z 15-07



O = IN FAVOR  
X = AGAINST



# GARLAND

June 11, 2015

CITY OF GARLAND  
PLANNING DEPARTMENT  
P.O. BOX 469002  
GARLAND, TX 75046-9002

HEARING DATE/TIME: Plan Commission: June 22, 2015 – 7:00 P.M.

APPLICANT: Mit Patel

File Z 15-07

Dear Property Owner:

A public hearing will be held by the Plan Commission of the City of Garland, Texas, at 7:00 P.M. Monday, June 22, 2015, in the Goldie Locke Room of the Duckworth Utilities Services Building, 217 North Fifth Street, to consider the application of Mit Patel requesting approval of 1) an amendment to Planned Development (PD) District 12-16 for Limited General Business Uses (Community Retail Uses under Ordinance 6773 – Garland Development Code), 2) a Detail Plan for Specific Use Permit for Hotel/Motel, Limited Services and 3) variances to Sections 34.20(B)(1) of the IH 635 Development Standards regarding landscape buffers and 10-100 of Ordinance No. 464 regarding parking. The property is shown on the enclosed sketch and is described as follows:

Being an approximate 1.476-acre tract of land and identified as Lots 2-AR3 and 2-AR2, Block A, Plaza South Addition Second Replat, an addition to the City of Garland as shown on the plat recorded in instrument No. 201200166713 of the Map Records of Dallas County, Texas. The subject property is located on the southeast corner of Saturn Road and Marketplace Drive, Garland, TX. (District 5)

**Note: The applicant proposes to develop a 3-story hotel.**

To convey any concerns or opinions regarding the aforementioned request, please complete the below-listed section and return to City of Garland, Planning Department, P.O. Box 469002, Garland, TX 75046-9002 or by fax to 972-205-2474. Should you have any questions, please contact Josue De La Vega at 972-205-2445.

(Please Check One Below)

- I am in favor of the request.
- I am opposed to the request.

Please include any comments you wish to provide supporting your position in the space provided below.

---



---

(Please complete the following information)

Your Property Address 4821 Saturn Road, Garland Tx 75041

Printed Name Masoud Arami

Address \_\_\_\_\_ City, State \_\_\_\_\_ Zip \_\_\_\_\_

The above statements reflect my (our) opinion regarding the proposed request(s).

Signature [Signature] Title owner

Date: 6/18/15



# Planning Report

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## GreenbergFarrow

**555 West I-30 Freeway (on the southwest corner of the Wal-Mart Supercenter parking lot)**

### **REQUEST**

Approval of a Specific Use Permit (Specific Use Provision) for Retail Sales with Gas Pumps on a property zoned Freeway (FW) District (Community Retail District under Ordinance 6773 – Garland Development Code).

### **OWNER**

Wal-Mart Real Estate Business Trust

### **PLAN COMMISSION RECOMMENDATION**

On June 22, 2015 the Plan Commission, by a vote of seven (7) to zero (0), recommended approval of a Specific Use Permit (Specific Use Provision) for Retail Sales with Gas Pumps with a single canopy as proposed by applicant for a period of 20 years.

Additionally, Plan Commission approved a variance to Section 34.19(A)(2)(a)(i) of the I-30 Development Standards regarding building placement to allow the dumpster enclosure within the required setback.

### **STAFF RECOMMENDATION**

Approval of a Specific Use Permit (Specific Use Provision) for Retail Sales with Gas Pumps for a period of 20 years. Limiting the Specific Use Permit allows for the reevaluation of the appropriateness of the use given any redevelopment efforts in the area. At this time, the request is compatible with the surrounding land uses and existing development pattern.

Additionally, Staff recommends the canopy be modified to limit the vast expanse and the visual impact from IH 30. The canopy could be redesigned to create two canopies to cover the gas pumps on either side of the building without extending over the entire area as proposed.

## **BACKGROUND**

In 1999 City Council approved a Specific Use Permit to allow the construction of a gas station on the subject property that would be operated by Wal-Mart. The site plan under the current Specific Use Permit reflects a gas station consisting of a 200-square foot kiosk with no walk-in retail floor area and a 5,625-square foot canopy over 4 gasoline pumps. However, to date, the gas station has not been constructed. The applicant brings forward a revised gas station layout and proposes a larger development than the one previously approved; furthermore, the original layout has been changed to have the long side of the canopy towards the I-30 Freeway and the retail building slightly shifted towards the east.

## **SITE DATA**

The subject property contains approximately 0.81 acres and has no street frontage. The site will be accessed from Broadway Boulevard, Broadway Commons and the service road of I-30.

## **USE OF PROPERTY UNDER CURRENT ZONING**

The application was received when the subject property was still zoned Freeway (FW) District. The Freeway (FW) District accommodates a broad range of nonresidential uses including office, retail, personal services, commercial, industrial and institutional activities. The development of Retail Sales with Gas Pumps is only permitted with approval of a Specific Use Permit. With the adoption of the GDC the property was rezoned to Community Retail (CR) District which still requires approval of a Specific Use Provision for Fuel Pumps, Retail.

## **CONSIDERATIONS**

1. The applicant proposes a gas station that consists of a 1,200-square foot retail building, a 4,824-square foot canopy over 8 fuel pumps. The gas station would be owned and operated by Murphy Oil USA, Inc. The previously approved SUP allowed for a 200-square foot kiosk with no walk-in retail floor area and a 5,625-square foot canopy over 4 gasoline pumps.
2. The applicant will remove landscape islands and 118 of the Wal-Mart parking spaces to accommodate for the proposed gas station leaving approximately 862 parking spaces. The remaining parking spaces meet the minimum parking requirement for the Wal-Mart. If approved, the 0.81-acre site will be platted as a separate lot.
3. A gas station site with a retail building of 1,200 square feet shall have at least 6 parking spaces. The applicant is proposing 11 parking spaces.

4. As required in Section 10-312 of Ordinance 4647, each façade of the building for retail sales with gas pumps shall consist of at least 80% face brick and/or stone and all the canopy columns shall be constructed with the same masonry materials as are used on the building facades. The exterior walls of the retail building consist of 80% brick and the canopy columns consist of 100% brick. It should be noted that the GDC also requires 80% masonry and masonry columns on the canopy to match the building.
5. The canopy is proposed to extend over the entire development, spanning across all the gas pumps and the retail building. Staff recommends the canopy design be modified to limit the expanse of the canopy.
6. The proposed landscape plan meets the applicable parking lot landscape regulation of the I-30 Development Standards. It should be noted that landscape buffers are not required given that the subject property does not have street frontage.
7. The proposed attached signage is in compliance with the sign area restrictions of the I-30 Development Standards. No freestanding signage is being proposed at this time.
8. The applicant seeks approval of a Specific Use Permit for Retail Sales with Gas Pumps for an indefinite time period. The typical time period requested for this type of use is between twenty (20) and thirty (30) years.

## **COMPREHENSIVE PLAN**

The Future Land Use Map of the Envision Garland Plan recommends transit-oriented centers for the subject property due to its proximity to the Lake Ray Hubbard Transit Center. Transit-oriented centers are areas of concentrated activity and increased density with maximum access to public transportation options. This type of center should be developed as mixed-use with live/work/play/shop opportunities. The proposed gas station is not consistent with the long-term vision set forth by the Envision Garland Plan; however it could be a compatible use in the short-term. Limiting the Specific Use Permit to a 20 year time period will allow the City of Garland to evaluate the compatibility in the event the overall area redevelops as recommended by the Envision Garland Plan.

## **COMPATIBILITY OF REQUEST WITH SURROUNDING ZONING AND LAND USES**

Most of the surrounding properties are zoned for Freeway (Community Retail) uses and developed with an array of commercial uses that include restaurants with drive-through, banks, restaurants, a medical clinic, a Wal-Mart Supercenter,

and a gas station located on the northwest corner of Broadway Boulevard and Broadway Commons.

The proposed gas station would be developed on the periphery of the Wal-Mart parking area, behind the developed outparcels. The gas station is compatible with the surrounding land uses and will provide a convenient service to those customers that patronize the businesses located within the same development.

Prepared By:

Josue De La Vega  
Development Planner

Date: July 8, 2015

Reviewed By:

Will Guerin, AICP  
Director of Planning

Date: July 9, 2015

Reviewed By:

Bryan L. Bradford  
City Manager

Date: July 13, 2015



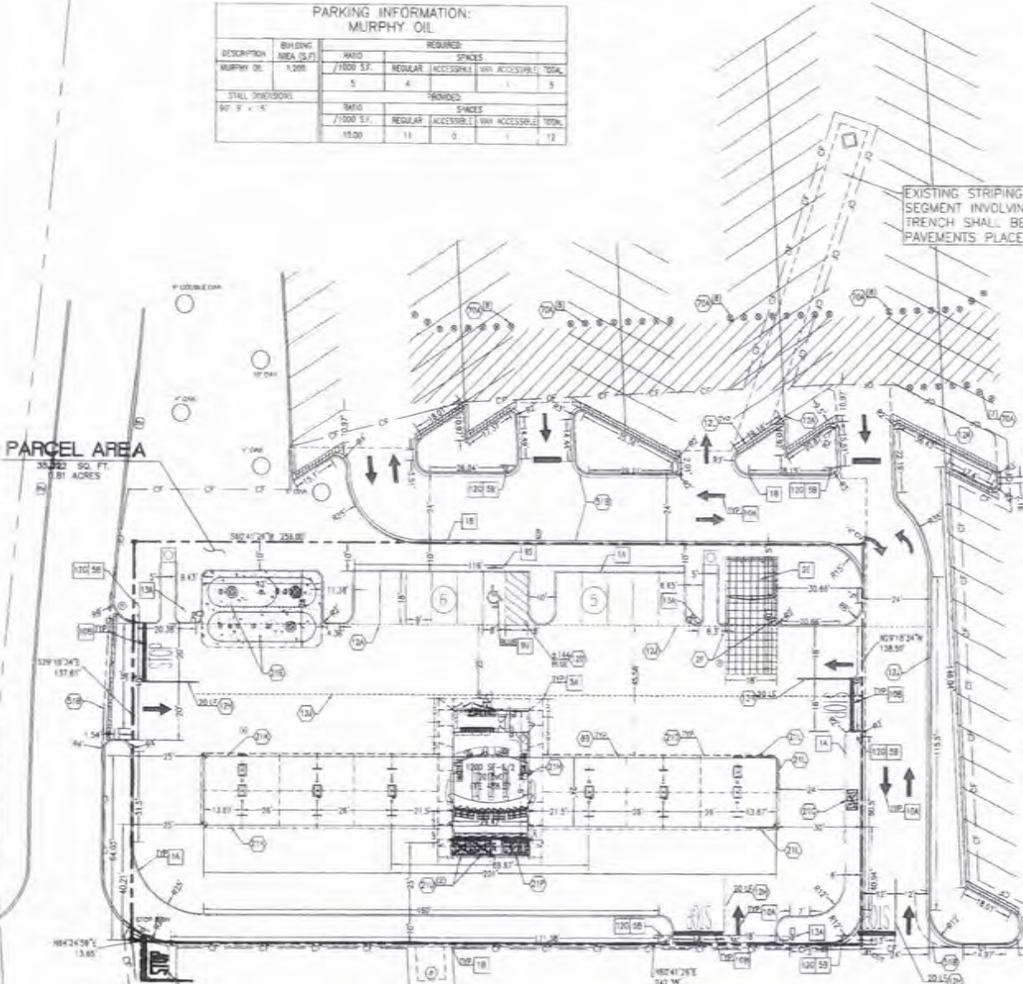
## SPECIFIC USE PROVISION CONDITIONS

### ZONING FILE 15-17

#### 555 West I-30 Freeway (on the southwest corner of the Wal-Mart Supercenter parking lot)

- I. **Statement of Purpose:** The purpose of this Specific Use Provision is to permit Fuel Pumps, Retail subject to conditions.
- II. **Statement of Effect:** This Specific Use Provision shall not affect any regulation found in the Garland Development Code, Ordinance No. 6773, as amended prior to adoption of this ordinance, except as specifically provided herein.
- III. **General Regulations:** All regulations of the Community Retail (CR) District as set forth in Chapter 2 of the Garland Development Code are included by reference and shall apply, except as otherwise specified by this ordinance.
- V. **Specific Regulations:**
  - A. Time Period: The Specific Use Permit shall be in effect for an indefinite time period.
  - B. Site Plan: Development shall be in general conformance with the site plan labeled Exhibit C.
  - C. Screening and Landscape Plan: All landscaping shall be in general conformance with landscape plan labeled Exhibit D.
  - D. Elevations: Elevations and canopy columns shall be in general conformance with the elevations labeled Exhibit E.
  - E. Attached Signs: The accumulative area of the attached signs on the building shall not exceed 64.59 square feet as reflected in Exhibit E.
  - F. Building Placement: The dumpster enclosure shall be permitted to be located within the required setback.

PARKING INFORMATION: MURPHY OIL				
DESCRIPTION	BUILDING AREA (SQ. FT.)	REQUIRED SPACES		
		WAD	REGULAR	ACCESSIBLE (MIN. ACCESSIBLE)
MURPHY OIL	7,200	5	4	3
STREET SIDEWAYS		PROVIDED		
80' x 15'		WAD	REGULAR	ACCESSIBLE (MIN. ACCESSIBLE)
		15.00	11	0



BUILDING SETBACKS

BUILDING SETBACK SHOWN ON PLAN

- THE MURPHY OIL SIGN SHALL NOT DROP THE MURPHY OIL SIGN BELOW CITY REQUIREMENTS.
- ALL PROPERTY TYPING MUST BE SETBACK.
- DO TO ENSURE THAT TRAFFIC THROUGH THE MURPHY OIL SIGN IS NOT INTERRUPTED AT ANY TIME OF CONSTRUCTION WORKS, THERE IS A MINIMUM TYPING LINE WITH 1' OF EACH SIDE OF THE SIGN. IF AVAILABLE, ALL SIGNAGE OF RESTRICTIONS TO TRAFFIC, IF NO SIGNAGE, THE CONSTRUCTION FENCE SHALL BE SETBACK 10 FEET FROM THE FACE OF THE CURB OR SIDE.
- IF RESTRICTION OF CONSTRUCTION ON SITE WILL INTERFERE WITH THE MURPHY OIL SIGN, THE CONTRACTOR SHALL COORDINATE WITH THE MURPHY OIL CONSTRUCTION/OPERATION MANAGER AND/OR MURPHY OIL PROPERTY OWNER TO ENSURE THE SIGNAGE IS MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. TRAFFIC APPROVED SIGNAGE AND/OR CONES TEMPORARILY LOCATED AND PLACED MAY BE ALSO NECESSARY.
- ALL MURPHY OIL PROPERTY SIGNAGE DUE TO CONSTRUCTION ACTIVITIES MUST BE REPLACED/RESTORED TO MATCH THE EXISTING TYPE AND QUALITY OF WORK AND MATERIALS, AND IS SUBJECT TO MURPHY OIL APPROVAL.
- UTILITY WORK DONE ON MURPHY OIL FACILITY SHALL BE APPROVED BY MURPHY OIL. ALL CONSTRUCTION SHALL BE RESTORED BACK TO ORIGINAL CONDITIONS.
- EROSION CONTROL MEASURES APPROVED MUST BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION. ALL SLOPES MUST BE PROTECTED WITH EROSION CONTROL MEASURES. ALL CONSTRUCTION SHALL BE RESTORED TO ORIGINAL CONDITIONS.
- IF SMALL UTILITY OPERATIONS ARE DONE ON MURPHY OIL FACILITY, ALL CONSTRUCTION SHALL BE RESTORED TO ORIGINAL CONDITIONS.

- TEMPORARY ACCESS DRIVE NOTES
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  - CONTRACTOR SHALL PROVIDE TEMPORARY TRAFFIC SIGNALS TO MAINTAIN TRAFFIC CONTROL THROUGHOUT CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF TEMPORARY TRAFFIC SIGNALS.
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SITE DETAILS - SEE DETAIL SHEETS

- 1A. NORMAL CONCRETE DRIVE
- 1B. 1" OF CONCRETE CURB & GUTTER
- 1C. CURB & GUTTER
- 1D. 1" OF CONCRETE CURB & GUTTER
- 1E. 1" OF CONCRETE CURB & GUTTER
- 1F. 1" OF CONCRETE CURB & GUTTER
- 1G. 1" OF CONCRETE CURB & GUTTER
- 1H. 1" OF CONCRETE CURB & GUTTER
- 1I. 1" OF CONCRETE CURB & GUTTER
- 1J. 1" OF CONCRETE CURB & GUTTER
- 1K. 1" OF CONCRETE CURB & GUTTER
- 1L. 1" OF CONCRETE CURB & GUTTER
- 1M. 1" OF CONCRETE CURB & GUTTER
- 1N. 1" OF CONCRETE CURB & GUTTER
- 1O. 1" OF CONCRETE CURB & GUTTER
- 1P. 1" OF CONCRETE CURB & GUTTER
- 1Q. 1" OF CONCRETE CURB & GUTTER
- 1R. 1" OF CONCRETE CURB & GUTTER
- 1S. 1" OF CONCRETE CURB & GUTTER
- 1T. 1" OF CONCRETE CURB & GUTTER
- 1U. 1" OF CONCRETE CURB & GUTTER
- 1V. 1" OF CONCRETE CURB & GUTTER
- 1W. 1" OF CONCRETE CURB & GUTTER
- 1X. 1" OF CONCRETE CURB & GUTTER
- 1Y. 1" OF CONCRETE CURB & GUTTER
- 1Z. 1" OF CONCRETE CURB & GUTTER

1200SF-6/2-2015v0



LEGEND

EXISTING	PROPOSED
1. EXISTING DRIVE	1. PROPOSED DRIVE
2. EXISTING SIDEWALK	2. PROPOSED SIDEWALK
3. EXISTING CURB & GUTTER	3. PROPOSED CURB & GUTTER
4. EXISTING TRAFFIC SIGNAL	4. PROPOSED TRAFFIC SIGNAL
5. EXISTING UTILITY	5. PROPOSED UTILITY
6. EXISTING CONCRETE	6. PROPOSED CONCRETE
7. EXISTING ASPHALT	7. PROPOSED ASPHALT
8. EXISTING GRAVEL	8. PROPOSED GRAVEL
9. EXISTING SAND	9. PROPOSED SAND
10. EXISTING SOIL	10. PROPOSED SOIL
11. EXISTING VEGETATION	11. PROPOSED VEGETATION
12. EXISTING FENCE	12. PROPOSED FENCE
13. EXISTING SIGN	13. PROPOSED SIGN
14. EXISTING LIGHT	14. PROPOSED LIGHT
15. EXISTING TREE	15. PROPOSED TREE
16. EXISTING BUSH	16. PROPOSED BUSH
17. EXISTING GRASS	17. PROPOSED GRASS
18. EXISTING ROCK	18. PROPOSED ROCK
19. EXISTING SANDSTONE	19. PROPOSED SANDSTONE
20. EXISTING LIMESTONE	20. PROPOSED LIMESTONE
21. EXISTING GYPSUM	21. PROPOSED GYPSUM
22. EXISTING CLAY	22. PROPOSED CLAY
23. EXISTING SILT	23. PROPOSED SILT
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149. EXISTING GLASS	149. PROPOSED GLASS
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153. EXISTING CLAY	153. PROPOSED CLAY
154. EXISTING SAND	154. PROPOSED SAND
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279. EXISTING GLASS	2



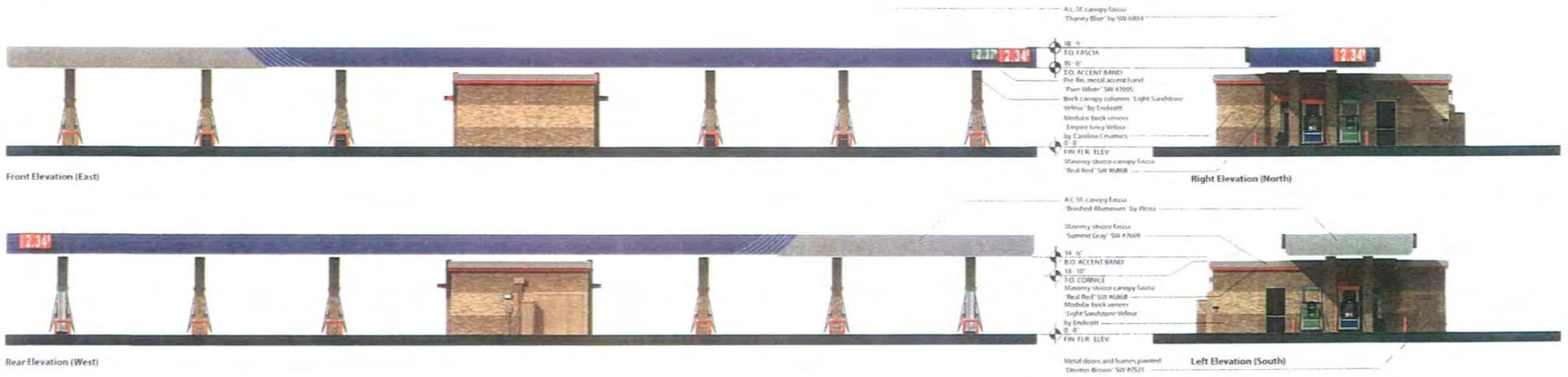
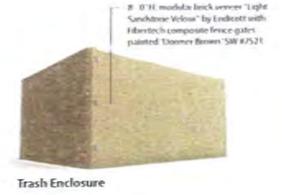


EXHIBIT E



Signs	Qty	Height	Width	Area	Total S.F.
Small Canopy Price Signs	2	34.11'	78.00'	125.4	250.8
Extra Small Canopy Price Signs	1	28.25'	62.00'	175.2	175.2
<b>Total Signage</b>					<b>426.0</b>

Elevation	Total	Brick	%	Masonry Stone	%
Front (East)	325.17	333.11	89%	41.84	11%
Rear (West)	284.50	242.67	85%	41.84	15%
Right (North)	503.35	401.41	80%	99.94	20%
Left (South)	503.35	401.41	80%	99.94	20%

## REPORT & MINUTES

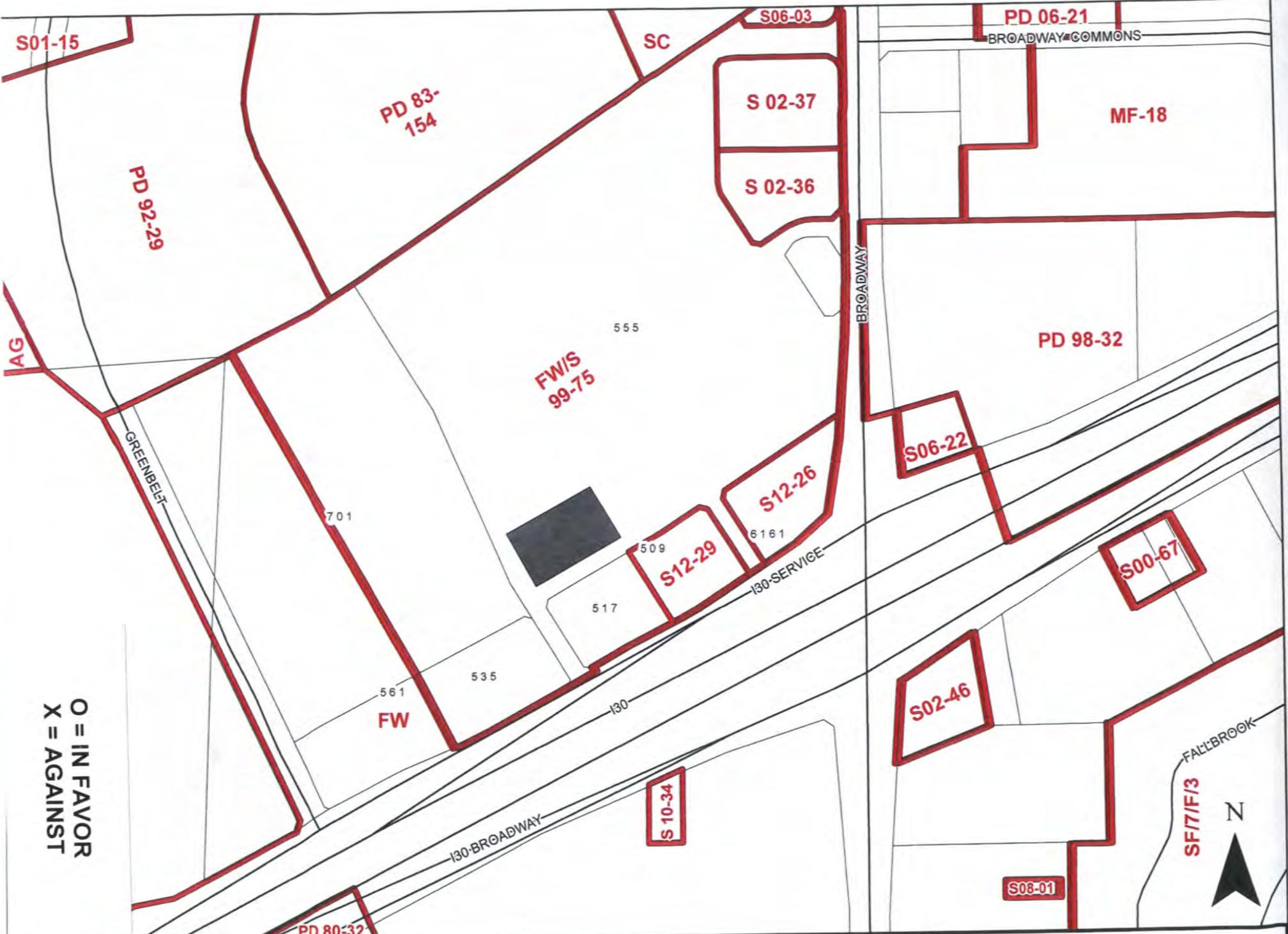
P.C. Meeting, June 22, 2015 (7 Members Present)

Consideration of the application of GreenbergFarrow requesting approval of 1) a Specific Use Permit for Retail Sales with Gas Pumps on a property zoned Freeway (FW) District (Community Retail District under Ordinance 6773 – Garland Development Code) and 2) a variance to Section 34.19(A)(2)(a)(i) of the I-30 Development Standards regarding building placement. This property is located at 555 West I-30 Freeway (on the southwest corner of the Wal-Mart Supercenter parking lot). (District 4)(Z 15-17)

The applicant, Wayne Gibson, 422 No. Washington, El Dorado, AR 71730, gave a brief overview of the request and provided additional information regarding the canopy design.

Representing the applicant Eric Wilhite, 5500 Democracy Dr., Plano, TX provided additional information regarding the variance request and manufacturing of the canopy.

**Motion** was made by Commissioner O'Hara, seconded by Commissioner Moore to approve the request as presented by the applicant. **Motion carried: 7 Ayes, 0 Nays.**



O = IN FAVOR  
 X = AGAINST

0 150 300 Feet  
 1 inch = 300 feet

# ZONING Z 15-17

INDICATES AREA OF REQUEST



We did not receive any replies for this case.



# Planning Report

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**Twenty Eight, Ltd, dba Kwik Kar of Buckingham**

**810 Buckingham**

## **REQUEST**

Approval of 1) an amendment of Planned Development (PD) District 93-13 for General Business (GB) Uses [Commercial Retail District uses under Ordinance 6773] and 2) a Detail Plan for Automotive Repair Minor

## **OWNER**

Twenty Eight, Ltd, dba Kwik Kar of Buckingham

## **PLAN COMMISSION RECOMMENDATION**

On June 22, 2015 the Plan Commission by a vote of seven (7) to zero (0), recommended approval of 1) an amendment of Planned Development (PD) District 93-13 for General Business (GB) Uses [Commercial Retail District uses under Ordinance 6773] and 2) a Detail Plan for Automotive Repair Minor

## **STAFF RECOMMENDATION**

Approval of 1) an amendment of Planned Development (PD) District 93-13 for General Business (GB) Uses [Commercial Retail District uses under Ordinance 6773] Uses and, 2) a Detail Plan for Automotive Repair Minor.

## **BACKGROUND**

On July 7, 1993, City Council approved Planned Development (PD) District 93-13 for General Business (GB) uses as the regulatory document to guide the development of the subject site. The approved Detail Plan reflects a single story building used for Automotive Repair Minor. The applicant requests approval to amend Planned Development (PD) District 93-13 and the approved Detail Plan to reflect the development of an additional 1,500 square foot building containing three service bays, used to provide additional automotive repair services. The applicant has indicated that the site will continue to provide more of the existing services.

The adoption of Ordinance No. 6773 amended several zoning districts within the City including the General Business (GB) District. The General Business (GB) District is referred to and regulated as the Community Retail (CR) District under the Garland Development Code.

## **SITE DATA**

The subject property is a 0.646-acre site developed with an existing 2,000 square foot building containing Kwik Kar (Lube and Tune)(automotive repair minor). The site has 173 linear feet of frontage along Buckingham Road and approximately 154 feet of frontage along N. Glenbrook Drive. The site has direct access to Buckingham but shares an access drive with an adjacent property to N. Glenbrook Drive.

## **USE OF PROPERTY UNDER CURRENT ZONING**

Development is restricted to the development standards and permitted uses of Planned Development (PD) District 93-13 for General Business Uses. The adoption of Ordinance No. 6773 amended the General Business (GB) District and is referred to and regulated as the Community Retail (CR) District.

## **CONSIDERATIONS**

1. Detail Plan: The applicant requests approval of a Detail Plan to construct a 1,500 square foot building to house additional automotive repair services. The building will contain three repair bays that will be oriented toward the east. The existing building on the site will remain as is and will continue to operate.

2. Parking: Planned Development 93-13 observed the parking requirements set forth by Ordinance 4647 that requires one parking space for every 500 square feet of gross floor area plus one space for each bay for Automotive Repair Minor uses. The proposed building requires six spaces and the existing building requires eight. The original design of the site contained parking primarily along the western portion of the property along the interior lot line. The Detail Plan proposes to utilize parallel parking along Glenbrook Drive and Buckingham Road and perpendicular parking along the southern portion of the site. The Detail Plan reflects 17 parking spaces in the above mentioned configuration to satisfy the parking requirement for the proposed use. Access to the parking area will be from Buckingham Road and an existing mutual access drive adjoining the site on the south.

3. Screening and Landscape: The site was granted a variance to reduce the landscape buffer depth from ten (10) feet to five (5) feet and relieve the parking lot landscaping requirement to allow the existing configuration of pavement to remain. The subject site will otherwise meet the minimum number of tree plantings required within the landscape buffers along both street frontages and provide a continuous 24 inch screening required from public streets and adjacent districts.

4. Building Façade Material: The proposed façade materials will be primarily brick with a four foot band of stucco across the top. The design of the proposed elevations matches the existing Kwik Kar building and is consistent with the existing surrounding non-residential developments.

5. Signage: The subject site contains a single freestanding sign and attached wall signage. The applicant is not proposing any signage improvements on the subject property and the signage will remain as is.

## **COMPREHENSIVE PLAN**

The Future Land Use Map of the Envision Garland Plan recommends Neighborhood Centers for the subject property. Neighborhood centers provide a mix of retail, services and community gathering places appropriately scaled to adjacent residential areas. For the past 22 years, the existing Kwik Kar has served the residents of the neighborhoods in the surrounding area; furthermore, the automobile repair service is conveniently and appropriately located at the corner of two major thoroughfares. The Detail Plan provides for a development that is consistent with the concept of the Neighborhood Centers designation.

## **COMPATIBILITY OF REQUEST WITH SURROUNDING ZONING AND LAND USES**

The subject site is located at the southwest intersection of Glenbrook Drive and Buckingham Road. The northwest and northeast intersections contain Rodgers Baptist Church and a Chevron gas station respectively. Immediately south of the subject site is the GISD Professional Development Center; immediately west of the site is a Taco Bueno drive-through restaurant. The surrounding area further west is primarily developed with established single-family neighborhoods. The proposed Detail Plan and conditions are consistent with the approach to preserve compatibility within the surrounding area.

Prepared By:

Isaac Williams  
Development Planner

Date: July 7, 2015

Reviewed By:

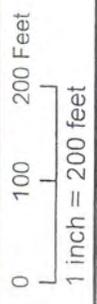
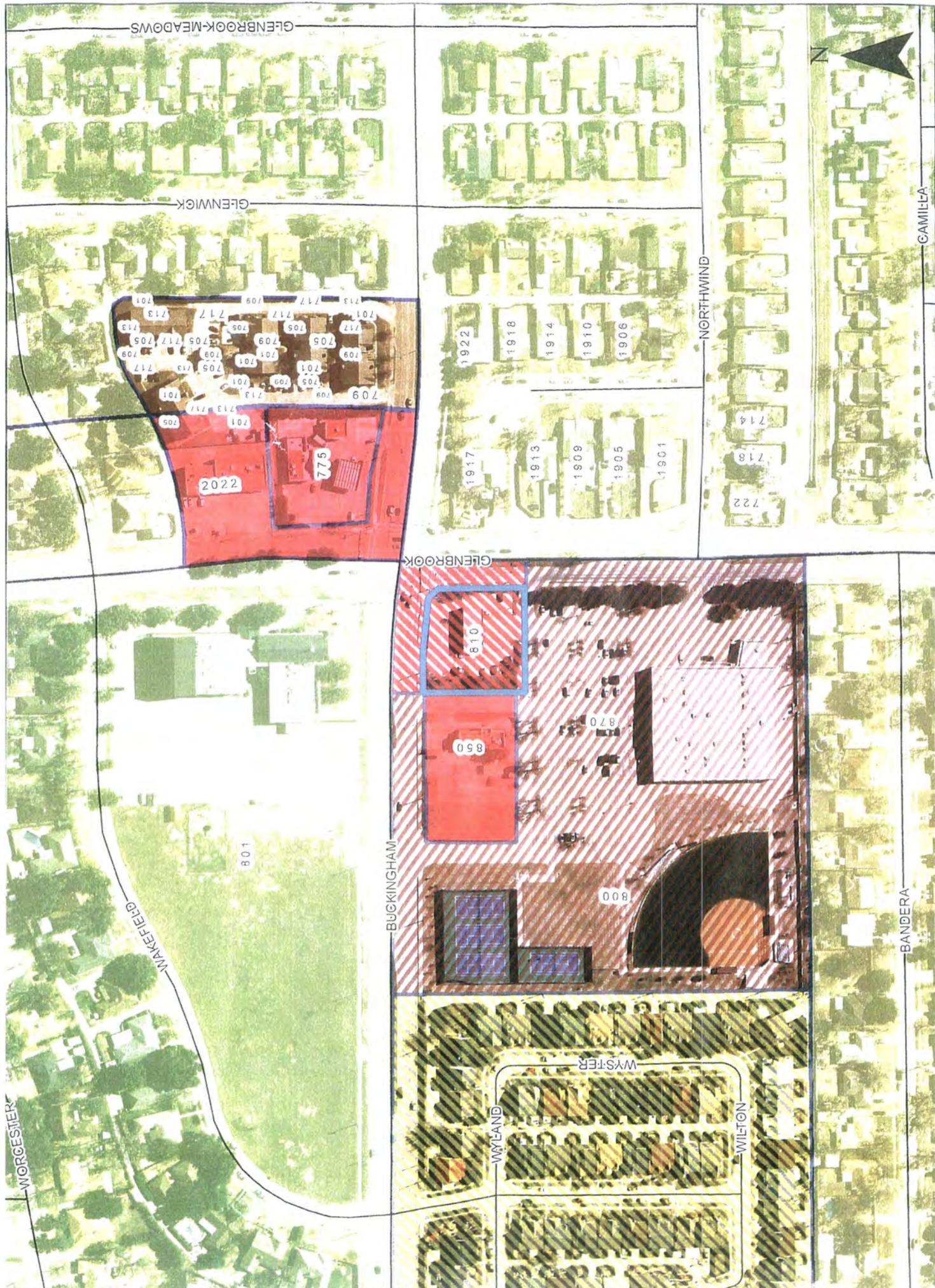
Will Guerin, AICP  
Director of Planning

Date: July 8, 2015

Reviewed By:

Bryan L. Bradford  
City Manager

Date: July 10, 2015



# ZONING Z 15-22

INDICATES AREA OF REQUEST



CAMILLE

BANDERA

NORTHWIND

BUCKINGHAM

GLENBROOK

GLENWICK

GLENBROOK-MEADOWS

WORCESTER

WAKEFIELD

WYSTER

WYLAND

WILTON



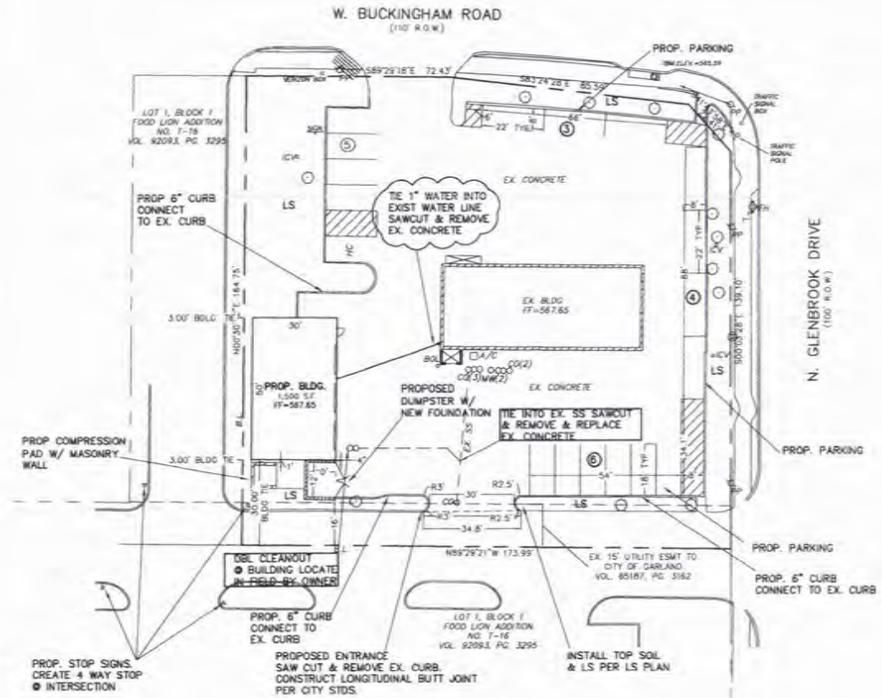
## PLANNED DEVELOPMENT CONDITIONS

### ZONING FILE 15-22

#### 810 Buckingham Road

- I. **Statement of Purpose:** The purpose of this Planned Development District is to permit the development of Automotive Repair (minor) building on the subject property subject to conditions.
- II. **Statement of Effect:** This Planned Development shall not affect any regulation found in the Garland Development Code, Ordinance No. 6773, as amended prior to adoption of this ordinance, except as specifically provided herein.
- III. **General Regulations:** All regulations of the Community (CR) District set forth in Chapter 2 of the Garland Development Code, Ordinance 6773, are included by reference and shall apply, except as otherwise specified by this ordinance.
- IV. **Development Plans:**
  - A. Detail Plan: Development shall be in general conformance with the Detail Plan set forth in Exhibit C. Any conflicts between the Detail Plan and the following conditions, the conditions shall prevail.
- V. **Specific Regulations:**
  - A. Permitted Uses: Uses shall be as permitted within the Community Retail (CR) District.
  - B. Screening and Landscaping: Screening and landscaping shall be provided as reflected on Exhibit D. A five foot landscape buffer shall be provided along Buckingham Road and Glenbrook Drive. No tree shall be required to be planted within the parking area along the street frontages. Parking lot landscaping shall be on the perimeter as reflected in Exhibit D
  - C. Building Elevations: The building elevations shall be in general conformance with Exhibit E.

!!!! CAUTION !!!!  
CALL 811 TO LOCATE  
UNDERGROUND LINES  
48 HRS PRIOR TO CONSTRUCTION



**SITE DATA:**

LOT AREA:  
0.64 Acres, 27,885.57 sq. ft.  
BUILDING AREA:  
1,500 sq. ft.  
PROPOSED USE:  
SERVICE BUILDING  
IMPERVIOUS AREA  
(including buildings):  
23,352 sq. ft.  
ZONING:  
FD93-13  
PARKING:  
1 space/bay & 1 space/500sf  
Required for prop. building: 6  
Required for ex. building: 8  
Required HC = 1  
Total Required = 15  
LANDSCAPE AREA:  
Required: PD standards  
Provided: 4,187 sq. ft.

NOTE: NO LANDSCAPING SUCH AS TREES, HEDGES, ABOVE OR UNDERGROUND STRUCTURES SHALL BE LOCATED WITHIN EXISTING OR PROPOSED UTILITY EASEMENTS AND RIGHT OF WAYS.

- NOTES:
- 1) ALL WORK MUST CONFORM TO CITY OF GARLAND & NCTCOO STANDARDS AND DETAILS.
  - 2) ALL WORK IN PUBLIC RIGHT-OF-WAY SHALL CONFORM TO CITY OF GARLAND "RIGHT-OF-WAY MANAGEMENT ORDINANCE No.5004" STANDARDS AND DETAILS.
  - 3) SEE DETAILS SHEETS FOR PRIVATE DETAILS. ALL PRIVATE DETAILS ARE SUPERSEDED BY STANDARD CITY DETAILS.
  - 4) ALL DIMENSIONS ARE FACE OF CURB TO FACE OF CURB UNLESS OTHERWISE NOTED.
  - 5) ALL SCREENING WALLS SHALL COMPLY WITH THE SCREENING WALL DETAILS OF THE "CITY OF GARLAND ENGINEERING DEPT. STANDARD DETAILS, 2006" AS AN ALTERNATIVE, AN EQUIVALENT SCREENING WALL PLAN, DESIGNED BY A STATE OF TEXAS PROFESSIONAL ENGINEER, MAY BE SUBMITTED TO THE BUILDING INSPECTION DEPT. FOR REVIEW AND APPROVAL.
  - 6) ALL PAVING JOINTS ARE TO BE CONSTRUCTION JOINTS UNLESS OTHERWISE NOTED.
  - 7) DEVELOPER/ CONTRACTOR TO CONTACT WATER DEPARTMENT @ 972-205-3214 FOR APPROVED BACKFLOW DEVICES.
  - 8) ALL UTILITY LOCATIONS SHOWN PER CITY OF GARLAND UTILITY MAPS. MUST FIELD VERIFY ALL LOCATIONS PRIOR TO CONSTRUCTION.
  - 9) ALL WATER & SEWER SERVICES MUST BE APPROVED & PERMITTED BY THE CITY OF GARLAND.
  - 10) NO PERMANENT STRUCTURES (INCLUDING LIGHT POLES AND INLETS) MAY BE PLACED WITHIN A PUBLIC UTILITY EASEMENT. BACKFLOW PREVENTION DEVICES MUST BE PLACED ON PRIVATE PROPERTY (NOT IN AN EASEMENT).

**WARNING:**  
PRIOR TO THE BEGINNING OF ANY CONSTRUCTION OR CONSTRUCTION STAKING, IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO CONTACT THE CIVIL ENGINEER TO ENSURE THAT ALL PARTIES ARE IN POSSESSION OF THE MOST CURRENT SET OF CONSTRUCTION DOCUMENTS.

**NOTE:**  
THE CONTRACTOR SHALL BE RESPONSIBLE FOR FIELD VERIFYING THE LOCATION OF ALL EXISTING UTILITIES AND EASEMENTS PRIOR TO START OF OPERATIONS. CONTRACTOR SHALL NOTIFY THE OWNER'S REPRESENTATIVE OF ANY DISCREPANCIES PRIOR TO STARTING THE WORK. EXISTING UTILITIES AND UNDERGROUND FACILITIES INDICATED ON THESE PLANS HAVE BEEN LOCATED FROM REFERENCE INFORMATION. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY BOTH THE HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UTILITIES AND UNDERGROUND FACILITIES PRIOR TO START OF CONSTRUCTION. TAKE THE NECESSARY PRECAUTIONS IN ORDER TO PROTECT ALL FACILITIES ENCOUNTERED. THE CONTRACTOR SHALL PRESERVE AND PROTECT ALL EXISTING UTILITIES FROM DAMAGE DURING CONSTRUCTION.

- 1) BENCHMARK: CITY OF GARLAND  
GPS 18: N=7027668.86  
E=2541043.07  
ELEVATION=574.48
- 2) TEMP BENCHMARK  
TOP OF STORM LIO ON W BUCKINGHAM  
ELEVATION=565.59

**VICINITY MAP NOT TO SCALE**

**LEGEND**

- - - PROPERTY LINE
- - - EXISTING SANITARY SEWER LINE
- - - EX. W
- - - EXISTING WATER LINE
- ⊕ EX. FIRE HYDRANT
- ⊕ EX. WATER METER
- ⊕ EX. WATER VALVE
- ⊕ EX. POWER POLE
- ⊕ EX. IRIGATION CONTROL VALVE
- ⊕ EXISTING STORM MANHOLE
- ⊕ EXISTING GAS METER
- ⊕ PROPOSED SS MANHOLE
- ⊕ PROPOSED FIRE HYDRANT
- ⊕ PROPOSED FIVE (5) FT CONNECTION
- ⊕ PROPOSED RESECTOR CHECK VALVE
- ⊕ EXISTING
- PROPOSED
- LS - LANDSCAPE
- RCF - REINFORCED CONCRETE FIVE
- MW - MANNING
- MW - MANNING

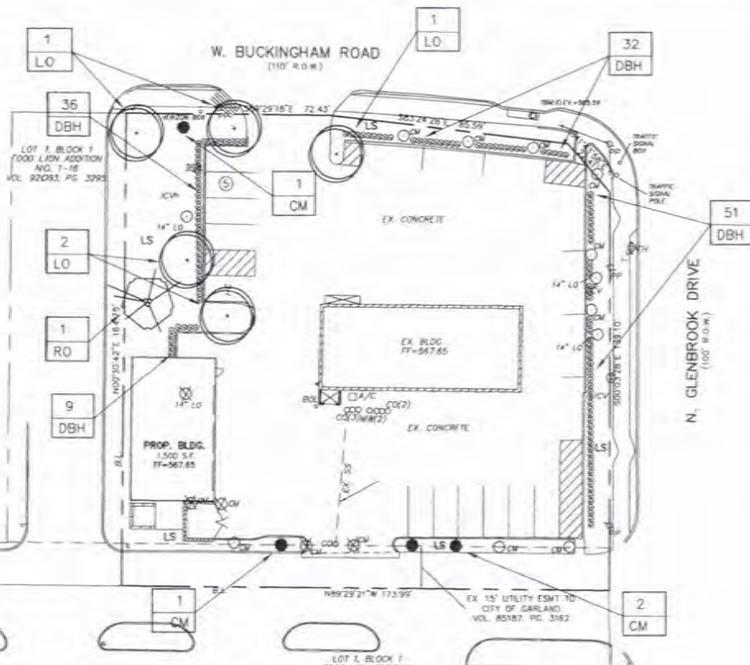
ONLY DRAWINGS STAMPED "RELEASED FOR CONSTRUCTION" BY THE CITY OF GARLAND TO BE USED FOR CONSTRUCTION.



CASE #150127-2

<b>SITE &amp; UTILITY PLAN</b>	
<b>KWK KAR</b>	
810 W. BUCKINGHAM WALTHAM ADDITION LOT 1, BLOCK 1, 0.64 Acres City of Garland, Dallas County, Texas	
Designer/Contractor: Twentyeight, LLC dba Kwk Kar of Buckingham 810 W. Buckingham Rd. Garland, TX 75042 Contact: Henry Corbett 972-754-0002	
Issued by: MCK CONSULTING ENGINEERS 1300 W. State Street, Garland Texas 75040 872 272-1783 Fax 872 272-8781 © 2015 Mck Consulting Engineers, Inc. All Rights Reserved	
PROJECT NO.: 2015-07	REC. NO. 7-2567
DATE: 8/10/15	SCALE: 1"=20'
	SHEET: C101

EXHIBIT C



GENERAL NOTES

- Quantities shown on Plant List are Landscape Architect's estimate only and should be verified prior to bidding. Contractor shall be responsible for bidding and providing quantity of plants required at spacing designated for bed sizes and configurations shown on plans regardless of quantities designated on Plant List.
- Contractor shall notify Landscape Architect of any discrepancies, ambiguity, or unlabeled plants on plans prior to bid submission. If discrepancy, ambiguity, or unlabeled plant is not clarified by Landscape Architect prior to bid submission date, Contractor shall note such item on bid.
- Contractor shall provide representative samples (minimum 3 each variety) of shrub and groundcover stock for Landscape Architect's and/or Owner's approval prior to major shipment of materials to site.
- After tillage and clearing, all areas to be grassed shall be leveled, and fine graded. The required result shall be the elimination of ruts, depressions, humps, and objectionable soil clods. During the soil preparation process, a "Rock Pick" or "Rock Rake" shall be used to gather surface stones as small as one inch (1") in diameter.
- Gross areas to be either hydramulch Bermuda or perennial Ryegrass depending on date of planting. Bermudagrass hydramulch shall not be applied prior to May 15 nor after August 15 nor at any time the soil temperature is less than 70° F. If grassing is to occur after August 15 or before May 15, Contractor shall include perennial Ryegrass seed bid with an alternate price to return the following Spring (after May 15) to scalp Ryegrass and re-hydramulch with Bermuda, guaranteeing a full stand of grass.
- Contractor shall guarantee a full stand of grass, regardless of whether a permanent landscape irrigation system is installed. Contractor shall provide temporary irrigation or hand water as required for turf establishment.
- Soil amendment to be "Compost" as produced by Living Earth Technology (Phone: 214-869-4332), or approved equal.
- Tree holes to be excavated 2' greater than ball diameter and 6" deeper. Backfill with 2/3 existing soil and 1/3 Compost (or approved equal) as noted under 7, above, thoroughly blended by mechanical means prior to backfill.
- Shrub pits shall be excavated 12" greater than container diameter and 6" deeper. Backfill with 1/2 existing soil and 1/2 Compost (or approved equal) as noted under 7, above, thoroughly blended by mechanical means prior to backfill.
- Mulch (addressing to be minimum 2" layer shredded hardwood spread uniformly on all shrub and groundcover beds and on all tree saucers).
- Bed edging (if applicable) to be 1/8" x 4" Ryerson "Estate" edging as manufactured by Joseph Ryerson Co., Inc. Houston, Texas (phone: 713.675.6111), or approved equal.
- All holes for trees and large shrubs shall be tested for water retention prior to tree or shrub installation. After hole is excavated, it is to be filled with water to the top of the excavation. If, after 24 hours, the hole still holds water, the Contractor shall excavate an additional 6" from the bottom of the hole. The Landscape Contractor shall then install 6" of native washed gravel covered on the top (and up to a minimum of 12" on the sides of the hole) with filter fabric. The Contractor shall also install a capped 3" diameter PVC sump which will extend from near the bottom of the rock layer to 3' above the proposed finish grade so the hole can be evacuated through mechanical means.
- All planting (trees, shrubs, groundcover, and/ or grass as applicable, to be guaranteed for a period of one year after Final Acceptance.
- Install bed edging in all areas where shrubs or groundcover abut gross area edges.



VICINITY MAP NOT TO SCALE

STABILIZATION OF DISTURBED AREAS PRIOR TO FINAL ACCEPTANCE:  
 A. PUBLIC R.O.W., EASEMENTS, AND COMMON AREAS MUST BE STABILIZED WITH PERENNIAL VEGETATION COVER, FULLY ESTABLISHED WITH 100% COVERAGE, OR OTHER APPROVED STABILIZATION METHOD.

NOTE:  
 NO LANDSCAPING SUCH AS TREES, HEDGES, ABOVE UNDERGROUND STRUCTURES SHALL BE LOCATED WITHIN EXISTING OR PROPOSED UTILITY EASEMENTS AND R.O.W.

LANDSCAPE REQUIREMENTS:

TOTAL LANDSCAPE AREA:  
 Provided: 4,534 sq.ft.

LANDSCAPE NOTES:  
 All grass areas, with the exception of drainage areas, are to be hydramulched Bermuda (2# per 1000 sq.ft.) for warm season application or hydro mulched mixture of ryegrass (5# per 1000 sq.ft.) and fescue Bermuda (1# per 1000 sq.ft.) for cool season application.  
 Grass in detention ponds and flow lines to be solid sod Bermuda grass.

Grass and bed areas are to be separated by 12 gauge metal edging.

All trees & shrubs to be planted a minimum of 2.5' from impermeable surfaces & utility lines.

Contractor to verify plant material quantities and notify owner of any conflicts.

Bed preparation shall consist of incorporating one 4 cubic foot bale of approved peat moss and one 3 cubic foot bag of landscaper's mix per 75 sq. ft. into the top six inches of existing soil.

All landscape areas shall be watered by a fully automatic irrigation system meeting the minimum standards of the American Society of Irrigation Consultants, and the current building code(s) for the City of Wylie.

All plant material shall meet American Nursery Standards for height and width in each container size. With the exception of ground cover beds, all plant material shall be mulched with 2" of cedar/cypress mulch (minimum).

Trees shall have a root ball of a minimum of 10 inches of diameter for each inch of caliper.

Contractor shall be responsible for locating all utilities and obtaining permits as required by the City.

The property owner, his successors, assigns or a designated Homeowners Association (H.O.A.) agrees to:

- maintain all common areas & buffer yards.
- keep all required landscaped areas maintained in a weed free, trash free condition.
- be responsible for maintaining a temporary irrigation system as long as necessary in order to transition plants over to natural sources. (Any plant materials that die in transition, for any reason, shall be replaced in accordance with Section 13-2-14.
- replace any dead plant material within 90 days.

PLANT LIST

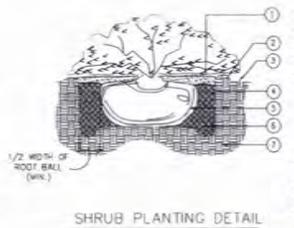
KEY	QTY	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
LO	5	LIME OAK	Quercus agrifolia	Minimum 2" caliper, minimum 12" H, and 8" spread	Nursery-grown B&B, established in container-grown, 1st year
LS	1	SPRING BURNING RED OAK	Quercus shumardii	Minimum 2" caliper, 8" H, 6" cal. and 12" spread	Nursery-grown B&B, established in container-grown, 1st year
DBH	128	SHRUB BURNING RED OAK	See sample photograph	3 gallon, minimum 24" H, 12" cal. and 12" spread	Self-watering, plant 1st year
CM	3	CELANO WAXE (Ceanothus sp.)	Liquidambar styraciflua	3 gal. 12" H, 4" width	Nursery-grown B&B, established in container-grown, 1st year

EXISTING TREES (to remain)

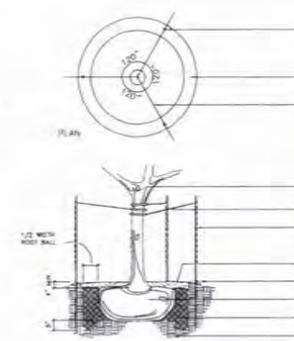
KEY	QTY	COMMON NAME
EX-04	4	SHRUB WAXE (Ceanothus sp.)
EX-10	3	LIME OAK

TREE REMOVAL

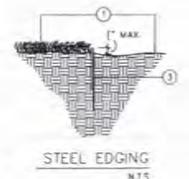
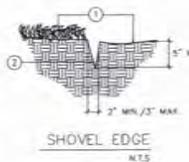
KEY	QTY	COMMON NAME
EX-10	1	LIME OAK
EX-10	1	LIME OAK



- 3" MULCH LAYER, REF. SPECS.
- 3" HIGH EARTH SAUCER
- SHOVEL EDGE (Typ.) WHERE BEDS MEET LAWN (DETAIL THIS SHEET)
- PLANTING PIT: EXCAVATE TO TWO TO THREE TIMES WIDTH OF ROOTBALL W/ PIT DEPTH AS NEEDED TO SET ROOTBALL @ PROPOSED FINISHED GRADE. PLACE ROOTBALL ON SOLID SOIL AND NOT LOOSE BACKFILL. SCARIFY SIDES OF PIT. PROVIDE CONTINUOUS PIT FOR MASSSED BED PLANTINGS.
- ROOT BALL: REMOVE FROM CONTAINER. GENTLY SCARIFY GIRDLED ROOTS AS NEEDED. REMOVE ALL TAGS & TWIGS.
- PIT BACKFILL W/ PREPARED SOIL. MIX. REF. SPECS.
- UNDISTURBED EARTH



- 2"x2"x4" STEEL FENCE "T" POST
- 4" SOIL SAUCER RW
- GALVANIZED CUY WIRE ADD TURNBUCKLES AS NEEDED TO STABILIZE TREE
- RUBBER CHAFING GUARD
- 1" COMPOST AND 3" MULCH AS SPECIFIED
- ROOT BALL: REMOVE ALL TWIGS & TWIGS. REMOVE CAPE WIRE & BURLAP FROM TOP THIRD OF ROOT BALL (AS PER CITY'S B&B MATERIALS) AFTER STABILIZING TREE IN PIT.
- SOIL BACKFILL MIX. REF. SPECIFICATIONS
- UNDISTURBED EARTH



- DIFFERENT PLANTING TREATMENTS
  - SHOVEL EDGE
  - STEEL EDGING
- GENERAL NOTES:  
 A. PROVIDE SMOOTH CONTINUOUS EDGE AS SHOWN. DIG EDGE WITH COMMON SPADE OR STRAIGHT BLADE SHOVEL.

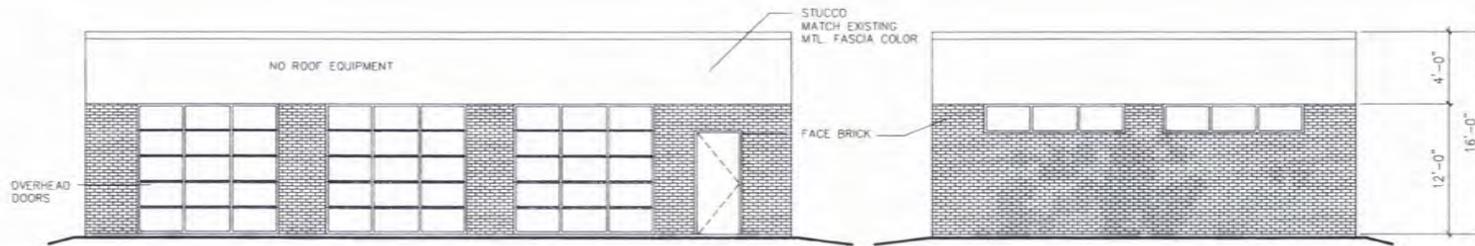
ONLY DRAWINGS STAMPED "RELEASED FOR CONSTRUCTION" BY THE CITY OF GARLAND TO BE USED FOR CONSTRUCTION.

CASE #150127-2  
**LANDSCAPE PLAN**  
**KWK KAR**  
 810 W. BUCKINGHAM  
 WALTHAM ADDITION  
 LOT 1, BLOCK 1, 0.64 Acres  
 City of Garland, Dallas County, Texas

Designer/Contractor  
**Twentyeight, Ltd. dba Kwk Kar of Buckingham**  
 810 W. Buckingham Rd.  
 Garland, TX 75048  
 Contact: Henry Doran 972-754-0082

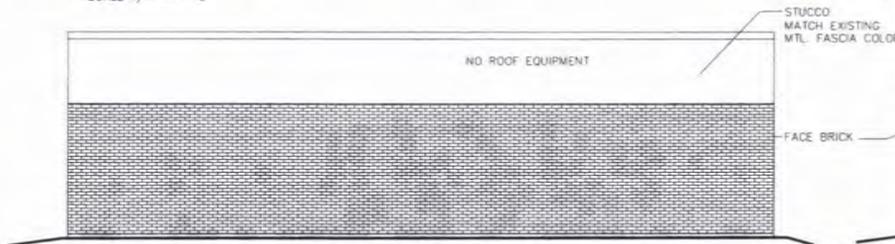
Monk Consulting Engineers  
 1200 N. 35th Street, Garland, Texas 75040  
 972-272-1783 Fax 972-272-8761  
 © 2015 Monk Consulting Engineers, Inc. All Rights Reserved

PROJECT NO: 2015-07  
 DATE: 6/10/15  
 SCALE: 1"=20'  
 SHEET: L101



**1 East Elevation**  
SCALE 1/4" = 1'-0"

**2 North Elevation**  
SCALE 1/4" = 1'-0"



**3 West Elevation**  
SCALE 1/4" = 1'-0"

**4 South Elevation**  
SCALE 1/4" = 1'-0"



**5 Floor Plan**  
SCALE 1/4" = 1'-0"

CASE #150127-2

PLAN & ELEVATIONS

KWIK KAR

610 W. BUCKINGHAM  
WILMINGTON ADDITION  
LOT 1, BLOCK 1, 0.84 Acres  
City of Carroll, Polk County, Texas

**Contractor:**  
Twentyeight, LLC, 2808 Funks Road of Buckingham  
610 W. Buckingham Rd  
Carroll, TX 75640  
Contact: Henry Daniel 817-794-8552

**Prepared by:**  
Mark W. Smith, Senior Architect  
10100-100, Suite 200  
Dallas, TX 75243

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PROJECT NO. 2015-07	DATE	SCALE	SHEET
	3/16/15	1"=20'	A101
	6/16/15		

## Z 15-22

Approval of an amendment to PD 93-13 and Detail Plan to allow  
A 1,500 square foot Automotive Repair (Minor) building  
On property zoned Community Retail (CR) District  
810 Buckingham Road



Looking south at subject site from Buckingham Road. (Approximate location of proposed building indicated by arrow) Community Retail (CR) District.



Looking north from Buckingham site at adjacent Rodgers Baptist Church building (Single-Family District.)



Facing west from rear of the site looking at approximate location of additional building. (Approximate location of proposed building indicated by arrow) Community Retail (CR) District.



Facing north east from rear of the subject site looking at Glenbrook and adjacent Chevron and convenience store. Community Retail (CR) District.

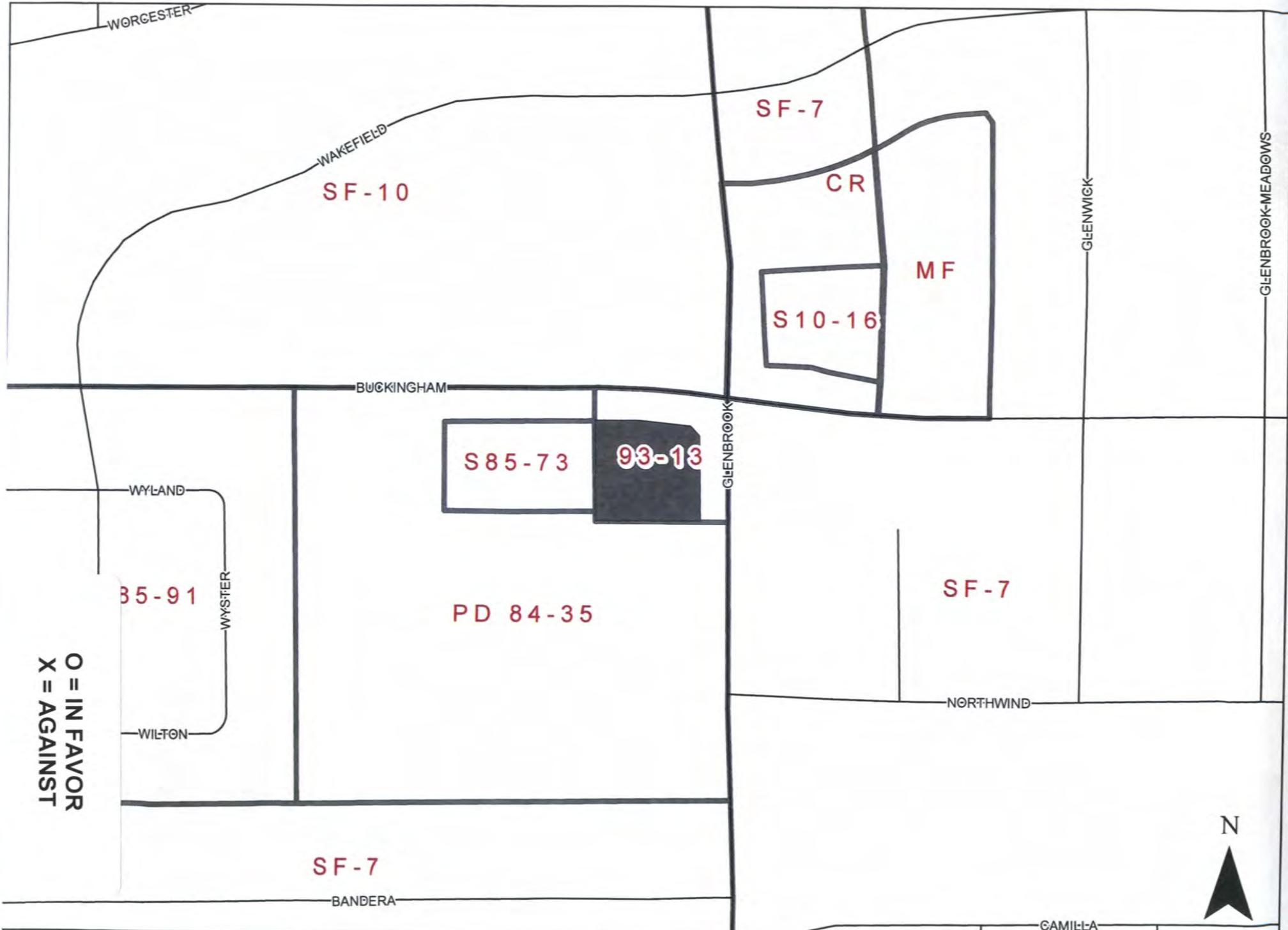
## REPORT & MINUTES

**P.C. Meeting, June 22, 2015 (7 Members Present)**

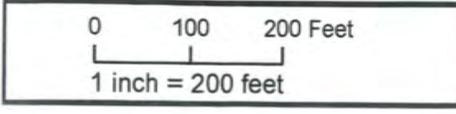
**Consideration of the application for Twenty Eight, Ltd dba Kwik Kar of Buckingham requesting approval of 1) an amendment of Planned Development (PD) District 93-13 for General Business (GB) Uses [Commercial Retail District uses under Ordinance 6773], 2) a Detail Plan for Automotive Repair Minor and 3) variances to the Screening and Landscape Standards regarding landscape buffers and parking area landscaping. (District 8) (File Z 15-22)**

Representing the applicant Gerald Monk, 1200 W. State Street, Garland, TX, provided a brief overview of the request and remained available for questions. There were no questions of this applicant.

**Motion** was made by Commissioner Ott, seconded by Commissioner Moore to approve the request per staff recommendation. **Motion carried: 7 Ayes, 0 Nays.**



O = IN FAVOR  
 X = AGAINST



**ZONING Z 15-22**

 INDICATES AREA OF REQUEST

We did not receive any replies for this case.



# Planning Report

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**K-9 University**

**3349 West Campbell Road**

## **REQUEST**

Approval of a Specific Use Provision for Pet Care/Play Facility (indoor) on a property zoned Community Retail (CR) District.

## **OWNER**

KC Propco, LLC c/o Greenstreet Real Estate Partners, L.P.

## **PLAN COMMISSION RECOMMENDATION**

On June 22, 2015 the Plan Commission, by a vote of seven (7) to zero (0), recommended approval of a Specific Use Provision for Pet Care/Play Facility (indoor) for a period of 20 years.

## **STAFF RECOMMENDATION**

Approval of a Specific Use Provision for Pet Care/Play Facility (indoor) on a property zoned Community Retail (CR) District. The proposed use will allow for a facility that will serve nearby residents as well as the surrounding area. The use is consistent with the adjacent retail and personal service uses.

## **BACKGROUND**

The applicant requests approval of a Specific Use Provision to occupy the existing 5,880 square foot building with a Pet Care/Play Facility (indoor). The use would include dog training, boarding, grooming and pet day care.

## **SITE DATA**

The subject property contains approximately 0.7299 acres with direct access from an access drive extending from West Campbell Road.

## **USE OF PROPERTY UNDER CURRENT ZONING**

The Community Retail (CR) District is intended to accommodate a variety of retail, service, and business establishments that may or may not be designed in a shopping center configuration. The district may be used as a transition district between lower intensity retail or office uses and more intense uses. The Community Retail (CR) District is generally appropriate along major transportation corridors but is generally not appropriate in proximity to low density residential districts without significant buffering and screening features.

## **CONSIDERATIONS**

1. The applicant proposes to remodel the existing vacant building to accommodate dog training lessons, dog boarding areas, three indoor dog day care areas, a dog grooming salon and a common area for clients. The hours of operation are as follows: Monday-Friday, 7:30am-6:30pm; Saturday, 8:00am - 1:00pm; Sunday 9:00am-10:00am and 4:00pm-5:00pm.
2. The facility would also have four to five outdoor fenced areas to walk dogs and to allow the dogs to play off leash. The proposed fencing would consist of eight (8) foot tall wooden fences. No dogs will be staying outside overnight.
3. Pet Care/Play Facility (indoor) is defined as an indoor commercial establishment in which domestic animals (such as dogs and cats) are housed, groomed, bred, boarded, entertained, or trained for a fee or compensation. The term includes overnight boarding, pet day cares, indoor dog parks, and grooming-only salons (that is, a pet salon that is not part of a retail Pet Store establishment). In order to fall under this definition, all of the establishment's activities must occur indoors, except for periodic outdoor breaks or exercise under close supervision for limited periods of time (periods of up to one hour).
4. Section 2.52(A)(9) of the Garland Development Code stipulates that the outdoor play/exercise areas of all types of Pet Care/Play facilities (including dog parks) must be maintained in a clean, odor-free and waste-free condition, and may not be used after 10:00pm if the facility is within one thousand feet of a residential district. The subject property is adjacent to a residentially zoned property to the northwest which is a part of the adjacent church property. The property to the south, across Campbell Road, is also a residential district.
5. The required parking for Pet Care/Play Facility (indoor) is 1 space for every 300 square feet of floor area. The site is required to provide 20 parking spaces; there are 21 parking spaces onsite.
6. The applicant requests the Specific Use Permit for a period of twenty (20) years.

## **COMPREHENSIVE PLAN**

The Future Land Use Map of the Envision Garland Plan recommends Neighborhood Centers for the subject property. Neighborhood Centers serve the needs of the nearby residents and are compatible in a neighborhood setting. They offer a mix of shops, services, amenities and gathering places, are primarily non-residential uses, but may include a small proportion of residential use in a vertical mixed-use development; the overall area, scale and architectural style should blend with adjacent residential areas and should strive to incorporate mobility options: by foot, bicycle, transit and private automobile. The proposed use is generally consistent with the recommendation of the Comprehensive Plan and is consistent with the existing surrounding land uses.

## **COMPATIBILITY OF REQUEST WITH SURROUNDING ZONING AND LAND USES**

The property to the west of the subject property is zoned Community Retail (CR) District and is developed with a multi-tenant shopping center. The applicant occupies a tenant space within this building with a similar use. The properties to the northwest and east are zoned Single Family (SF-7) and Agriculture (AG) and are developed with a church and school, respectively. Properties to the south are zoned within a Planned Development and developed with single family homes. The proposed use will occupy an existing vacant building with a use that combines both retail and service components. The use of the site is compatible with surrounding uses and would not impact the future development of the undeveloped portion of property along West Campbell Road.

Prepared By:

Josue De La Vega  
Development Planner

Date: July 8, 2015

Reviewed By:

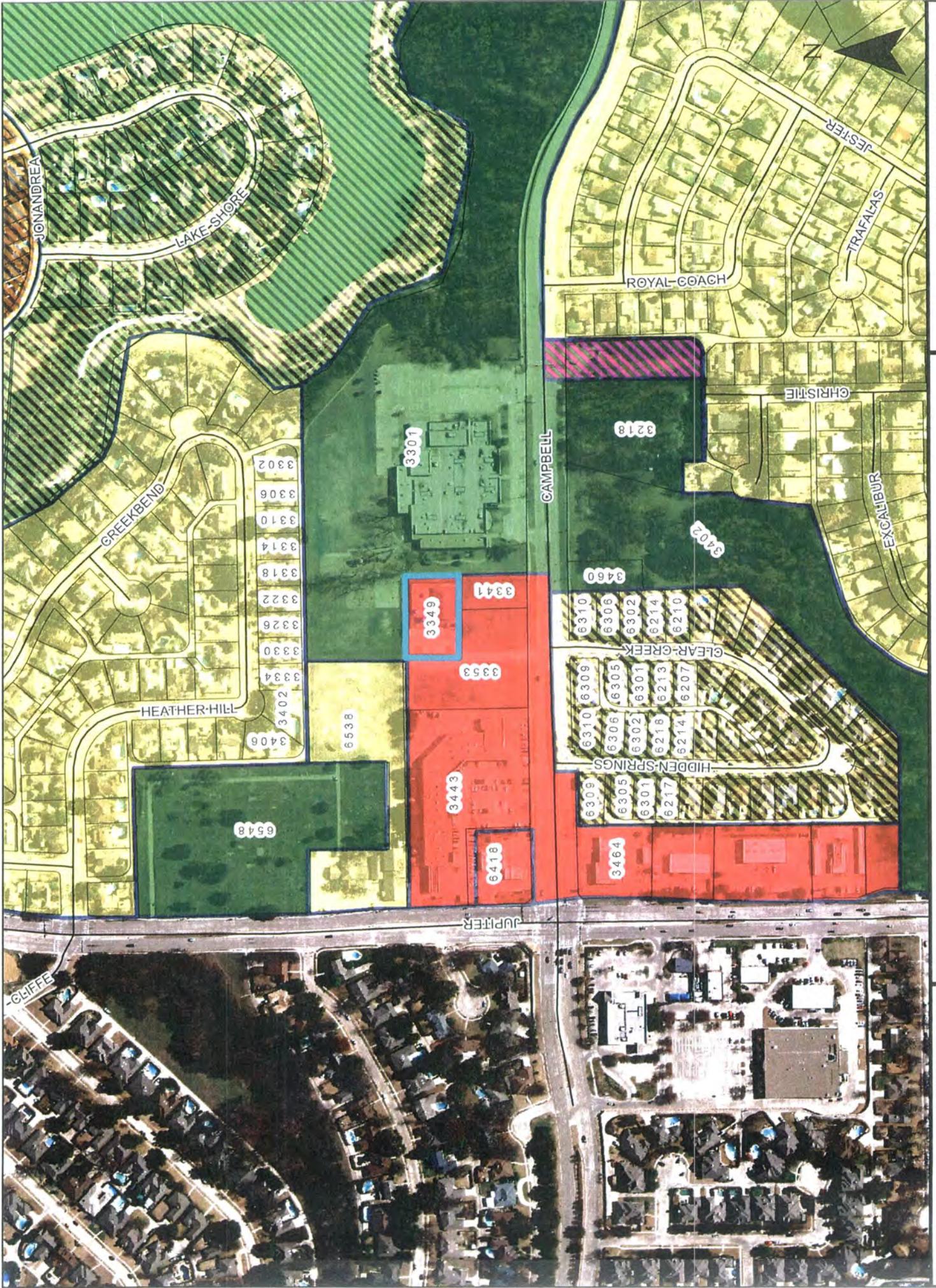
Will Guerin, AICP  
Director of Planning

Date: July 9, 2015

Reviewed By:

Bryan L. Bradford  
City Manager

Date: July 13, 2015



INDICATES AREA  
OF REQUEST



# ZONING Z 15-23

0 160 320 Feet

1 inch = 327 feet



## SPECIFIC USE PROVISION CONDITIONS

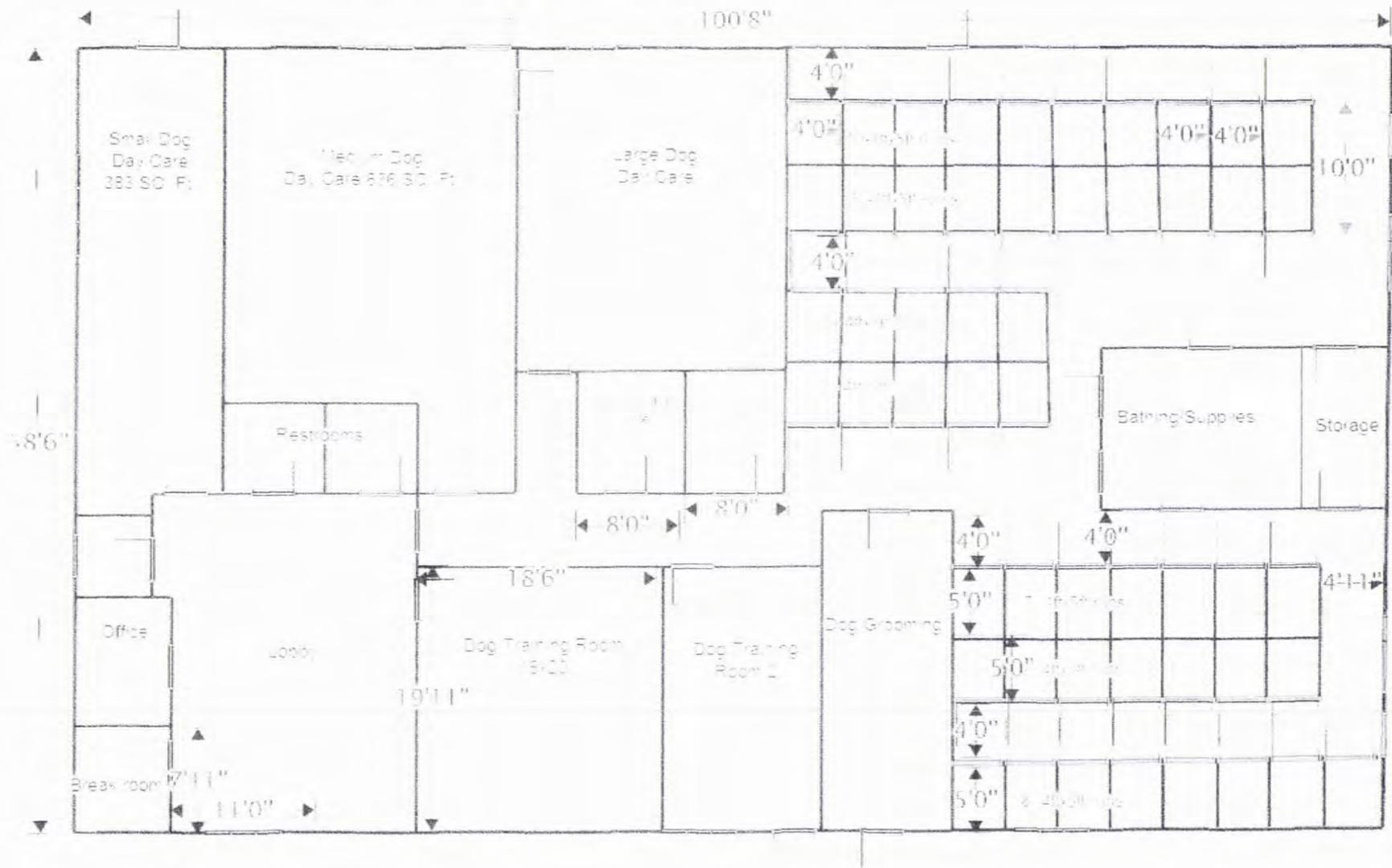
### ZONING FILE 15-23

#### 3349 West Campbell Road

- I. **Statement of Purpose:** The purpose of this Specific Use Provision is to permit a Pet Care/Play Facility subject to conditions.
- II. **Statement of Effect:** This Specific Use Provision shall not affect any regulation found in the Garland Development Code, Ordinance No. 6773, as amended prior to adoption of this ordinance, except as specifically provided herein.
- III. **General Regulations:** All regulations of the Community Retail (CR) District as set forth in Chapter 2 of the Garland Development Code are included by reference and shall apply, except as otherwise specified by this ordinance.
- V. **Specific Regulations:**
  - A. Time Period: The Specific Use Permit shall be in effect for period of twenty (20) years.
  - B. Site Plan: Development shall be in general conformance with the site plan labeled Exhibit C.
  - C. Outdoor Play Areas: The outdoor play/exercise areas of all types of Pet Care/Play facilities (including dog parks) must be maintained in a clean, odor-free and waste-free condition, and may not be used after 10:00pm if the facility is within one thousand feet of a residential district.



# Proposed Remodel



feet      24ft      48ft

## REPORT & MINUTES

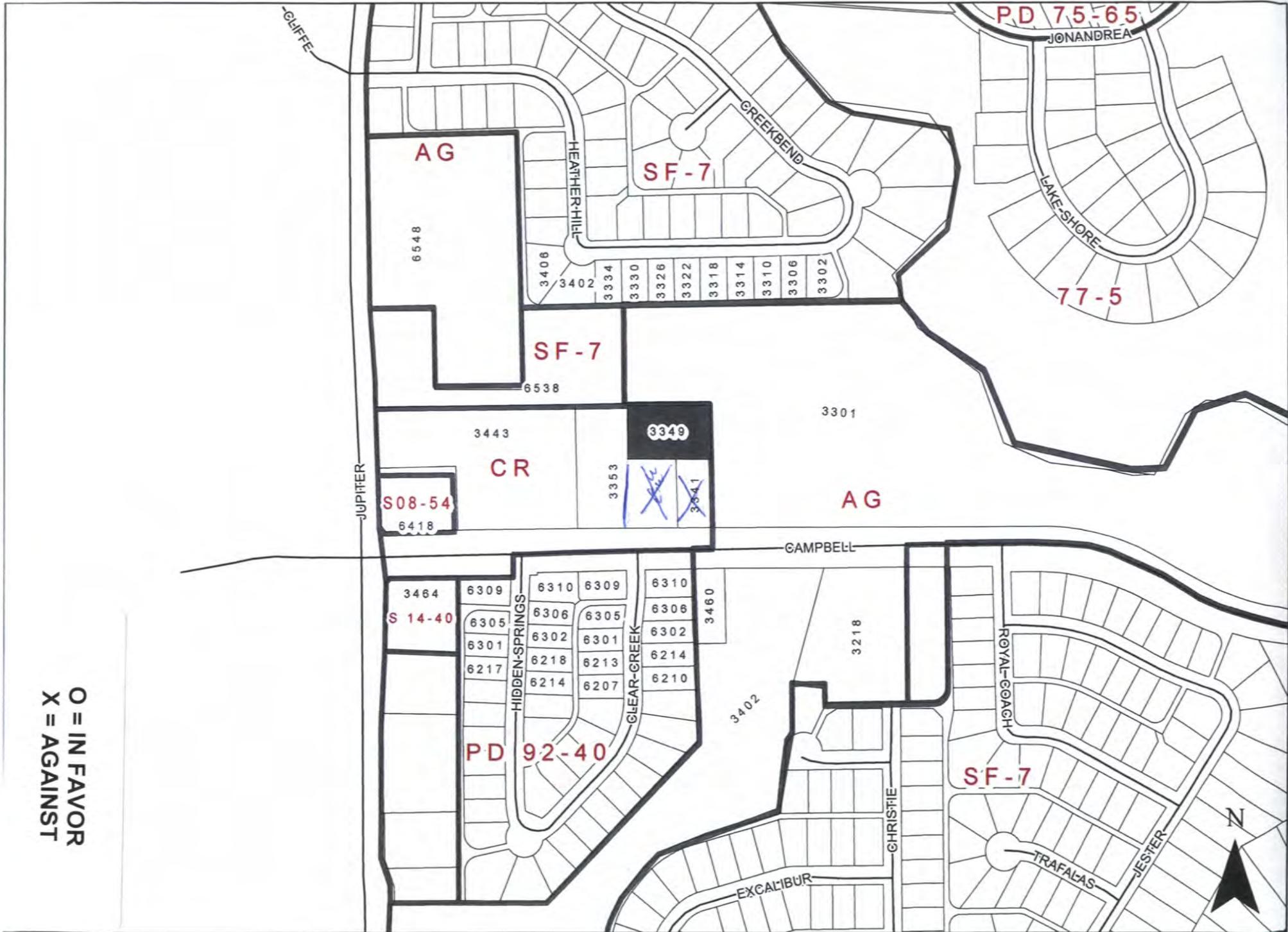
P.C. Meeting, June 22, 2015 (7 Members Present)

**Consideration of the application of K-9 University requesting approval of a Specific Use Provision for Pet Care/Play Facility (indoor) on property zoned Community Retail (CR) District. This property is located at 3349 West Campbell Road. (District 1) (Z15-23)**

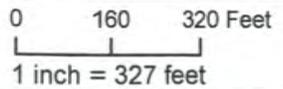
The applicant Chuck Bratt, 3900 Kimbrough Lane, Plano, TX, provided a brief overview of the request and provided additional information regarding the daily operation of the facility.

Mohammed I Jetpuri, expressed concerns regarding trespassing issues, and animal waste that is left behind on his property.

**Motion** was made by Commissioner Luckie, seconded by Commissioner Welborn to approve the application per staff recommendation. **Motion carried: 6 Ayes, 1 Nay** by Commissioner Moore.



O = IN FAVOR  
 X = AGAINST



# ZONING Z 15-23

 INDICATES AREA OF REQUEST

## Allmendinger, Tracy

---

**From:** Mohammed Iqbal Jetpuri <jetpuri@gmail.com>  
**Sent:** Monday, June 22, 2015 11:20 AM  
**To:** Allmendinger, Tracy  
**Subject:** Fwd:Sub:File:Z15-23

Specific use permit

The email from our grass mowing is attached herewith concerning the Protest to PLEASE DO NOT issue the specific use permit.

Mohammed I. Jetpuri  
972-989-4983  
[jetpuri@gmail.com](mailto:jetpuri@gmail.com)

----- Forwarded message -----

**From:** "Brenda Barth" <[brenda@tractormowing.com](mailto:brenda@tractormowing.com)>  
**Date:** Jun 22, 2015 11:09 AM  
**Subject:**  
**To:** <[jetpuri@gmail.com](mailto:jetpuri@gmail.com)>  
**Cc:**

Dear Mr. Bob Jetpuri,

We at J&A Services as your property maintenance company regret to inform you that if the situation at your 3341 Campbell Road and 3353 Campbell Road location is not remedied, we will no longer be able to maintain your property. As we discussed at length before these are the following issues:

1. The Dog Co. is allowing the animals to defecate on the property causing a health issue to me and my employees.
2. The Dog Co. is usually on the property when we arrive making this difficult for us to complete the work we were hired to do.
3. The Dog Co. has animals that are very temperamental and cause a safety issue to me and my employees.
4. The Dog Co. is causing a huge liability issue for me when they are on the property should we have an equipment issue, etc.

You have been a valued customer. If these issues are resolved we would be happy to continue our business relationship. I look forward to doing business with you again.

Thank you,

--

Andy Cox  
J&A Services-Tractor mowing  
214-533-0112  
[jac@tractormowing.com](mailto:jac@tractormowing.com)  
[www.tractormowing.com](http://www.tractormowing.com)

Mohammed I. Jetpuri  
905 Troon Circle  
Richardson, Texas 75081  
6/21/2015

To, Attention: JOSUE DE LA VEGA  
City of Garland, Planning Department  
Garland Texas, 75046

SUB: File: Z15-23  
Specific use permit for K-9 University, Inc  
Your letter dated 6-11-2015 mailed on 15<sup>th</sup> of June  
Received by us in the mail on 6-20-2015

To, Honorable City Council/ Planning Department

We are the owners of the property 3341 & 3353 Campbell. Our property are directly attached to the earlier Kinder Care Center, where the applicant is requesting K-9 Dogs Training Center called "University" we are absolutely AGAINST allowing Dogs Training Facility next to our property because of the following:

- 1) We did not have enough time available from the date we received your letter vs. planning department meeting on Monday -June 22, 2012 to hire a professional planning advocate to represent us, advise us and talk to the neighbor businesses and residents that this type of business to be allowed will cause following set backs and harm to the neighborhood.
- a) The so-called Dog Training "University" has been TRESPASSING our land with "their dogs for years" dropping their waste on our property causing REAL BAD SMELL all around with SICK BACTERIA GERMS because they are presently located just behind our land renting a portion of the strip center.
- b) We have approached them several times in past and have pleaded not to walk their dogs and drop their filth on our property causing ILLEGAL trespassing, they have constantly ignored our plea.
- c) That smells so bad that our current grass moving tractor company employee has to put a special mask on the face of the tractor driver and will not climb down from the tractor to the ground because of the bad smell, afraid of getting sick, getting dirty. In fact previous moying companys refused to mow our land.
- d) When these so called "University" walk their dogs on our land the neighbors are also attracted to come walk their dogs on our land urinating and dropping their waste also. It is so bad some times that the mechanics who work at Firestone right next to us – have asked us to STOP these people who walk their dogs, these mechanics get afraid of getting sick and attacked.

e) We took few pictures of their employees in their company uniforms and send to the city a few years back but we did not get any resolve. We cannot locate the photos in the short time available to us as evidence, but I am pretty sure if your code enforcement investigates around the neighborhood store employees and residents will testify to the fact we are mentioning to you.

f) In fact it can be so bad if you are driving past Campbell with your windows down at the time you can smell the rotted droppings and dog urine smell.

g) These dogs have psychological and mental problems of their attack nature and harmful behaviors, since these dogs are at times have attack behavior could result in harm to the community, besides spreading sickening germs to the neighborhood, business employees, shoppers, and BIG SPRING elementary school kids next to it.

h) This type of highly dangerous, sick and harmful dogs should be housed and treated and trained in a Very highly specialized SECURE facility type building of 8" tall Brick fence all around in secluded farm type setting.

i) If you folks go visit their present facility behind our property the way these dogs are PRISONED without plenty of dog play and run around training land YOU WILL HAVE MERCY ON THESE BEAUTIFUL DOGS. If I turn in my plea to the animal shelter abuse organizations – They will require the so-called “university” to mandate them to provide a HEALTHY secure surroundings for these bad behavior type dogs. This type facility so close to a strip center, shoppers, small school kids, and employees in my opinion is VERY HARMFUL to the community to be attacked by dogs.

j) I have nothing personal against these types of dogs or businesses, but should NOT be located in harms way to the general public for their SAFETY AND HEALTH REASONS this close to retail shopping strip area.

k) Any good developers to develop our land for good use of retail market will definitely NOT APPROVE to develop the land with sick behavior dangerous dogs barking around through their chain fence and smell of the droppings, urination and constant germs and bacteria all over the property.

l) PLEASE PLEASE DO NOT APPROVE TO HARM OUR COMMUNITY RETAIL MARKET OF GARLAND.

m) This request SPECIAL SPECIFIC use is permitted without the general public and residence feed back to my plea not to approve this. I am requesting the planning department to please allow me AMPLE TIME TO PROTEST to communicate with surrounding neighbors businesses and residents for their feedback to my protest.

Sincerely – Thanks

Mohammed Jetpuri, 972-989-4983, Jetpuri@gmail.com





# City Council Item Summary Sheet

Work Session

Date: July 21, 2015

Agenda Item

## Boards and Commissions

### Summary of Request/Problem

Council is requested to consider appointments to Boards and Commission.

### Recommendation/Action Requested and Justification

Council discussion.

Submitted By:

Approved By:

**Bryan L. Bradford**  
City Manager