

DCTA

DENTON COUNTY
TRANSPORTATION AUTHORITY



DCTA DBE Program Plan 2023

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Denton County Transportation Authority (DCTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” DCTA receives Federal financial assistance from DOT, and as a condition of receiving this assistance, DCTA has signed an assurance that it will comply with Title 49 CFR Part 26.

It is the policy of DCTA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to compete for and participate in the performance of all DCTA DOT–assisted contracts and subcontracts. Pursuant to the intent of these Regulations, it is also DCTA policy to:

1. Ensure non-discrimination in the award and administration of DOT-assisted contracts and subcontracts.
2. Create a level playing field by which DBEs can fairly compete for and perform in DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law and current legal standards.
4. Ensure that only firms meeting 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove procurement and contracting barriers, which impede DBE participation in DOT-assisted contracts.
6. Assist DBEs and small businesses in increasing their ability to compete successfully in the marketplace.
7. Promote the use of DBEs in all types of federally assisted contracts and procurement activities.
8. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements.

In response to requirements set forth under 49 CFR Part 26; “Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs,” effective March 4, 1999, and subsequently issued DOT Directives and Final Rules, DCTA will ensure DOT-assisted contracting and procurement processes promote equity in access, consideration and opportunity for DBEs and other small businesses.

Joe Oerum has been designated as the DBE Liaison Officer (DBELO). In this capacity Mr. Oerum is responsible for implementing all aspects of the DBE program. The DBELO has direct access to the Chief Executive Officer for DBE-related matters.

Implementation of the DBE Program is afforded the same priority as compliance with all other legal obligations incurred by DCTA in its financial assistance agreements with DOT. It is the expectation of the CEO that all DCTA personnel shall adhere to the full spirit and intent of the DBE program in pursuing all DBE requirements, accordingly.

DCTA disseminated this policy statement to the Board of Directors and all of the components of the organization. DCTA distributed this policy to DBE and non-DBE business communities that are interested

in or performing work on DCTA projects. The DBE Program Plan is available on DCTA's website and will be included in solicitations with federal funds.



Paul A. Cristina
Chief Executive Officer



Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

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

Section 26.3 Applicability

The Denton County Transportation Authority (DCTA) is the recipient of 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. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 105-178, 112 Stat. 107.

In direct response to these regulatory requirements, DCTA hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements.
2. Meet legal standards for narrow-tailoring requirements
3. Ensure non-discrimination in the award of DOT-assisted contracts.
4. Reaffirm the commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26 (Attachment 1: DBE Program Regulations, 49 CFR Part 26), DCTA will continue to carry out its DBE Program until all DOT funds have been expended. DCTA will advise all applicable DOT Operating Administrations of any significant updates and/or changes to this DBE Program. In the event of any conflicts or inconsistencies between the DBE Program Regulations, 49 CFR Part 26, and the DCTA DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

Section 26.5 Definitions

The Denton County Transportation Authority (DCTA) will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

DCTA 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, or national origin.

In administering its DBE program, the DCTA 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

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

DCTA will submit to FTA the “Uniform Report of DBE Awards or Commitments and Payments” (Attachment 2) semi-annually on June 1 and December 1 of each year, as required. The June 1 report will include DBE activity from October 1 through March 31. The December 1 report will include DBE activity from April 1 through September 30. This report presents a summary of DOT-assisted prime contracts and subcontracts awarded or committed to as well as actual payments for ongoing contracts and contracts completed during each reporting period. DCTA will include non-TVM vehicle purchases and payments with Uniform Reports.

DCTA has developed a detailed record keeping system as a mechanism for monitoring and tracking DBE commitments/attainments through an online award and payment tracking software.

Bidders List: 26.11(c)

DCTA created and maintains 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 includes the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

DCTA collects this information in the following ways:

- Bidder’s Questionnaire is required by all bidders during the solicitation process. The information is made available on DCTA’s website and is provided to contractors upon request.
- DCTA may also include a contract clause requiring all prime bidders to report the names/addresses and information outlined above.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

The following language will appear in financial assistance agreements with sub-recipients:

“DCTA 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. DCTA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. DCTA’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 DCTA 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.)”

Contract Assurance: 26.13b

DCTA 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.

DCTA remedies may include but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

DCTA has received assistance of \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year, DCTA will continue to carry out this program until all funds from DOT financial assistance have been expended. DCTA will provide updates to DOT representing significant changes in the program.

Section 26.23 Policy Statement

The policy statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer

DCTA has designated the following individual as the DBE Liaison Officer (DBELO):

Joe Oerum
Senior Manager of Contracts and Procurement
1955 Lakeway Drive, Suite 260
Lewisville, Texas 75057
(972) 316-6105
(972) 221-4601 fax
joerum@dcta.net

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that DCTA complies with all provisions of 49 CFR Part 26 and subsequent DOT-issued directives and final rules. The DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters (Attachment 3: DCTA Organizational Chart).

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one part-time equivalent employee (PTE) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DBE Program, including preparation of semi-annual DBE reports (Attachment 2: Uniform Report of Awards & Commitments) and overall Project DBE goals and related analysis for submission to the applicable DOT Operating Administration and management ad hoc reporting.
2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements and compliance with this program.
3. Consults with affected departments in developing overall DBE goals and project goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Reviews DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals, when appropriate, and/or applicable race-neutral methods.
6. Analyzes DCTA's progress towards meeting overall DBE goal commitments by monitoring individual contract DBE attainments and identifies ways to improve progress.
7. Participates in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders/proposers.
8. Advises the CEO/governing body on DBE matters and achievements.
9. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
10. Determines contractor compliance with race-conscious DBE Good Faith Effort provisions, as applicable, in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards the DCTA overall goal, as applicable, to both race-conscious and race-neutral methods.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

The duties and responsibilities of support staff include the following:

- A. The DBELO will work with other DCTA staff and departments as appropriate to assist in DBE program implementation.
- B. DCTA staff, at a minimum, shall:
 1. Notify the DBELO of all grant applications.
 2. Notify the DBELO of grant awards.
 3. Report to the DBELO the potential for DBE participation on grants.
 4. Report no less than quarterly, to the DBELO as to the status of DBE goals.
 5. Involve the DBELO in the entire bid/proposal process which includes, but is not limited to:

- a. Advance notification of consultant and/or construction contracts and purchases that exceed \$25,000.
 - b. Provide the DBELO the opportunity to review Invitations for Bids (IFB) and Requests for Proposals (RFP) prior to formal release to the public to assure that DCTA's DBE requirements have been met and that specifications are not unnecessarily restrictive.
 - c. Advance notification to the DBELO of the time and place for all pre-bid/pre-proposal conferences if any, so that the DBE requirements can be explained and questions answered.
 - d. Assure that the DBELO has an opportunity to evaluate bids received in an effort to validate the degree of DBE participation claimed and compliance with DBE Program requirements.
 - e. Monitor contractor and DBE compliance with DBE requirements and commitments for applicable departmental contracts over the contract duration.
- C. The DBELO shall work closely with all DCTA procurements to eliminate barriers for DBEs to participate in DCTA's purchasing activities.

Section 26.27 DBE Financial Institutions

It is the policy of the DCTA 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, as available, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. DCTA utilizes the Federal Reserve's Minority-Owned Financial Institutions (<https://www.fdic.gov/regulations/resources/minority/mdi.html>) and re-evaluates the availability of DBE financial institutions annually.

Information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

The DBE Program found at Title 49 CFR Part 26 requires that any delay or postponement of payment over 30 days may take place only for good cause and with DCTA's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

Prompt Payment: 26.29(a)

DCTA will include the following clauses in each DOT- assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Denton County Transportation Authority (DCTA). Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the

Denton County Transportation Authority (DCTA). This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

DCTA will include the following clauses in each DOT- assisted prime contract:

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Denton County Transportation Authority (DCTA). This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

The DCTA has established a contract compliance system to monitor and enforce that prompt payment and return of retainage is in fact occurring.

Section 26.31 Directory

DCTA utilizes a directory which identifies 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. DCTA utilizes the Texas Department of Transportation (TxDOT) Texas Unified Certification Program (TUCP) DBE statewide directory which is available online at:

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=6651&TN=txdot>.

Section 26.33 Overconcentration

DCTA has not identified that overconcentration exists in the types of work that DBEs perform. DCTA will re-evaluate for overconcentration every three (3) years.

Section 26.35 Business Development Programs

DCTA has not established a business development program. DCTA will re-evaluate the need for such a program every 5 years.

Section 26.37 Monitoring and Enforcement Mechanisms

DCTA implements and carries out the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants, including prompt payment and commercially useful function reviews.

Monitoring Payments to DBEs and Non-DBEs:

DCTA undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following methods:

- Monthly reporting of prime contractor and subcontractor payments to subcontractors, review by DCTA of compliance with prompt payment requirements, and follow up with prime contractors and subcontractors for explanations when prompt payment requirements are not met.

- Use of an automated system that requires real time entry of payments to, and receipts by prime contractors and subcontractors and regularly monitoring that system. DCTA has recently implemented a web-based electronic reporting system and requires prime contractors and subcontractors to report payments through this system. DCTA monitors prompt payments to subcontractors using this electronic system.

DCTA requires prime contractors and subrecipients to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for DCTA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of DCTA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

DCTA proactively reviews contract payments to subcontractors including DBEs on a monthly basis and may conduct periodic audits of contractor invoices. Invoice payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to DCTA by the prime contractor. During these reviews, DCTA may also review whether payments to DBEs include any lower tier subcontractor payments to non-DBEs, and whether DBE subcontractor is performing a commercially useful function. DCTA may also conduct a review or site visit of subrecipients to verify subrecipients are monitoring DBE Program compliance as required under the DCTA Implementation Agreement for Subrecipients.

Prompt Payment Dispute Resolution

DCTA will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of compliance with 49 CFR Part 26.29.

- DCTA will host an initial meeting for prime and sub to present evidence to a DCTA representative who has authority to settle the relevant dispute with individuals authorized to bind each interested party.
- DCTA will review evidence from both sides and issue a determination.

DCTA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- Alternative Dispute Resolution (ADR) Contract Clause. Depending on the type of contract, one of the following contract clauses will be used requiring the prime contractor to engage in ADR for any prompt payment and return of retainage to the subcontractor:
 - Any controversy or claim arising out of or relating to prompt payment under a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
 - Any controversy or claim arising out of or relating to prompt payment under a contract that is not a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- Prompt Payment Contract Clause. 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:

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, DCTA may impose appropriate penalties for failure to comply with prompt payment requirements.

- Prompt Payment Complaints. Complaints by subcontractors regarding the prompt payment requirements are handled according to the following steps:
 - Prime: Subcontractor shall first contact prime contractor in writing regarding late payments. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime after several attempts to resolve prompt payment issue, subcontractor should contact DBELO to initiate complaint.
 - DCTA: If subcontractor is unable to timely resolve prompt payment issue after contacting prime contractor, subcontractor shall submit prompt payment complaint in writing to DBELO and include the prime contract number, copy of subcontract or purchase order, and a summary of payment issues. Subcontractor should provide any copies of checks, and correspondence, including emails, that may assist in understanding the facts of any payment issues.
 - FTA: If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by DCTA to resolve prompt payment disputes, affected subcontractor may contact the FTA.

- Enforcement Actions for Noncompliance of Participants

DCTA will provide appropriate means to enforce the requirements of § 26.29 to include:

- Prior DCTA issuance of progress payments, commencing with the second invoice, the prime Contractor shall provide DCTA with evidence that the Prime Contractor has paid all Subcontractors all amounts due for work that the subcontractor has performed.
- DCTA may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.
- In accordance with the contract, withhold payments up to a specific amount against the prime contractor for each for non-compliance, or impose other sanctions as determined by DCTA.

DCTA will actively implement the enforcement actions detailed above. In addition to the above:

1. DCTA will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for

criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. DCTA will consider similar action under their own legal authorities including responsibility determinations in future contracts. Attachment 4 lists the contract remedies available to DCTA in the event of non-compliance with the DBE regulation by a participant in procurement activities.
3. DCTA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. The Project Manager shall as part of their responsibilities confirm that the DBE firm is performing the designated scope of work on the project job site. The prime contractor shall report DBE participation through an online award and payment tracking software. This process will provide a continuous total of actual DBE attainment (payments actually made to DBE firms) and enable a means of comparing these attainments to commitments.
4. Release a contractor's retainage only after all DBE subcontractor's participation information is submitted and verified by DCTA.
5. Require contractors to prepare and provide a project work schedule with a list of all subcontractors for the scheduled work. This will enable staff to schedule on-site inspections to ensure that subcontractors listed are actually utilized.
6. DCTA will keep a running tally of actual payments to DBE firms for work committed at the time of award.

Section 26.39 Small Business Participation

Effective February 28, 2012, DCTA established a Small Business Element as a supplement to the existing DBE Program 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 in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

DCTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

DCTA's Small Business Enterprise Program (SBE) operates in a race and gender-neutral manner. The program is open to all certified SBE's, whether they participate as prime contractors or subcontractors. DCTA actively encourages the participation of SBE's in its procurement and contracting process. It is the policy of DCTA to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability.

In order to participate in the SBE Program, small businesses must be certified by TxDOT and certification is based on a firm's gross revenue or number of employees as defined by the Small Business Act (SBA), Section 3 and 13 CFR 121.201.

Prime contractors who receive contracts with DCTA will be required to use good faith efforts to utilize certified SBE's. The use of certified SBE's whether as prime contractors or subcontractors, for projects

involving federal financial assistance funding will not count toward DBE Program participation. In accordance with provisions included in the SBA guidelines, DCTA will count small business participation for any certified SBE until the firm no longer qualifies as an SBE under SBA guidelines.

DCTA will include outreach activities to encourage the participation of SBE's in the procurement process. For each federal assisted contract, DCTA will compile a list of certified SBE firms from the information available on the TxDOT website and notify the firms of the procurement opportunity.

The foregoing shall be accomplished in addition to, and not in lieu of, any advertising or other notice of contract letting for the applicable work required under the procurement policy, related procedures and applicable law.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

DCTA does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45 (f), DCTA will submit its triennial overall DBE goal to FTA on August 1 of the year as determined by FTA. The overall program goal will represent the amount of DOT-assisted funds DCTA anticipates expending on DBE firms over three years and will be presented as a percentage of the total DOT-assistance received.

The process generally used by DCTA to establish overall DBE goals is in accordance with the 2-step process in 49 CFR Part 26.45 (c) & (d) and is as follows:

1. Step 1 is to determine the goal "base figure" based on the relative availability of DBEs in the DCTA market area using DBE directors, US Census data, and DCTA's bidders list.
2. The Step 2 is to examine all available evidence in the relevant market area to determine what, if any, adjustments to the "base figure" from Step 1 are needed so that the goal reflects as accurately as possible the DBE participation DCTA would expect in the absence of discrimination based on past participation, disparity studies, and/or information about barriers to DBE participation.

Based on the foregoing adjustments, DCTA will establish its draft DBE goal for the forthcoming three fiscal years as a percentage of the federal financial assistance funds that DCTA will expend for construction, design and engineering services and preventative maintenance during the respective fiscal years.

DCTA will post a notice of the proposed three-year overall goal on DCTA's website informing the public that the proposed goal and its rationale are available for inspection during normal business hours at DCTA's principal office for 30 days following the date of the notice. The notice will inform the public that DCTA and DOT will accept comments on the goal for 30 days from the date of the notice. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

DCTA will also consult with minority, women's and general contractor groups, community organizations, and other officials or organizations that are expected to have information regarding availability including at a minimum the Small Business Administration (SBA) and the U.S. Department of Commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the DCTA's efforts to establish a level playing field for the participation of DBEs.

DCTA will submit the overall triennial DBE goal to DOT in accordance with §26.45 (f)(2). The overall goal submission to DOT will include a summary of information and comments received during the public comment/participation process and any DCTA responses.

DCTA will begin using the overall DBE goal on October 1 of the specified year, unless other instructions are received from DOT. DCTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA. If DCTA establishes a goal on a project basis, DCTA will begin using project goal by the time of the first solicitation for a DOT-assisted contract for the project. The goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on DCTA's 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, DCTA will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
2. Establish specific steps and milestones to correct the problems identified in the analysis and to enable DCTA to meet fully the goal for the new fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

DCTA 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, DCTA 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.

Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base used to calculate the overall goal for DBE participation. DCTA shall submit TVM purchase information to FTA within 30 days of making an award.

Section 26.51 Meeting Overall Goals/Contract Goals

DCTA will use contract goals to meet any portion of the overall goal DCTA 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, DCTA will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

DCTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. DCTA need not establish a contract goal on every contract, and the size of the 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.)

DCTA will express contract goals as a percentage of the total amount of the DOT-assisted contract.

Race-Neutral Measures

DCTA will take the following steps to facilitate participation:

- (1) Arrange 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) Carry 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 and ensuring the dissemination to bidders on prime contracts a list of potential subcontractors).
- (3) Advise the DCTA contracting community of the online directory of certified DBEs, found at <https://txdot.txdotcms.com/FrontEnd/searchcertifieddirectory.asp?TN=txdot>
- (4) Hold pre-bid conferences to explain the projects and encourage prime contractors to use DBEs as subcontractors.
- (5) Include DCTA's goal requirement for DBE participation in solicitations for all DOT-assisted applicable projects.

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

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. In those instances where a contract-specific DBE goal is included in a procurement/solicitation DCTA will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Information to be Submitted: 26.53(b)

DCTA treats bidders/offeror's compliance with good faith efforts 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 (Attachment 5: Commitment Agreement Form for All Subcontractors).

2. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
3. The dollar amount of the participation of each DBE firm participating.
4. Written and signed documentation of the bidders/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts (Attachment 6: Good Faith Efforts Form).

Evaluation of Good Faith Efforts: 26.53(c)

The DBELO or designee 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. DCTA follows the Guidance provided in 49 CFR part 26, Appendix A¹ in making a Good Faith Efforts determination. The documentation used to determine whether good faith efforts have been made by a bidder are as follows:

- a. Evidence of the contractor's attendance at any pre-solicitation or pre-bid meetings that were scheduled by DCTA to inform DBEs of contracting and subcontracting opportunities.
- b. Evidence of the contractor's advertisements in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities.
- c. Evidence of the contractor's written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow the DBEs to participate effectively.
- d. Evidence of the contractor's follow-up of initial solicitations of interest by contacting DBEs (by email and phone) to determine with certainty whether the DBEs were interested.
- e. Evidence that the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation and/or making available work that the contractor would typically self-perform).
- f. Evidence of the contractor providing interested DBEs with adequate information about the plans, specifications and requirements of the contract (e.g., including an offer of assistance in notices and advertisements).
- g. Evidence of the contractor negotiating in good faith with interested DBEs and not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of the interested DBEs capabilities.
- h. Evidence of the contractor making efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by DCTA or the contractor e.g., including an offer of assistance in notices and advertisements).

¹ <https://www.ecfr.gov/current/title-49/subtitle-A/part-26#Appendix-A-to-Part-26>

- i. Evidence the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder has made good faith efforts, DCTA may take into account the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, DCTA 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, DCTA may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

DCTA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

Administrative Reconsideration: 26.53(d)

Within three days of being informed by DCTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror's should make this request in writing to the following reconsideration official:

Paul Cristina
DCTA Chief Executive Officer
1955 Lakeway Drive, Suite 260
Lewisville, TX 75057 972-221-4600
pcristina@dcta.net

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 Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

DCTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without DCTA'S PRIOR written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to DCTA its request to terminate, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to DCTA, of its intent to request to terminate and/or substitute, and

the reason for the request. A copy of this notice must be provided to DCTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise DCTA of why it objects to the proposed termination.

In those instances where “good cause” exists to terminate a DBE’s contract, DCTA will require the prime contractor to make good faith efforts to replace a DBE terminated with another certified DBE to the extent needed to meet the contract goal. In this situation, DCTA will require the prime contractor to obtain DCTA prior approval of the replacing DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, DCTA may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, DCTA may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of DCTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal or percentage has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required 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 firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

DCTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

1. Notification of Reporting Responsibilities

Prior to execution of all contracts containing DBE goals, the prime contractor shall be directed to the contract specification for DCTA’s specific DBE reporting and record keeping requirements.

2. DBE Activity Reporting Forms

All prime contractors shall report monthly payments received by DCTA and paid to subcontractors, including DBEs, through DCTA’s online award and payment tracking software. Failure to report payments in a timely manner may result in a penalty.

3. Contractor Good Faith Efforts and Reporting Obligations

During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor meets its DBE goal.

The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49CFR, Part 26.55:

- Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate.
- When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- In instances of joint venture, a bidder/proposer may only count toward its DBE goal the portion of the bid which meets certification, ownership and control standards.
- A bidder/proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- A bidder/proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- A bidder/proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- Special Provisions for Trucking – A bidder/proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. 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. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does

not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- In cases where DBE certification has ceased during the performance period of the contract, although the prime contractor will continue to report the dollar value of the work performed to DCTA on the online award and payment tracking software. DCTA will not count the participation towards its overall goal.

Commercially Useful Function Standards (§26.55)

DCTA will count payments to a DBE firm for DBE credit only if the DBE is performing a Commercially Useful Function (CUF) on that contract. A DBE performs a CUF when it is responsible for execution of the work of the contract or a distinct element of the work 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, installing the material (where applicable), and paying for the material itself.

To determine whether a DBE is performing a commercially useful function, DCTA will 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, the DBE credit claimed for its performance of the work, and other relevant factors. DCTA will conduct site visits and phone interviews of DBEs performing on FTA-assisted contracts to determine if a commercially useful function is being provided by DBEs. A DBE questionnaire has been developed to monitor DBE compliance with CUF requirements. DCTA will interview various types of DBE firms, including, construction, services, materials, supplies and trucking firms to determine if the DBE firm is providing a commercially useful function. DCTA has developed several CUF questionnaire forms that will be used for CUF interviews.

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. In determining whether a DBE is such an extra participant, DCTA may examine similar transactions, particularly those in which DBEs do not participate. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.

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, if 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, DCTA will presume that it is not performing a commercially useful function.

If DCTA determines that a DBE is not performing a CUF, the DBE may present evidence to rebut this determination. DCTA's decisions on commercially useful function matters are subject to review by DOT.

A DBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from a non-DBE firm, DCTA will address this matter with the DBE firm. DCTA may commence a proceeding under Section 26.87 to determine the continued eligibility of the DBE firm.

In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE. If fraud is suspected, DCTA will contact the DOT Office of Inspector General.

SUBPARTS D & E – CERTIFICATION

Section 26.81 Unified Certification Programs

DCTA is a non-certifying member of a Unified Certification Program (UCP) administered by Texas Department of Transportation (TxDOT). The UCP will meet all of the requirements of this section.

The following is a description of the UCP:

Texas Department of Transportation

Attn: TUCP

125 E. 11th Street

Austin, Texas 78701-2409

<https://www.txdot.gov/business/disadvantaged-small-business-enterprise/dbe-airport-concessions/dbe-certification-tucp.html>

DCTA will use and count for DBE credit only those DBE firms certified by the Texas UCP. DCTA reserves the right in its sole discretion to reject any certification that it deems to require further review or reconsideration on any DOT-Assisted projects administered by DCTA.

Section 26.83-26.91 Procedures for Certification Decisions

Any firm or complainant may appeal Texas UCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation

Department Office of Civil Rights

1200 New Jersey Ave. SE West Building, 7th Floor

Washington, D.C. 20590

DCTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation

DCTA will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. DCTA will adhere to the Freedom of Information Act, Texas Open Records Act and will make staff aware of the requirements of the acts.

In addition, DCTA will:

- Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures.
- Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements.
- Be informed about open records laws and educate employees on the requirements of those laws.
- Inform requestors of the estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the OAG, in writing before finalizing the request.
- Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time.
- Request a ruling from the Office of the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor.
- Segregate public information from information that may be withheld and provide that public information promptly.
- Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body.
- Respond in writing to all written communications from the Office of the Attorney General regarding charges for the information.
- Respond to the Office of the Attorney General regarding complaints about violations of the Act.

Notwithstanding any contrary provisions of state or local law, DCTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Attachments

Attachment 1: DBE Program Regulations, 49 CFR Part 26

Attachment 2: Uniform Report of DBE Awards or Commitments and Payments

Attachment 3: Organization Chart

Attachment 4: Monitoring and Enforcement Mechanism/Legal Remedies

Attachment 5: Commitment Agreement Form for All Subcontractors

Attachment 6: Good Faith Efforts Form

Attachment 1: DBE Program Regulations, 49 CFR Part 26

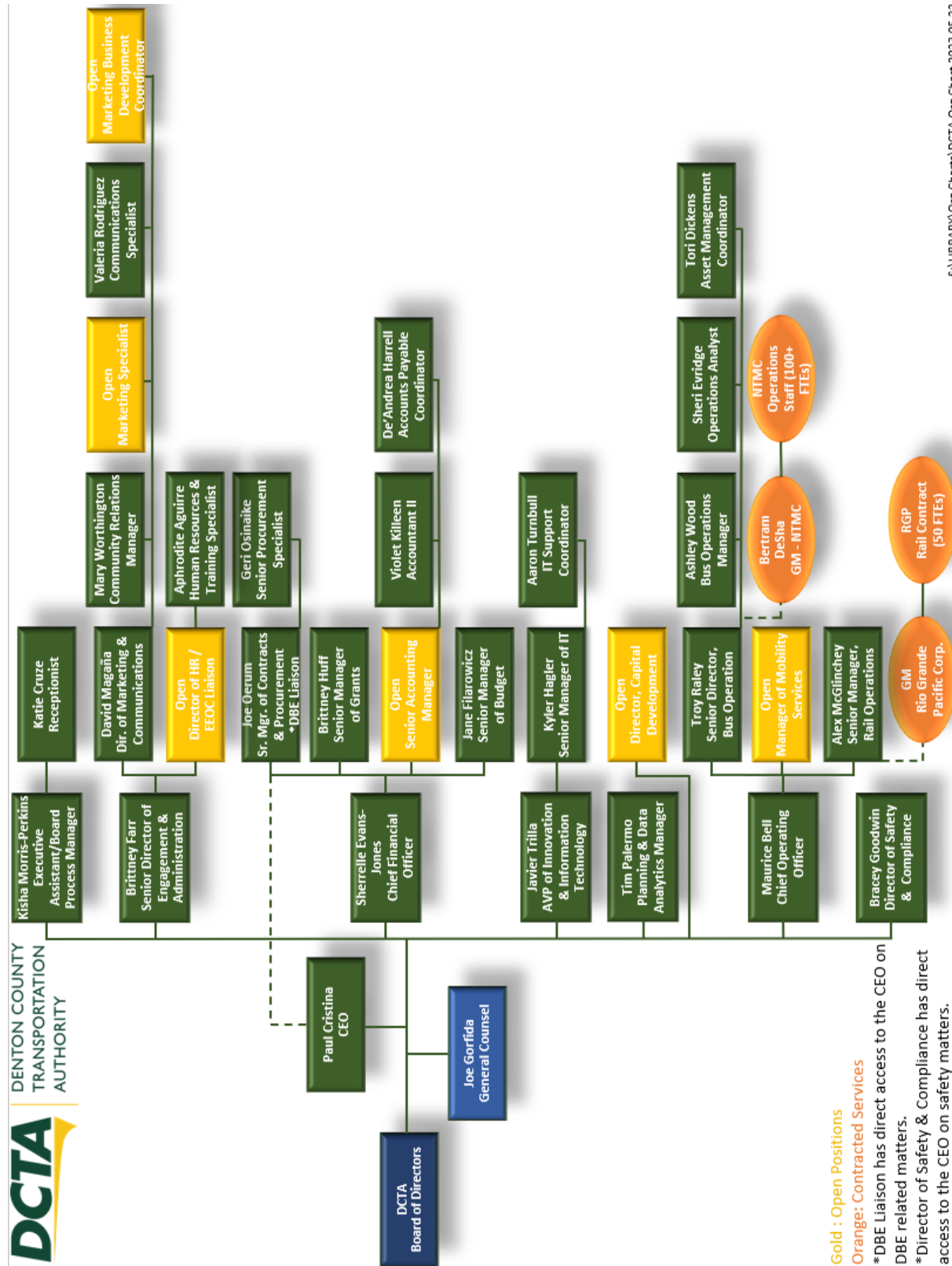
The DBE program regulations can be found at the following website:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

Attachment 2: Uniform Report of DBE Awards or Commitments and Payments

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS												
Please refer to the instruction sheet for directions on filling out this form												
1	Submitted to (check only one) <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA - Recipient ID Number											
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):											
3	Federal Fiscal year in which reporting period falls				4. Date This Report Submitted:							
5	Reporting Period			<input type="checkbox"/> Report due June 1 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)			<input type="checkbox"/> FAA annual report due Dec 1		
6	Name and address of Recipient:											
7	Annual DBE Goal(s):		Race Conscious Projection:			Race Neutral Projection:			OVERALL Goal:			
Awards/Commitments this Reporting Period												
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I		
		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		
	8	Prime contracts awarded this period	\$ -	0	\$ -	0			\$ -	0	#DIV/0!	
	9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0	#DIV/0!	
	10	TOTAL			\$ -	0	\$ -	0	\$ -	0	#DIV/0!	
	B	BREAKDOWN BY ETHNICITY & GENDER	Total to DBE (dollar amount)			Total to DBE (number)						
			A	B	C	D	E	F				
			Women	Men	Total	Women	Men	Total				
		11	Black American	\$ -	\$ -	\$ -	0	0	0			
		12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13		Native American	\$ -	\$ -	\$ -	0	0	0				
14		Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0				
15		Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0				
16		Non-Minority	\$ -	\$ -	\$ -	0	0	0				
17		TOTAL	\$ -	\$ -	\$ -	0	0	0				
Payments Made this Period												
C	PAYMENTS ON ONGOING CONTRACTS	A	B	C	D	E	F					
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs					
18	Prime and subcontracts currently in pro	0	\$ -	0	\$ -	0	#DIV/0!					
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E						
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs						
	19	Race Conscious	0	\$ -	\$ -	\$ -	#DIV/0!					
	20	Race Neutral	0	\$ -	\$ -	\$ -	#DIV/0!					
21	Totals	0	\$ -	\$ -	\$ -	#DIV/0!						
22	Submitted by:			23. Signature:			24. Phone Number:					

Attachment 3: DCTA Organizational Chart



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Attachment 4: Monitoring and Enforcement Mechanisms

The following sections contain the standards, policies, practices, and procedures DCTA uses to assess whether a contractor is in compliance with regulatory and contract requirements applicable to DOT-assisted projects.

Regulatory Provisions

Including but not limited to:

- 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises Department of Transportation Financial Assistance Programs; particularly, Subpart F, Compliance and Enforcement
- 49 CFR Part 29 – Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace.
- 49 CFR Part 31 – Program Fraud Civil Remedies
- 13 CFR Part 121 – Small Business Size Standards

Contract Requirements and Remedies

Contract requirements and remedies are provided in this DBE program and by administrative policies, practices, and procedures requirements in each contract. All contractors, as a condition of participation in any DOT-assisted contract, shall agree to the terms of this DBE program and shall incorporate the DBE program and the DBE administrative policies, practices and procedures requirements into their contracts and subcontracts at all tiers.

Findings of Non-Compliance and Administrative Sanctions

Contractors found not to be compliant with any part of the DBE program requirements shall be notified of DCTA's finding of Non-Compliance, in writing, by certified mail. The notice shall cite the DBE program requirement under which the contractor is non-compliant, state the date of the findings and the grounds on which the finding was made and state the category of sanctions being imposed. Upon a finding of non-compliance, DCTA may choose to impose sanctions including, but not limited to:

DBE TRAINING

Attendance at a DBE Training program shall be mandatory for the owners, partners, or officers, and staff member of each firm, responsible for the management of DBE businesses and for the preparation of DBE related records and reports. Contractors shall be responsible for all travel, meals, lodging and similar expenses.

ASSESSMENT FOR NON-COMPLIANCE

Contract payments will be reduced by the greater of: an amount equal to up to Five Thousand Dollars (\$5,000) per day from the date DCTA sends Notification to the contractor of the finding of non-compliance with a DBE Program requirement to the date the contractor is notified that DCTA finds the firm has complied with the DBE program requirement or DCTA chooses to excuse the contractor from performance of that DBE program requirement, or an amount equal to ten percent (10%) of the total contract value including any approved Change Orders.

SUSPENSION OF PAYMENT

DCTA will suspend payment to the contractor of any monies held by it, as retained, on the contract.

TERMINATION OF THE CONTRACT FOR DEFAULT

If the Board of Directors approves the action, DCTA may terminate the contract for default.

SUSPENSION AND DEBARMENT (49 CFR Part 29)

Information concerning the existence of a cause for suspension or debarment shall be reported, investigated, and referred, when appropriate, to the proper official for consideration. After consideration, the official will issue the appropriate notice of proposed action.

Enforcement Mechanisms

The federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, suspension or debarment proceedings pursuant to 49 CFR Part 26 B. Enforcement action pursuant to 49 CFR part 31 C. Prosecution pursuant to 18 USC 1001.


Resolution of Disputes Between Contractor and Subcontractors

DCTA shall be notified of any unresolved disputes between the Contractor and any lower tier DBE subcontractors. DCTA shall be notified of such dispute within ten 10 days of failure to resolve by the parties involved.

These provisions shall not apply to disputes between the Contractor and DCTA.

Attachment 6: Good Faith Efforts Form

Form GFE

 <p>GOOD FAITH EFFORT FORM</p> <p>If you have failed to secure DBE participation and you have subcontracting and/or supplier opportunities or if you're DBE participation is less than the DCTA's project goal, you must complete this form.</p>	
Prime Company Name (please print):	DCTA Contract Number:
	DCTA Contract Goal: _____ %
Check applicable response to describe prime:	DBE: (yes <input type="checkbox"/>) Certifying Entity: _____ (no <input type="checkbox"/>)
<p>If the bidder's method of compliance with the DBE goal is based upon demonstration of a "good faith effort", the bidder will have the burden of correctly and accurately preparing and submitting the documentation required by the DCTA. Compliance with items 1 through 6 as it appears on the Good Faith Effort Form, in its entirety shall satisfy the good faith effort requirement upon verification by DCTA's staff and confirmation of no counterfeit information, intentional and/or knowing misrepresentation of facts or intentional discrimination by the contractor.</p> <p>Failure to complete this form, in its entirety with supporting documentation, and received by the DBE Liaison, will result in the bid being considered non-responsive to bid specifications. Please list each and every subcontracting and/or supplier opportunity for the completion of this project, regardless of whether it is to be provided by a DBE or non-DBE. (DO NOT LIST NAMES OF FIRMS).</p> <p>1. Please list each and every (subcontracting and/or supplier opportunity) for the completion of this project, regardless of whether it is to be provided by a DBE or non DBE (DO NOT LIST NAMES OF FIRMS). List opportunities only. (Use additional sheets, if necessary)</p>	
List of Subcontracting Opportunities:	List of Supplier Opportunities:

2. Did you obtain a current (**not more than 60 days old from the initial response to the DCTA's solicitation due date**) list of DBE subcontracts and/or suppliers from the DCTA DBE Liaison?

(yes) (no)

DBE listing request date to the DCTA DBELO : _____/_____/20____

3. Did you solicit bids from DBE firms, within the subcontracting and/or supplier areas previously listed by mail?

(yes) (no)

Attach the DBE mail listing including a dated copy of the letter mailed, or email correspondence showing proof of solicitation to DBE firms. **If you did not fulfill, please write the following statement: "I did not comply"**

-
4. Did you solicit bids from DBE firms within the subcontracting and/or supplier areas previously listed by telephone?

(yes) (no)

Attach DBE contact list to include: DBE firm, person contacted, telephone number, date and time of contact. **If you did not fulfill, please write the following statement: "I did not comply"**

NOTE: A facsimile may be used to comply with either 3 or 4 but may **not** be used for both. If a facsimile is used, attach the fax confirmation, which is to provide: DBE name, date, time, fax number and documentation faxed.

NOTE: If the list of DBE firms for a particular subcontracting/supplier opportunity is **ten (10) or less**, the contractor must contact the entire list to be in compliance with item 3 and 4. If the list of DBE firms for a particular subcontracting/supplier opportunity is ten (10) or more, the contractor must contact at least two-thirds (2/3) of the list within such area of opportunity, but not less than ten to be in compliance with items 3 and 4.

5. Did you provide plans and specifications to potential DBE firms or information regarding the location of plans and specifications in order to assist the DBE firms?

(yes) (no)

6. Submit documentation if DBE firms were rejected. The documentation submitted should be in the form of an affidavit, include a detailed explanation of why the DBE firms were rejected and any supporting documentation the contractor wishes to be considered by the DCTA. In the event of an actual dispute concerning quotes, the contractor will provide for confidential access to and inspection of any relevant documentation by DCTA Legal representative. **(Please use additional sheets, if necessary and attach)**

Company Name	Telephone	Contact Person	Scope of Work	Reason for Rejection

ADDITIONAL INFORMATION:
 Please provide additional information you feel will further explain your good and honest efforts to obtain DBE participation on this project.

The bidder further agrees to provide, directly to the DCTA upon request, complete and accurate information regarding actual work performed on this contract, the payment thereof and any proposed changes to the original arrangements submitted with this bid. The bidder also agrees to allow an audit and/or examination of any books, records and files held by their company that will substantiate the actual work performed on this contract, by an authorized DCTA employee. Any intentional and/or knowing misrepresentation of facts will be grounds for terminating the contract or debarment from DCTA work for a period of not less than three (3) years and for initiating action under laws concerning false statements. Any breach of contract may result in a determination of an irresponsible offeror and barred from participating in DCTA work for a period of time not less than one (1) year.

The undersigned certifies that the information provided and the listed was/were contacted in good faith. It is understood that any DBE firms listed on the Good Faith Effort Form will be contacted and the reasons for not using them will be verified by the DCTA DBELO.

Authorized Signature:	Printed Signature:
Title:	Contact Name and Title (if different):
Company Name:	Phone Number:
Street Address:	Email Address:
City/County/State and Zip Code	Date: _____ , _____ 20 ____
DCTA DBELO Authorized Signature:	Date: _____ , _____ 20 ____