

CITY AND COUNTY OF HONOLULU

DEPARTMENT OF TRANSPORTATION SERVICES

**DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM PLAN**

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INTRODUCTION

The Department of Transportation Services (DTS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26). DTS has received federal financial assistance from USDOT, and as a condition of receiving this assistance, DTS has signed an assurance with the USDOT that it will comply with 49 CFR Part 26.

DEPARTMENT OF TRANSPORTATION SERVICES

DBE POLICY STATEMENT

The Department of Transportation Services (DTS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26). DTS has received federal financial assistance from USDOT, and as a condition of receiving this assistance, DTS has signed an assurance with the USDOT that it will comply with 49 CFR Part 26.

It is the policy of DTS to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate on USDOT- assisted contracts. It is also the policy of DTS to:

1. Ensure non-discrimination in the award and administration of USDOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT- assisted contracts;
3. Ensure that the DBE Program is narrowly-tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT- assisted contracting;
6. Assist in the development of firms that can compete successfully in the market place outside the DBE program.

The Director of DTS is responsible for implementation of this policy. The DBE Liaison Officer (DBELO) is designated with the authority and overall responsibility to implement DTS' DBE program on a day-to-day basis. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by DTS in its financial assistance agreements with USDOT.

This policy statement shall be included in all contract provisions for federal aid projects, and electronically disseminated throughout DTS, Department of Budget and Fiscal Services and to DBE and non-DBE business communities that perform work on USDOT- assisted contracts.



Director

Department of Transportation Services

5/24/13

Date

DEFINITIONS

DTS will adopt the definitions contained in 49 CFR Section 26.5 for this program.

ASSURANCES

DTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. DTS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. DTS' DBE program, as required by 49 CFR Part 26 and as approved by USDOT, 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 DTS 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.).

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

Contract assurance

DTS will ensure that the following clause is placed in every USDOT-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 USDOT 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.

The abovementioned clause is contained as an attachment on all DTS awarded contracts. The DTS DBELO shall contact the winning contractor to fully explain their responsibilities and DTS' expectations regarding the DBE program. Emphasis will be put on the prime's responsibilities for all sub-contractors. Periodic checks will be conducted to monitor and enforce compliance.

PROGRAM ADMINISTRATION

Applicability 49 CFR Section 26.3

The DBE Program shall apply to contracts awarded subject to USDOT DBE regulations 49 CFR Part 26.

Non-discrimination 49 CFR Section 26.7

DTS 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, DTS 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.

Record keeping requirements 49 CFR Section 26.11

DTS will report DBE participation to USDOT as follows:

DTS will report DBE participation on a semi-annual basis, using the Uniform Report of Awards or Commitments and Payments (Attachment A) to the Federal Transit Administration (FTA). These reports will reflect payments actually made to DBEs on USDOT- assisted contracts.

Bidders list 49 CFR Section 26.11(c)

DTS shall create and maintain a bidders list by working with the Department of Budget and Fiscal Services' in improving its vendor file database consisting of information about all DBE and non-DBE firms that bid or quote on USDOT- assisted contracts. DTS plans to improve its current bidders list by including the name, address, DBE/non-DBE status, age, and range of annual gross receipts of firms. DTS' intent is to use the bidders list approach in calculating overall goals.

Contract assurance 49 CFR Section 26.13b

DTS will ensure that the following clause is placed in every USDOT- 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 USDOT 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.

Contract provisions

DTS' contract provisions relative to the DBE program are contained this program document. (Attachment B)

DBE program updates 49 CFR Section 26.21

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

Responsibilities of staff and sub-recipients 49 CFR Section 26.25

DBE Liaison Officer (DBELO):

The Director has overall responsibility for the DTS, and has delegated the responsibility of DBELO to the Division Chief of the DTS' Transportation Division.

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that DTS complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Director concerning DBE program matters.

The duties and responsibilities of the DBELO include, but are not limited to the following:

1. Gathers, reviews, and reports statistical data and other information as required by USDOT;
2. Reviews, approves, and submits DTS' overall goals to the respective USDOT Operating Administrations;
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
4. Analyzes DTS' and its sub-recipients' progress toward attaining DBE goals by maintaining a running tally of payments to DBE and non-DBE subcontractors;
5. Advises the Director of DTS on DBE matters and achievement;
6. Plans and participates in City and County of Honolulu sponsored DBE training seminars;
7. Coordinates and conducts training for project managers, consultants acting on behalf of DTS, subrecipients, and other staff with DBE responsibilities on DBE requirements such as but not limited to, monitoring commercially-useful function, goal-setting, good faith efforts, and prompt payment provisions;
8. Provides outreach to DBEs and minority and women business organizations to assist small businesses with contracting opportunities and to help foster relationships with larger prime bidders/contractors. Such outreach activities may include, but shall not be limited to, networking workshops, small business fairs, business development training sessions, and mentor-protégé programs;
9. Conducts audits of prime contractors to ensure prompt payment requirements are met;
10. Monitors compliance of subrecipients; and
11. Maintains the DTS' bidders list and DBE directory.

The DBELO contact information is provided below.

Don Hamada
Department of Transportation Services
650 South King St., 3rd Floor
Honolulu, HI 96813

Phone: 808-768-8310
Fax: 808-768-6987
Email: dhamada@honolulu.gov

Sub-recipients of DTS:

A sub-recipient is defined for the purposes of this program plan as an entity, public or private, that receives USDOT financial assistance through DTS.

Sub-recipients shall develop a DBE program where required by law, or adopt and abide by DTS' DBE Program Plan. DTS will make an effort to ensure that sub-recipients comply with all requirements. A sub-recipient agreement shall be executed to ensure that sub-recipients include the appropriate DBE clauses in all of its federal-aid contracts and subcontracts.

A signed contract with DTS serves as written confirmation that the sub-recipient has elected to adopt the DTS DBE Program.

DTS shall conduct an annual review of all sub-recipients having adopted DTS' program document. DTS shall submit an annual update to the USDOT Operating Administrators which includes a status statement regarding performance and compliance with DTS' DBE program document.

DTS shall provide all sub-recipients written notice of all document amendments. Sub-recipients shall provide written confirmation of adoption and incorporation of these amendments.

DBE financial institutions 49 CFR Section 26.27

It is the policy of DTS 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 USDOT assisted contracts to make use of these institutions.

Prompt payment mechanisms 49 CFR Section 26.29

DTS will include the following clause in each USDOT- 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 calendar days from the receipt of each payment the prime contract receives from DTS. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented, as required by DTS. Full and prompt payment by the prime contractor to all subcontractors shall include retainage, if applicable. Any delay or postponement of payment from the above referenced time frame may be considered a breach of contract and occur only for good cause following written approval of DTS. This clause applies to both DBE and non-DBE subcontracts, and all tiers of subcontracts.

All prime contractors shall submit the DBE Participation Monthly Report (Attachment C) with each request for payment. Payments to the prime contractor will not be processed if the DBE Participation Report is not properly completed and attached.

DBE Directory 49 CFR Section 26.31

The Hawai'i Department of Transportation (HDOT) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, and type of work the firm has been certified to perform as a DBE. HDOT updates the directory on a weekly basis. DTS will update its copy of the HDOT directory available for public inspection on a monthly basis. DTS will make the directory available as follows: Department of Transportation Services, 650 South King St., 3rd Floor, Honolulu, HI 96813 and it is posted on the HDOT/DBE webpage

Overconcentration 49 CFR Section 26.33

DTS has not identified that overconcentration exists in the types of work that DBEs perform. If, however, the issue of overconcentration arises, the DBELO after securing approval of the USDOT may initiate some of the following actions:

1. Work with prime contractors to find and use DBEs in other industry areas.
2. Discontinue assigning a goal on a contract that offers work in the concentrated field.
3. Establish a business development program such as a mentor-protégé program, to assist DBEs in performing work outside of the specified field that DTS has determined to have an overconcentration of DBE participation.

Monitoring and enforcement mechanisms 49 CFR Section 26.37

DTS will implement the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Section 26.37.

1. DTS will monitor its DBE program to insure DBEs are getting the opportunity to perform the work committed to them. DTS will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. DTS will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. DTS will adopt a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. This will be accomplished by requiring pre-construction meetings with the prime contractor and subcontractors to discuss scope of work and performance expectations on contracts and subcontracts. DTS will conduct field inspections and written certification on every contract on which DBEs are participating to ensure that DBEs are in fact performing a commercially useful function. DTS will be monitoring all payments to subcontractors.
4. DTS shall require its contractors and subcontractors to submit the "DBE Participation Monthly Report" and the "DBE Participation Final Report" (Attachments C & D) to verify that work committed to DBEs is actually being performed by DBEs with its own forces and reflecting payments made to DBE subcontractors.
5. On an annual basis, DTS shall review the DBE policies and practices of its subrecipients to ensure that they are in compliance with 49 CFR, Part 26.
6. DTS will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
7. DTS will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of DTS or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Fostering small business participation 49 CFR Section 26.39

DTS shall review the feasibility of initiating a mentor-protégé program as a race-neutral means to increase DBE participation. DTS' mission is to breakdown as many barriers as possible. We will do

what we can to act as a liaison between the primes, subcontractors, DBEs and small business to develop mutually beneficial business relationships.

DTS shall make every effort towards unbundling large contracts to allow small businesses, including DBEs to compete for smaller, more manageable contracts. For all contracts, DTS shall require prime contractors to identify elements of a contract, or a specific subcontract that are of a size that small businesses, including DBEs can reasonably perform.

DTS believes that disseminating contract information is critical in the effort to level the playing field and to provide DBEs and small businesses the opportunity to competitively participate in the procurement process. DTS will be compiling an ongoing comprehensive list of DBEs and small businesses ready, willing and able to bid on our contracts. This will be a "living list" and there will be a constant proactive effort to add DBEs and small businesses. Every attempt will be made to identify small businesses in the minority community, encourage and assist them in the DBE certification process to ensure as many as possible eligible DBEs are participating. As contracting opportunities become available on a contract and sub-contracting level, DTS will inform DBEs and small businesses and offer whatever assistance is needed.

DTS will start an outreach program directed to the minority small business community through their leaders and organizations. This may include, but shall not be limited to conducting periodic pre-bid conferences, seminars, workshops and business fairs to inform and encourage participation. We will be readily available to address and satisfy whatever special assistance needs that arise.

GOAL, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or quotas 49 CFR Section 26.43

DTS shall not impose quotas or set-asides for use of DBEs in its federally assisted contracting.

Overall Project Goal 49 CFR Section 26.45

DTS will utilize a City and County of Honolulu Overall Goal applicable to all USDOT assisted contracts.

DTS has established a nine (9) percent overall DBE Contract Goal for federal fiscal year 2013. The nine (9) percent consist of three (3) percent race neutral and six (6) percent race conscious means. It is based on the relative availability of ready, willing, and able DBE(s) to participate in contracting opportunities under the DTS. The goal reflects the level of DBE participation expected absent the effects of discrimination in DTS contracting activities, and will be reviewed and adjusted, as necessary over the life of the Project.

Goal methodology 49 CFR Section 26.51

DTS shall attempt to meet its overall goal through race-neutral means or race conscious means as applicable. Race-neutral DBE participation includes award under the race neutral small business element of this Program 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).

Public participation & goal submittal process 49 CFR Section 26.45(f)

DTS will publish a notice of the proposed goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the DBE program office for 30 days following the date of the notice. It will also be posted on DTS' website during this period. The notice shall include an address where comments may be submitted. DTS will inform the public that DTS will accept comments on the goal for 45 days from the date of the notice.

DTS' overall goal submission to USDOT will include a summary of information and comments received during this public participation process and DTS' responses.

DTS will begin using its overall goal on (*day and year FTA approves*) and will monitor DBE participation to determine if adjustments need to be made to the goal

DTS shall submit for approval to USDOT any significant adjustments made to the goal due to changed circumstances.

Transit vehicle manufacturer's goals 49 CFR Section 26.49

DTS 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. DTS will check that the TVM is listed as currently eligible on the FTA website and will require a written statement of compliance from the TVM. Alternatively, DTS 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.

Estimated race-neutral & race-conscious participation 49 CFR Section 26.51(a-c)

DTS will adjust the estimated breakout of race-neutral and race-conscious participation to reflect the actual DBE participation, and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not limited to:

1. DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
2. DBE participation through a subcontract under a prime contract that does not have a DBE goal; and
3. DBE participation through a subcontract under a prime contract that exceeds a contract goal.

DTS shall meet the maximum feasible portion of its overall goals through race-neutral means and shall use the following methods to increase DBE participation:

1. Arranging solicitation times for presentation of bids, quantity specifications, and delivery schedules that will facilitate the participation of DBEs and other small businesses. This may include unbundling large contracts, and encouraging prime contractors to subcontract portions of their work that they may otherwise perform with their own forces.
2. Providing information and technical assistance to DBEs and other small businesses.
3. Distributing the DBE Directory through print and electronic means.

Contract goals 49 CFR Section 26.51(d-g)

As previously mentioned, DTS shall attempt to meet its overall goal through race-neutral means. Contract goals or other race or gender conscious means may be considered if, through constant monitoring, it becomes apparent that the overall project goal cannot be met race neutrally. DTS shall establish contract goals to the extent that contract goals will cumulatively meet any portion of the overall goal that DTS projects it will not meet through race-neutral means. Contract goals will be expressed as a percentage of the total amount of a USDOT-assisted contract, less allowances and mobilization. DTS has established a nine (9) percent overall DBE Contract Goal for federal fiscal year 2013. The nine (9) percent consist of three (3) percent race neutral and six (6) percent race conscious means.

Contract goals will only be established on those USDOT contracts that have subcontracting possibilities.

Contract goals shall not be established on every contract. The amount of the goal shall be contingent upon the circumstances of the contract. Some of the following factors may be considered in determining whether a contract goal shall be established, and what the percentage of the goal shall be:

The projected portion of the goal that will be met by establishing contract goals;

The progress towards achieving the overall three-year goal;

The types and breakdown of activities in the proposed contract;

The availability of DBEs that are capable of performing the work called for in the contract;

The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project; and

The effect that the contract specific goal may have on the project's completion time.

Good faith efforts procedures 49 CFR Section 26.53

Demonstration of good faith efforts 49 CFR 26.53(a) & (c)

As previously mentioned, DTS shall attempt to meet its overall goal through race-neutral means. Contract goals or other race or gender conscious means may be considered if, through constant monitoring, it becomes apparent that the overall project goal cannot be met race neutrally. When a contract goal is not met, the DBELO shall conduct the initial review of good faith efforts submitted by the contractor. The DBELO shall determine whether the contractor has performed the quality, quantity, and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the contract goal in accordance with 49 CFR Part 26, Appendix A.

The contractor bears the responsibility of demonstrating that it met the contract goal, or if the contract goal was not met, by documenting the good faith efforts it made in an attempt to meet the goal.

The contractor shall be required to document all actions taken to meet the contract goal. Good faith efforts by the bidder/offeror to meet the contract goal, may include, but are not limited to, the following actions:

1. Whether the contractor solicited through all reasonable and available means (e.g. attendance at meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform part or all of the work to be included under the contract. DTS will also consider whether the bidder/offeror solicited the participation of potential DBEs in sufficient time to allow the DBEs to properly inquire about the project and respond to the solicitation, and will also review whether the bidder/offeror took appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in this project;
2. Whether the contractor identified and broke up portions of work that can be performed by DBEs in order to increase the likelihood that DBEs would be able to participate, and the DBE goal could be achieved (e.g. breaking out contract items into economically feasible units to facilitate DBE participation, even when the bidder/offeror might otherwise prefer to perform these work items with its own forces);
3. Whether the contractor made available or provided interested DBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner, and assisted them in responding to the bidder's/offeror's solicitation;
4. Whether the contractor negotiated in good faith with interested DBEs. Evidence of such negotiations includes documenting: a) the names, addresses, and telephone numbers of DBEs that were contacted by the bidder/offeror; b) a description of the information that was provided to DBEs regarding the plans and specifications; and c) detailed explanations for not utilizing individual DBEs in the project. The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for a bidder's/offeror's refusal to utilize a DBE, or the failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire of a bidder/offeror to perform a portion of the work with its own forces, that could have been undertaken by an available DBE, does not relieve the bidder/offeror of the responsibility to make good faith efforts to meet the DBE goal, and to make available and solicit DBE participation in other areas of the project to meet the DBE goal;
5. Whether the contractor rejected DBEs as being unqualified without sound reasons, or based on a thorough investigation of their capabilities. The DBE's standing within the industry, membership in specific groups, organizations, or associations, and political or social affiliation, are not legitimate bases for the rejection or non-solicitation of bids from particular DBEs;
6. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance;
7. Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
8. Whether the contractor effectively used the services of available minority/women community organizations, minority/women business groups, contractors' groups, local, state, and federal minority/women business assistance offices, or other organizations to provide assistance in recruitment and placement of DBEs.

It is the sole responsibility of the contractor to submit any and all documents, logs, correspondence, and any other records or information to DTS that will demonstrate that the contractor made good faith efforts to meet the DBE goal. Additionally, for each DBE that was contacted but not utilized by the contractor for a contract, the contractor shall submit a detailed written explanation for each DBE detailing the reasons for the contractor's failure or inability to utilize, or to allow the DBE to participate in the contract. In its good faith effort evaluation, DTS may, but shall not be required to perform the following as part of its evaluation:

1. Request additional information and documents from the contractor;
2. Compare the contractor's bid against the bids of other contractors on the same project, and comparing the DBEs and DBE work areas utilized by the contractor with the DBEs listed in other bids submitted for this contract;
3. Verify contacts by contractors with DBEs; and
4. Compare the DBE and the categories of DBE work targeted by the contractor for participation in the contract, with the total available pool of DBEs available for each particular subcontract targeted by the bidder.

Information to be submitted 49 CFR Section 26.53(b)

DTS treats contractor'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;
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 contractor's commitment; and if the contract goal is not met, evidence of good faith efforts;
6. The dollar amount of each DBE and non-DBE subcontractor participating in the project; and
7. A written and signed confirmation by the participating DBE to verify its active status, as provided in the prime contractor's commitment.

Administrative reconsideration 49 CFR Section 26.53(d)

Within five (5) working days of being informed by the DTS' Director that the contractor is not responsive because it has not documented sufficient good faith efforts, a contractor may request administrative reconsideration. Contractors should make this request in writing to the following official:

Director
Department of Transportation Services
650 South King St., 3rd Floor
Honolulu, Hawaii 96813
Attn: DBELO

The Director of DTS or his designee shall not have played any role in the original determination that the contractor did not document sufficient good faith efforts.

As part of this reconsideration, the contractor 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 contractor will have the opportunity to meet in person with the reconsideration official, or his/her designee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

In an administrative reconsideration, DTS may consider whether other contractors are able to attain the contract goal, as DTS will review all previously submitted documents, oral, and written arguments, and other evidence presented in the reconsideration, in making its decision.

The Director will inform the contractor in writing of DTS' reconsideration decision within 45 days of the proceeding. The decision will state DTS' findings with respect to whether or not the contractor met the contract goal, or whether the contractor exhibited good faith efforts to achieve the contract goal.

The reconsideration decision is not administratively appealable to the USDOT but is appealable under HRS 103D-709.

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 the Department of Transportation Services to practice non-discrimination 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 of _____ % percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, 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 (5) if the contract goal is not met, evidence of good faith efforts.

Counting DBE participation 49 CFR Section 26.55

DTS will count DBE participation toward contract goals as provided in 49 CFR §26.55, as follows:

1. The entire amount of work actually performed by DBEs on all tiers on a contract;
2. One hundred percent of the cost of materials that are obtained from DBE manufacturers;
3. The cost of materials and supplies obtained or equipment leased by DBEs (except from the prime

contractor or its affiliate);

4. Sixty percent of the cost of materials that are purchased from DBE regular dealers;
5. The commissions or fees for transactions with DBE suppliers who are not regular dealers;
6. The total value of the transportation services of a certified DBE trucker if the DBE trucker uses trucks it owns, insures, and operates using drivers it employs;
7. The total value of the transportation services if a DBE trucker leases trucks from another DBE firm;
8. The value of the fees, commission or mark up from a lease arrangement if a DBE trucker leases trucks from a non-DBE firm and credit is not allowed for the lease amount; and,
9. The total value of the transportation services provided by a non-DBE lessee, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, credit will be awarded only for the fee or commission the DBE firm receives as a result of the lease arrangement.

EXAMPLE: DBE firm X uses two of its own trucks on a contract, 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.

Counting DBE Participation of De-certified DBEs:

1. If a DBE firm becomes de-certified after the contract award but before the notice to proceed has been issued by DTS, DTS shall require the prime contractor to meet the DBE goal by continuing to subcontract with the de-certified DBE, and by expending good faith efforts to find work not already subcontracted out to DBEs, in an amount sufficient to meet the DBE goal. The work performed, or supplies provided by an ineligible (i.e. de-certified) DBE, shall not be counted towards the DBE contract goal or DTS' overall goal.
2. If a prime contractor has executed a subcontract with the firm before the notice of ineligibility, the prime contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE contract goal for the firm's work. If a prime has a DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the issuance of the notice shall not count toward the overall goal, but may count toward the contract goal.
3. If a DBE firm becomes ineligible solely because it has exceeded the business size standard during performance of the contract, DTS shall continue to count its participation on that contract towards DTS' overall goal, as well as the contract goal.

Commercially useful function 49 CFR Section 26.55(c)(1)

To determine whether a DBE is performing a commercially useful function, DTS shall evaluate the amount of work subcontracted to the DBE and industry practices. This will determine 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. The DBE must perform at least 30 percent of the work with its own forces.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to refute this presumption. DTS shall make the determination whether a DBE firm is performing a commercially useful function given the type of work involved and normal industry practices.

DTS' decision on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

Monitoring Commercially Useful Function Performance:

It shall be the prime contractor's responsibility to ensure that all certified DBEs selected to perform work on the contract and for which the prime contractor shall receive DBE credit, perform a commercially useful function.

DTS shall conduct inspections at each project site at the start of the project and whenever DBEs begin work to ensure that certified DBEs are performing a commercially useful function. Field inspectors shall utilize the Commercially Useful Function Project Site Review CUF Form (Attachment E).

Commercially Useful Function of Trucking Firms:

The following factors are used in determining whether a DBE trucking company is performing a commercially useful function:

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.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

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.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases 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 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 project. 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 operating administration.

Example: DBE firm X uses two of its own trucks on a contract, 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.

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.

Use of Joint Checks Under the DBE Program

DTS will not object to the use of joint checks when the following conditions are met:

1. The second party (typically the prime contractor) acts solely as a guarantor,
2. The DBE must release the check to the supplier,
3. The use of joint checks is a commonly recognized business practice,
4. DTS will approve the practice before it is used. As a part of this approval process, DTS will analyze industry practice to confirm the practice is commonly employed outside of the DBE program for non-DBE subcontractors on both federal and City funded contracts. Using joint checks shall not be approved if it conflicts with other aspects of the DBE regulations regarding commercially useful function (CUF).
5. DTS shall monitor this use closely to avoid abuse.

The following shall be present to support joint checks:

1. Standard Industry practice applies to all contractors (federal and city contracts).
2. Use of joint checks must be available to all subcontractors.
3. Material industry sets the standard industry practice, not prime contractors.
4. Short term not to exceed reasonable time (i.e., one year, two years) to establish/increase a credit line with the material supplier.
5. No exclusive arrangement between one prime and one DBE in the use of joint checks that may compromise the independence of the DBE.
6. Non-proportionate ratio of DBE's normal capacity to size of contract and quantity of material to be provided under the contract.
7. DBE is normally responsible to install and furnish the work item.
8. DBE must be more than an extra participant in releasing the check to the material supplier.

General conditions for allowance by DTS:

1. DBE submits request to DTS for action.
2. DTS will provide prior approval of the request.
3. There is a formalized agreement between all parties that specify the conditions under which the arrangement shall be permitted.
4. There is a full and prompt disclosure of the expected use of joint checks.
5. DBE remains responsible for all other elements of 49 CFR 26.55(c)(1).
6. The agreement states clearly that the DBE's independence is not threatened because it retains final decision making responsibilities.
7. DTS will determine that the request is not an attempt to artificially inflate DBE participation.
8. Standard industry practice is only one factor and other factors shall be considered by DTS prior to authorizing the use of joint checks.
9. DTS will monitor and maintain oversight of the arrangement by reviewing cancelled checks and/or certification statement of payment.
10. DTS will verify there is no requirement by prime contractor that DBE is to use a specific supplier nor the prime "contractors" negotiated unit price.

Replacement of a DBE on a contract 49 Section 26.53(f)

DTS will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. DTS will require the prime contractor to promptly provide written notice to the project manager or resident engineer of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The written notice by the contractor must include the following:

1. The date the contractor determined that the certified DBE to be unwilling, unable or ineligible to perform work on the contract;
2. The projected date that the contractor shall require a substitution or replacement DBE to commence work if consent is granted by DTS;
3. Documentation of facts that cite specific actions or inactions on the part of the affected DBE that led to the contractor's conclusion that the DBE is unwilling, unable, or ineligible to perform work on the contract;
4. A brief statement of the affected DBE's capacity and ability or inability to perform the work as determined by the contractor;
5. Documentation of contractor's good faith efforts to enable the affected DBE to perform the work;
6. The current percentage of work completed on each bid item by the affected DBE;
7. The total dollar amount currently paid per bid item for work performed by the affected DBE;
8. The total dollar amount per bid item remaining to be paid to the DBE for work completed but for which the DBE has not received payment, and with which the contractor has no dispute; and
9. The total dollar amount per bid item remaining to be paid to the DBE for work completed for which the DBE has not received payment, and with which the contractor and DBE have a dispute.

The prime contractor shall send a copy of the written notice to replace a certified DBE on a contract to the affected DBE. The affected DBE may submit a written response within five (5) calendar days to

DTS to explain its position on its performance on the committed work. DTS shall consider both the prime contractor's request and DBE's stated position before approving the termination or substitution request, or determining if the contractor should reconsider its decision to replace a DBE and terminate its subcontract.

No substitution or termination of a DBE subcontractor shall be made at any time without the prior written consent of DTS. Written consent shall be provided only if the prime contractor has demonstrated good cause, as determined by DTS, to terminate the DBE. Good cause may include, but is not limited to the following circumstances:

1. The DBE subcontractor fails or refuses to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law;
6. HDOT has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to HDOT written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.

Proposed Substitution of a Certified DBE; Section 26.53

Upon termination of the certified DBE, the prime contractor shall make good faith efforts to replace the terminated DBE. The termination of the DBE does not relieve the prime contractor of meeting the DBE contract goal, and the unpaid portion of the terminated DBE's contract shall not be credited towards the DBE contract goal.

When a DBE substitution is necessary, the prime contractor shall submit in writing the name of another certified DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The prime contractor shall furnish information such as the contract I.D. number, bid item, item description, bid unit and bid quantity, unit price, and total price.

If the prime contractor is unable to commit the remaining required dollar value to the substitute DBE, the prime contractor shall provide written evidence of good faith efforts made by the prime contractor in accordance with DTS' Good Faith Efforts Procedures on pages 13 and 14 of this document. If the contractor fails or refuses to comply in the time specified, DTS' contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for a default proceeding.

CERTIFICATION

HDOT is the sole certifying agency for the USDOT DBE Program in the State of Hawaii. All applicants that are seeking DBE certification or re-certification will be directed to HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.

HDOT compiles, maintains and distributes a DBE Directory consisting of all eligible DBEs. A DBE Directory is printed and distributed annually. The electronic version is posted on the internet at www.state.hi.us/dot/administration/dbe/index.htm. The electronic DBE Directory is revised weekly and provides information on the previously certified DBEs and those DBEs that were certified or recertified in the previous week.

For the purpose of the DTS DBE program, the DTS will rely solely on the information supplied by HDOT.

Information, confidentiality, cooperation; Section 26.109

DTS shall safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. This includes disclosure of confidential business or personal information prohibited by Section 92F-13 of the Hawaii Revised Statutes.

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

(rev. 5/23/13)

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 (check only one):		<input type="checkbox"/> FHWA	<input type="checkbox"/> FAA	<input type="checkbox"/> FTA--Vendor Number					
2. AIP Numbers (FAA Recipients Only):									
3. Federal fiscal year in which reporting period falls:		FY _____							
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-Sept. 30)						
6. Name of Recipient:									
7. Annual DBE Goals: Race Conscious Goal % Race Neutral Goal % OVERALL GOAL %									
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(total contracts and subcontracts awarded or committed during this reporting period)</small>	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									
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				
	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				
	12. Race Conscious								
	13. Race Neutral								
	14. Totals								
15. Submitted by (Print Name of Authorized Representative)				16. Signature of Authorized Representative					
17. Phone Number:				18. Fax Number:					

Contract Provisions

1. **DBE Assurances:** The contractor and its subcontractors 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 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy, as the Department of Transportation Services (DTS) deems appropriate.

The above paragraph shall be included in each subcontract of which the contractor signs with a subcontractor.

2. **Prompt Payment:** The contractor shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by the City. Full and prompt payment by the contractor to all subcontractors shall include retainage, if applicable.
3. **DBE Goal:** DTS has established a nine (9) percent overall DBE Goal for federal fiscal year 2013. The nine (9) percent consist of three (3) percent race neutral and six (6) percent race conscious means.
 - a) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR Part 26.51(b) as practical to afford opportunities to DBEs to participate in the agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.
 - b) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and
 - c) A DBE firm must be certified by the HDOT before its participation is reportable under paragraph (d) below:
4. **Reports to DTS:** The contractor shall report its DBE participation obtained throughout the period of performance. The contractor shall submit the "DBE Participation Monthly Report" reflecting payments made by the contractor to DBE subcontractors. Payments to the contractor will not be processed if the "DBE Participation Monthly Report" is not properly completed and attached.
5. **Records:** On request, the contractor shall make available for inspection, and assure that its subcontractors make available for inspection:
 - a) Records of prompt payments made in accordance to the participation requirements;
 - b) The names and addresses of DBE subcontractors, vendors, and suppliers under the contract;
 - c) The dollar amount and nature of work of each DBE subcontractor;
 - d) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian

American, Asian Pacific American, Non-Minority Women, or Other; and

e) Other related materials and information.

6. The contractor shall promptly notify DTS, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor shall also promptly notify DTS of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

DBE PARTICIPATION MONTHLY REPORT

This report shall be submitted with each invoice as a condition of payment under this contract

Project Title:		Project No.	
Contractor Name:		Contract No.	
Period Covered By This Project:		Total Contract Amount:	
Invoice No:	Previous Total Invoice Amount: (A)	Current Invoice Amount: (B)	Total Invoice Amount to Date(A+B): (C)
DBE Prime Contractor/Subcontractor (attach additional sheets if necessary)		DBE Code	DBE Contract Amount
Name:			
Type of Work:			
Name:			
Type of Work:			
Name:			
Type of Work:			
Name:			
Type of Work:			
TOTAL			
Contractor's DBE Goal for this Contract: (Refer to Statement and Goal Form)		%	DBE Participation to Date (D/C):
			%

DBE classification codes: BA=Black American; HA=Hispanic America; NA=Native American; SAA=Subcontinent Asian American; APA=Asian Pacific American; W=Women; O=Other (any other groups whose members are designated socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective)

DBE PARTICIPATION FINAL REPORT

This report must be submitted with the final invoice for payment under this contract

Project Title:		Project No.			
Contractor Name:		Contract No.			
Period Covered By This Project:		Total Contract Amount:			
Invoice No:	Previous Total Invoice Amount: (A)	Current Invoice Amount: (B)	Final Invoice Amount (A+B): (C)		
DBE Prime Contractor/Subcontractor (attach additional sheets if necessary)	DBE Code	DBE Contract Amount	DBE Previous Invoice Amount	DBE Current Invoice Amount	Final DBE Invoice Amount
Name:					
Type of Work:					
Name:					
Type of Work:					
Name:					
Type of Work:					
Name:					
Type of Work:					
TOTAL					(D)
Contractor's DBE Goal for this Contract: (Refer to Statement and Goal Form)		% Final DBE Participation (D/C):		% %	

DBE classification codes: BA=Black American; HA=Hispanic America; NA=Native American; SAA=Subcontinent Asian American; APA=Asian Pacific American; W-Women; O=Other (any other groups whose members are designated socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective)

**DTS
DBE COMMERCIALY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW REPORT**

Project No:		Reviewer:			
		Review Date:			
Project Name:					
Prime Contractor:					
DBE Subcontractor:					
DBE Foreman/Supt:		DBE Start Date:		DBE Completion Date:	
DBE Foreman/Supt:		DBE Start Date:		DBE Completion Date:	
Work Item: (continue on back of form)	Work Item Description	Approximate % Complete as of this date	Subcontracted Dollar Amount		
REGARDING DBE'S FOREMAN/SUPT.					
Exclusively employed by DBE?		Yes	No	Shown on the DBE payroll?	
				Yes	No
Shown on any other firm's payroll?		Yes	No	If yes, whose?	
Directly reports to:					
REGARDING DBE'S EMPLOYEES					
Are DBE's employees shown on any other contractor's payrolls?				Yes	No
If yes, whose?					
Do the DBE's employees receive work assignments from DBE foreman?				Yes	No
REGARDING DBE'S EQUIPMENT					
Does the equipment have the DBE's name or logo?				Yes	No
If another firm's name or logo is shown, identify:					
Does the equipment belong to the DBE?				Yes	No
If leased or rented, is there a copy of the agreement in project file?				Yes	No
REGARDING DBE'S WORK PERFORMANCE					
Has any other contractor performed work that was to be performed by the DBE?				Yes	No
If yes, identify the contractor who performed the work:					
What work items did the identified contractor perform? (if more than two, write on back of form)					
1) _____					
2) _____					
Were these items on the DBE's subcontract?				Yes	No
Has the DBE owner been on the job site?				Yes	No
Does the DBE appear to have control over their work and employees?				Yes	No
Comments: (any comments pertaining to the performance or conduct of the DBE company)					
Has DTS' DBELOCivil Rights been notified of any problem(s) identified in this report?				Yes	No
If no, explain why:					

(Rev. 7/3/12)

Attachment E