



**HILL COUNTRY TRANSIT DISTRICT
DISADVANTAGED BUSINESS
ENTERPRISE
PROGRAM**



Adopted: September 26, 2024

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DISADVANTAGED BUSINESS PROGRAM**

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POLICY STATEMENT

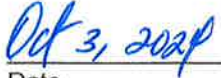
Section 26.1, 26.23 Objectives/Policy Statement

Hill Country Transit District (HCTD) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." HCTD receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, HCTD has signed an assurance that it will comply with Title 49 CFR Part 26.

It is the policy of HCTD to ensure that DBEs, as defined in Part 26, have an equal opportunity to compete for and participate in the performance of all HCTD DOT-assisted contracts. Pursuant to the intent of these regulations, it is also HCTD policy to:

1. Ensure non-discrimination in the award and administration of DOT- assisted contracts.
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.
4. Ensure that only firms that fully meet 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. Promote the use of DBE's in all types of federally assisted contracts and procurement activities.
7. Assist DBE's and small businesses in increasing their ability to compete successfully in the market-place.
8. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements


Raymond Suarez, HCTD General Manager


Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

Hill Country Transit District (HCTD) is the recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Public Law 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.

In direct response to these regulatory requirements, HCTD 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 4, HCTD will continue to carry out its DBE Program until all DOT funds have been expended. HCTD 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 HCTD DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

Section 26.5 Definitions

HCTD will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

HCTD 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 this part on the basis of race, color, sex, or national origin.

In administering its DBE program, HCTD 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 program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

REPORTING TO DOT: 26.11(B)

HCTD will submit the Uniform Report of DBE Awards or Commitments and Payments 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 contracts and subcontracts awarded or committed to as well as actual payments for ongoing contracts and contracts completed during each reporting period. Report.

Bidders List: 26.11(c)

HCTD will maintain a bidders list, consisting of information about all DBE and non-DBE contractors and subcontractors who seek to work on DOT-assisted contracts. The information collected will be used to set the overall goals.

The bidders list will include the following information:

1. Firm name;
2. Firm address including ZIP code;
3. Firm's status as a DBE or non-DBE;
4. Race and gender information for the firm's majority owner;
5. NAICS code applicable to each scope of work the firm sought to perform in its bid;
6. Age of the firm; and
7. The annual gross receipts of the firm.

The information will be collected from all bidders on federally assisted contracts by requiring the information be submitted with their bids or responses to procurements. This information will be entered in the Uniform Report no later than December 1 following the fiscal year in which the relevant contract was awarded.

Section 26.13 Assurances

HCTD has executed the assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

HCTD 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 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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: 26.13(b)

HCTD 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, which may include, but is 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

HCTD receives planning, capital, and or operating assistance and must maintain a DBE program. HCTD will continue to carry out the DBE program until all funds from DOT financial assistance have been expended.

Section 26.23 Policy Statement

The Policy Statement is included as part of the program and is located on first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

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

Louise Moreno, Assistant Finance Director
Hill Country Transit District
4515 W. US 190 Belton TX 76513
lmoreno@takethehop.com

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that HCTD complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the HCTD General Manager, concerning DBE program matters. Attachment 1: HCTD Organizational Chart.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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, Uniform Report of Awards or 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 HCTD'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 HCTD 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.

Section 26.27 DBE Financial Institutions

HCTD will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions, as available. HCTD utilizes the Federal Reserve's Minority-Owned Financial Institutions information and re-evaluates the availability of DBE financial institutions annually. [Minority Depository Institutions List | FDIC](#)

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 HCTD'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: 26.29(b)

HCTD 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 Hill Country Transit District. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the HCTD. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

HCTD 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 HCTD or DOT. Reporting requirement also extends to any certified DBE subcontractor.

HCTD will perform interim audits of contract payments to DBEs. We will make onsite visits for the purpose of performing audits of contract payments. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Section 26.31 Directory

HCTD is a participant in the Texas Department of Transportation (TXDOT) Texas Unified Certification Program (TUCP) for certifying DBEs. Interested persons may obtain access to the TXDOT TUCP statewide directory of DBEs online:

Diversity Management System - Texas Department of Transportation (txdotcms.com)

HCTD does not certify DBEs.

Section 26.33 Overconcentration

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

Section 26.35 Business Development Programs

HCTD does not administer any business development or mentor protégé programs.

Section 26.37 Monitoring and Enforcement Mechanisms

HCTD has implemented the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26. Such monitoring activities will be accomplished through the following methods:

1. Monthly reporting of prime contractor and subcontractor payments, review by HCTD for compliance with prompt payment requirements, and follow up with prime contractors and subcontractors for explanations when prompt payment requirements are not met.
2. HCTD 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 HCTD's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of HCTD or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

HCTD proactively reviews contract payments to subcontractors including DBEs monthly 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 HCTD by the prime contractor. During these reviews, HCTD 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. HCTD may also conduct a review or site visit of subrecipients to verify subrecipients are monitoring DBE Program compliance as required under the HCTD Implementation Agreement for Subrecipients.

Prompt Payment Dispute Resolution

HCTD 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.

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

Section 26.39 Fostering small business participation

HCTD 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 on, 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).

HCTD 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):

Prime contractors who receive contracts with HCTD 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, HCTD will count small business participation for any certified SBE until the firm no longer qualifies as an SBE under SBA guidelines.

HCTD will include outreach activities to encourage the participation of SBE's in the procurement process. For each federal assisted contract, HCTD 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

HCTD does not use set-asides or quotas in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45 (f), HCTD 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 HCTD 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 HCTD 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 HCTD market area using DBE directors, US Census data, and HCTD’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 HCTD 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, HCTD will establish its draft DBE goal for the forthcoming three fiscal years as a percentage of the federal financial assistance funds that HCTD will expend for construction, design and engineering services and preventative maintenance during the respective fiscal years.

HCTD will post a notice of the proposed three-year overall goal on HCTD’s website informing the public that the proposed goal and its rationale are available for inspection during normal business hours at HCTD’s principal office for 30 days following the date of the notice. The notice will inform the public that HCTD 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.

HCTD 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 HCTD’s efforts to establish a level playing field for the participation of DBEs.

HCTD 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 HCTD responses.

HCTD will begin using the overall DBE goal on October 1 of the specified year unless other instructions are received from DOT. HCTD will also request use of project-specific DBE goals as appropriate, and/or will establish project specific DBE goals as directed by FTA. If HCTD establishes a goal on a project basis,

HCTD 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 HCTD'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, HCTD 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 HCTD to meet fully the goal for the new fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

HCTD will require each transit vehicle manufacturer (TVM), 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 and to certify that it is on the FTA list of approved TVMs.

Alternatively, HCTD 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 if a certified TVM cannot be identified.

Section 26.51 Means to Meet Overall Goals

HCTD will use contract goals to meet any portion of the overall goal HCTD 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, HCTD 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.

HCTD will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. HCTD 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.)

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

Race-Neutral Measures

HCTD 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. Conduct 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 HCTD 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 HCTD's goal requirement for DBE participation in solicitations for all DOT-assisted applicable projects.

HCTD will meet the maximum feasible portion of the overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(A) & (C))

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, HCTD 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)

HCTD 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 2: 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 3: 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. HCTD follows the Guidance provided in 49 CFR part 26, Appendix A to Part 26, 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:

1. Evidence of the contractor's attendance at any pre-solicitation or pre-bid meetings that were scheduled by HCTD to inform DBEs of contracting and subcontracting opportunities.
2. Evidence of the contractor's advertisements in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities.
3. 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.
4. 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.
5. 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).
6. 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).
7. 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.
8. Evidence of the contractor making efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by HCTD or the contractor e.g., including an offer of assistance in notices and advertisements).
9. 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, HCTD 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, HCTD 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, HCTD may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

HCTD will ensure that all information is complete and accurate and adequately documents the bidder/offer'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 HCTD 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:

Raymond Suarez
General Manager
Hill Country Transit District
4515 W. US 190
Belton TX 76513
rsuarez@takethehop.com

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. 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)

Before transmitting to HCTD its request to terminate, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to HCTD, 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 HCTD prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise HCTD of why it objects to the proposed termination.

In those instances where “good cause” exists to terminate a DBE’s contract, HCTD 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, HCTD will require the prime contractor to obtain HCTD. 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, HCTD may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, HCTD 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 HCTD 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, 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. Names and addresses of DBE firms that will participate in the contract;
2. Description of the work that each DBE firm will perform;
3. 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 form; and
6. If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

Notification of Reporting Responsibilities

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

DBE Activity Reporting Forms

All prime contractors shall report monthly payments received by HCTD and paid to subcontractors, including DBEs.

Failure to report payments in a timely manner may result in a penalty.

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.

1. The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49CFR, Part 26.55:
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 the 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.
7. 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.
8. 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 HCTD. HCTD will not count the participation towards its overall goal.

Commercially Useful Function Standards (§26.55)

HCTD 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, HCTD 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. HCTD 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.

HCTD will monitor DBE compliance with CUF requirements. HCTD 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.

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

If HCTD determines that a DBE is not performing a CUF, the DBE may present evidence to rebut this determination. HCTD'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, HCTD will address this matter with the DBE firm. HCTD 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, HCTD will contact the DOT Office of Inspector General.

HCTD treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offers 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. 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 commitment to use a DBE subcontractor whose participation it submits to meet a contract goal: and
5. Written and signed confirmation from each listed DBE that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.as provided in the prime contractors' commitment.
6. If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative reconsideration (26.53(d))

If HCTD determines that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

1. As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
2. The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
3. The bidder/offeror must have the opportunity to meet in person with thr reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
4. HCTD 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.

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

Good Faith Efforts when a DBE is replaced on a contract (26.53(g))

In accordance with 49CFR part 26.53(g), a prime contractor may not terminate a DBE subcontractor without good cause and must have HCTD's prior written consent to do so.

Good cause includes:

1. DBE subcontractor fails or refuses to execute a written contract;
2. DBE subcontractor fails or refuses to perform the work in a way consistent with normal industry standards;
3. DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

4. DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. DBE subcontractor is ineligible to work on public works projects because of suspension and debarment;
6. HCTD has determined that the DBE subcontractor is not a responsible contractor;
7. DBE subcontractor voluntarily withdraws and provides written notice;
8. the DBE subcontractor is ineligible to receive DBE credit for the type of work required;
9. DBE owner dies or becomes disabled with the result that the DBE subcontractor is unable to complete its work on the contract;
10. Other documented good cause that HCTD determines compels the termination of the DBE subcontractor.

If HCTD requests documentation under this provision, the contractor must submit the documentation within 7 days.

HCTD 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.

HCTD will require the prime contractor to obtain written prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

HCTA will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

HCTD will use the following administrative remedies for noncompliance:

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

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS AND PROCEDURES

Section 26.61 – 26.73 Certification Process

HCTD is the member of the Unified Certification Program administered by Texas Department of Transportation (TUCP). TUCP uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts in Texas. To be certified as a DBE by TUCP, a firm must meet all certification eligibility standards. HCTD does not certify DBEs.

For information regarding the certification process or to apply for certification, firms should contact:

Texas Department of Transportation (TxDOT)

Office of Civil Rights

DBE Unified Certification Program

125 E. 11th Street

Austin, TX 78701-2483

Website: [DBE certification through Texas Unified Certification Program \(TUCP\)txdot.gov](http://www.txdot.gov/dbe/certification)

Section 26.81 – 26.91 Unified Certification Programs and Certification Procedures

HCTD is a member of a Unified Certification Program (UCP) administered by the Texas Department of Transportation. HCTD does not certify DBEs. The TUCP will meet all of the requirements of Section 26.81 through 26.89.

In addition to TxDOT, the following agencies are members of the TUCP:

1. [City of Houston, Office of Business Opportunity](#)
2. [City of Austin, Small and Minority Business Resources Department](#)
3. [Corpus Christi Regional Transportation Authority](#)
4. [North Central Texas Regional Certification Agency](#)
5. [South Central Texas Regional Certification Agency](#)

SUBPART E – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

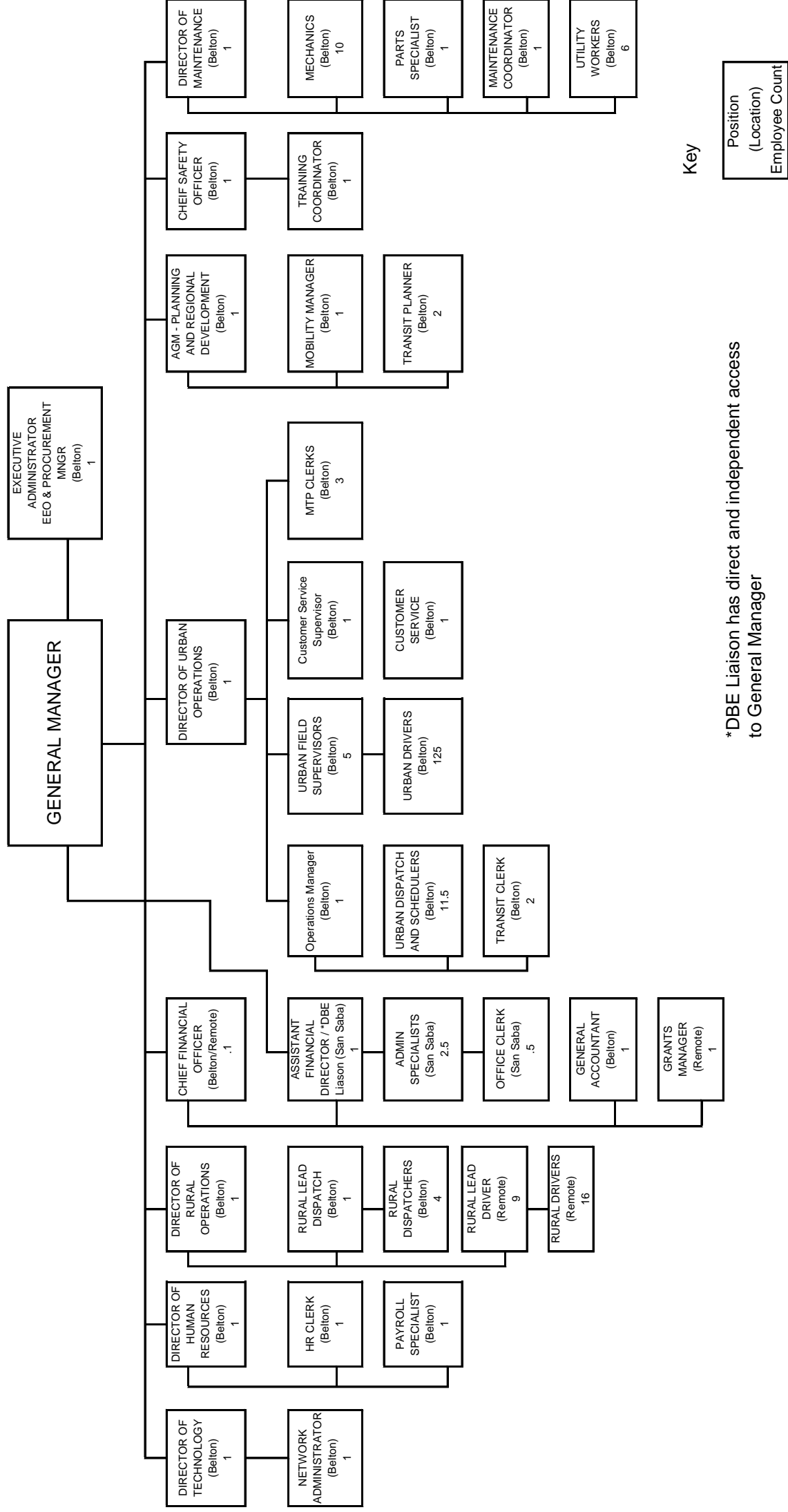
In addition, HCTD will:

1. Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures.
2. Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements.
3. Be informed about open records laws and educate employees on the requirements of those laws.
4. 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.
5. Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time.
6. 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.
7. Segregate public information from information that may be withheld and provide that public information promptly.
8. Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body.
9. Respond in writing to all written communications from the Office of the Attorney General regarding charges for the information.
10. Respond to the Office of the Attorney General regarding complaints about violations of the Act.
11. Notwithstanding any contrary provisions of state or local law, HCTD 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	Organizational Chart
Attachment 2	Commitment Agreement Form
Attachment 3	Good Faith Effort Form
Attachment 4	Regulations: 49 CFR Part 26

Attachment 1 Organizational Chart



Key

Position
(Location)
Employee Count

*DBE Liason has direct and independent access to General Manager

Attachment 2

COMMITMENT AGREEMENT FORM FOR ALL SUBCONTRACTORS

Project Description _____ Solicitation/Contract No: _____

The signatures of the prime contract, the subcontractor, and the total commitment amount must be on the same page.

Subcontractor:

Contact Name	Address
City/State/Zip	Phone
Email	Federal Tax ID
Certification Number	<input checked="" type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> Non-Minority
Work/Service to be Performed	NAICS
Quantity/Percentage	Total Dollar of work to be performed
Name	Title
Signature	<input type="checkbox"/> Anticipated costs \$3,000 but less than \$50,000

2nd Tier Subcontractor:

Contact Name	Address
City/State/Zip	Phone
Email	Federal Tax ID
Certification Number	<input type="checkbox"/> DBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> Non-Minority
Name	Title
Signature	Date

Prime Contractor

Contact Name	
Address	City/State/Zip
Phone	Email
Signature	Date

This form must be completed and submitted with the bid/offer to be considered responsive to the solicitation.

**Attachment 3
GOOD FAITH EFFORT FORM**

If you have failed to secure DBE participation for subcontracting and/or supplier opportunities, or if the DBE participation is less than the project goal, you must complete this form.

Solicitation/Contract No. _____

Contract Goal: _____ %

Prime Contractor Name/Address	Email/phone
Is Prime a DBE	Yes No
Certifying Agency	Certification No.

If the bidder/offeror's method of compliance with the DBE goal is based upon demonstration of a good faith effort, the bidder/offeror will have the burden of correctly and accurately preparing and submitting the documentation required by HCTD. 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 HCDT staff and confirmation of no false information, intentional and/or knowingly misrepresentation of facts or intentional discrimination by the contractor.

Failure to complete this form, in its entirety with supporting documentation, and received by the DBE Liaison Officer, will result in the bid/offer being determined non-responsive to the bid/offer specifications.

1. List all subcontracting and/or supplier opportunities for the completion of this project, regardless of whether it is to be proved by a DBR or non-DBE firm.

Do not include Names of Firms, Opportunities Only

List of Subcontracting Opportunities	List of Supplier Opportunities

Use additional page if needed

2. Did you obtain a current (not older than 60 days from the response due date) list of DBE subcontractors or suppliers from the HCTD DBE Liaison (DEBLO)?

Yes No Date request sent to HCTD DBELO _____

3. Did you solicit bids from DBE firms, within the subcontract and/or supplier area previously listed in your email to the DEBLO?

Yes No

Attach proof of correspondence/solicitation sent to DBE firms.

If you did not fulfill, state "I did not comply: _____"

4. Did you solicit bids from subcontractors and/or suppliers by telephone?

Yes No

Attach a list of firms contacted to include firm name, name of person contacted, telephone number, date and time.

If you did not fulfill, state "I did not comply: _____"

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, including an explanation of why the DBE firms were rejected and supporting documentation you wish to be considered by HCTD. In the event of an actual dispute concerning bids/quotes, the contractor will provide access and inspection of any relevant document by HCTD legal representative. Please use additional pages if needed and attach to this form.

Company Name	Telephone Number	Contact Person	Scope of Work	Reason for Rejection

Additional Information

Please provide additional information you feel will further explain your best efforts to obtain DBE participation on this project.

The bidder/offeror further agrees to provide, directly to HCTD upon request, complete and accurate information regarding actual work performed on this contract, the payment thereof and any proposed changes to the original information submitted with this bid/offer. The bidder/offeror also agrees to allow an audit and/or examination of any records and files held by the company that will substantiate the actual work performed on this contract, by an authorized representative of HCTD.

Any intentional and/or knowingly misrepresentation of facts will be grounds for termination of the contract or debarment from HCTD work, and for initiating action under laws concerning false statements. Any

breach of contract may result in a determination irresponsible and barred from participating in HCTD's future projects.

The undersigned certifies that the information provided and the listed firms/individuals 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 the firms will be verified by the HCTD DBE Liaison.

Authorized Signature	Printed Name
Title	Company Name
Phone	Address
Email address	Date
HCTD DBELO Signature	Date

Attachment 4

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

[eCFR :: 49 CFR Part 26 -- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs](#)