

TENNESSEE DEPARTMENT OF TRANSPORTATION
AERONAUTICS DIVISION

Disadvantaged Business Enterprise (DBE) PROGRAM PLAN

Federal Fiscal Years 2021-2023



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PROPOSED

This Plan Carries Out Program Requirements as Specified in 49 CFR 26.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Tennessee Department of Transportation, Aeronautics Division (TDOTAD), has established a Disadvantaged Business Enterprise (DBE) Program for Federal subgrant recipients in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TDOTAD has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, TDOTAD has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26"), and furthermore require subgrant recipients to comply as well.

It is the policy of the TDOTAD to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the TDOTAD policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms which fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Mr. James G. Currey III has been delegated as the TDOTAD DBE Liaison Officer. In that capacity, Mr. Currey is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the TDOTAD in its financial assistance agreements with the Department of Transportation.

Mr. Currey has disseminated this policy statement to the Tennessee Aeronautics Commission and all other components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on DOT-assisted contracts.

[Signed] _____

Ms. Michelle Frazier, Director

_____ Date

SUBPART A – GENERAL INFORMATION

The intent of this plan is not to copy 49 CFR 26 verbatim but to point out salient regulatory requirements and the mechanism that the TDOTAD and Subgrant Recipients or Airport Sponsors employ to meet program requirements.

The TDOTAD is a Block Grant State FAA Partner. Via program requirements it is responsible for AIP grant management and project compliance monitoring. To that end this document discusses individual and joint team member compliance responsibilities.

Section 26.1 Objectives

The overall program objectives and guiding policy are elaborated by the TDOTAD in the policy statement on the first page of this program.

Section 26.3 Applicability

The TDOTAD is the primary recipient of FAA grants associated with Discretionary, Apportionment, Entitlement and other grant program funds authorized by 49 U.S.C. 47101, *et seq.* Airport Sponsors are secondary or subgrant recipients of these AIP grants. This DBE Program Plan applies to Tennessee's Non-Primary Commercial Service, Reliever, and General Aviation airports included in the FAA's current National Plan of Integrated Airport Systems (NPIAS) report. Tennessee's Primary Commercial Service airports included in the NPIAS are responsible for their own DBE program as well as setting overall and contract goals for the individual program.

Section 26.5 Definitions

The TDOTAD and Airport Sponsors will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The TDOTAD and Airport Sponsors 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 Part 26, based upon race, color, sex, or national origin.

In administering its DBE program, the TDOTAD and Airport Sponsors 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 DBE program objectives with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to FAA

TDOTAD Responsibility

The TDOTAD will provide data about its DBE Program to the FAA as directed by the FAA.

DBE participation will be reported to the FAA as follows:

The TDOTAD will transmit to the Federal Aviation Administration (FAA) annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The TDOTAD will similarly report required information about participating DBE firms. All reporting will be accomplished through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Airport Sponsors Responsibility

Provide timely information required to populate the Uniform Report. Information will be transmitted on forms as provided by the TDOTAD.

Bidders List

TDOTAD Responsibility

TDOTAD will create and maintain a bidders list. The purpose of the list is to provide data that is as accurate as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on DOT-assisted contracts. One of its uses is in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and approximate annual gross receipts of firms.

Airport Sponsor Responsibility

This information will be collected by Airport Sponsors as reported by bidders during the project bidding process and made available to the TDOTAD in a timely manner.

Records retention and reporting:

TDOTAD Responsibility

Maintain records documenting a firm’s compliance with the requirements of this part in accordance with FAA Records and Retention requirements.

Airport Sponsor Responsibility

Maintain records documenting a firm’s compliance with the requirements of this part in accordance with FAA Records and Retention requirements.

Section 26.13 Federal Financial Assistance Agreement

TDOTAD Responsibilities

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

Assurance: - Each financial assistance agreement, subgrant recipients sign, with the TDOTAD will include the following assurance:

The TDOTAD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The TDOTAD 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 TDOTAD 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 TDOTAD 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.*).

Airport Sponsor Responsibilities

Contract Assurance:

Airport Sponsor will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

TDOTAD Responsibilities

The TDOTAD and, in turn, Airport Sponsors as grant subrecipients are required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The TDOTAD and applicable Airport Sponsors are not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the TDOTAD and applicable Airport Sponsors comply with the program and any regulation in 49 CFR Part 26. The TDOTAD and applicable Airport Sponsors will continue to carry out this program until all funds from DOT financial assistance have been expended. The TDOTAD and applicable Airport Sponsors do not have to submit regular updates of the DBE program document, as long as it remains in

compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

The Policy Statement is contained on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

TDOTAD Responsibilities

The following individual has been designated as the DBE Liaison Officer for the TDOTAD:

Mr. James G Currey III
Transportation Project Specialist
TDOT Aeronautics Division
(615) 741-1953
Jim.Currey@tn.gov

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

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 DOT.
2. Works with TDOT Office of Civil Rights to set overall annual goals.
3. Prepares the three-year DBE Management Plan.
4. Advises the TDOTAD Director and Engineering Manager on DBE matters and achievement.
5. Assesses contractor compliance with good faith efforts.
6. Plans and participates in DBE training seminars.
7. Maintains the agency's Bidders List.

Airport Sponsor Responsibilities

The applicable Airport Sponsors are required to assign a staff point of contact for administration of the airport DBE program, and subsequently notify the TDOTAD of their identity and contact information.

Section 26.29 Prompt Payment Mechanisms

The TDOTAD requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for acceptable work performed pursuant to their agreements, in accordance with all relevant federal, state, and local laws.

TDOTAD Responsibilities

In accordance with 49 CFR §26.29, the TDOTAD established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Airport Sponsor.

Airport Sponsor Responsibilities

The Airport Sponsor ensures prompt and full payment from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed and invoice received by the prime contractor. Pursuant to §26.29, the TDOTAD has selected the following method to comply with this requirement:

The Airport Sponsor declines to hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

Section 26.31 Directory

The TDOTAD is a non-certifying member of the Tennessee Uniform Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs. It contains all elements required by §26.31, and may be accessed in the following location:

<https://www.tdot.tn.gov/Applications/DBEDirect/Search>

Section 26.33 Over-concentration

The TDOTAD has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

TDOTAD has not established a Business Development Program. This function is performed by the TDOT Office of Civil Rights.

Section 26.37 Monitoring Responsibilities

TDOT Responsibilities

The TDOTAD actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. This is facilitated through the Contract Commitments/Awards and Payments Report contained in Attachment 5.

Monitors compliance of Part 26 requirements by Airport Sponsors.

Airport Sponsor Responsibilities

Airport Sponsors implement and carry out appropriate monitoring to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment.

Monitoring Payments to DBEs and Non-DBEs

Airport Sponsors undertake ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

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

- Airport Sponsors proactively review contract payments to subcontractors including DBEs on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Airport Sponsors by the prime contractor.

Prompt Payment Dispute Resolution

Airport Sponsors will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

Airport Sponsors must establish, as part of their DBE program, the following mechanism(s) to ensure prompt payment:

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact the Airport Sponsor to initiate complaint.

- If filing a prompt payment complaint with the Airport Sponsor does not result in timely and meaningful action by the prime to resolve prompt payment disputes, affected subcontractor may contact the responsible DBELO.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

Airport Sponsors will provide appropriate means to enforce the requirements of §26.29. These means include:

- *In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor*
- *Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract*
- *Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met*
- *Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).*

The Airport Sponsor will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

Airport Sponsors review contracting records and engage in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Airport Sponsor. Contracting records are reviewed by the Airport Sponsor. The Airport Sponsor will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

TDOTAD Responsibilities

The TDOTAD will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts to Airport Sponsors, the cumulative total value of which exceeds \$250,000, in DOT funds during any one or more of the reporting fiscal years within the

three-year goal period. In accordance with §26.45(f), The TDOTAD will ordinarily submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due. The development of the Overall Three-year DBE Goal and Program Plan have been delayed during 2020 due to by the COVID-19 pandemic. As a result, the TDOTAD will submit its Overall Three-year DBE Goal to FAA after a 30-day comment period has concluded.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the TDOTAD does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be applied. However, this DBE Program will remain in effect and the Airport Sponsor will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

In establishing the overall goal, the TDOTAD will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the TDOTAD to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the TDOTAD is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the TDOTAD engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the TDOTAD will publish a notice announcing the proposed overall goal before submission to the FAA on October 1st, or immediately following the 30-day comment period. The notice will be posted on the TDOTAD official internet web site. If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the TDOTAD responses.

The TDOTAD will begin using the overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

Prior Operating Administration Concurrence

The TDOTAD understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the TDOTAD for calculating goals is inadequate, the FAA may, after consulting with the TDOTAD, adjust the overall goal or require that the goal be adjusted by the TDOTAD. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 3 to this program.

Section 26.47 Failure to meet overall goals

The TDOTAD cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the TDOTAD fails to administer its DBE program in good faith.

The TDOTAD understands that to be considered in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The TDOTAD will meet the maximum feasible portion of its 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.

Race-neutral means include, but are not limited to the following:

- (1) Arranging 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.
- (2) Providing technical assistance;
- (3) Attending the Annual DBE conference to raise awareness and promote opportunities in airport construction.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 3 to this program.

Contract Goals

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). In general, contract goals are encouraged on any DOT-assisted contract where the Engineer's Opinion of Probable Construction Cost (EOPCC) exceeds \$100,000, provided there are subcontracting possibilities.

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

Airport Sponsors are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as *Responsible*.

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

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required by the Airport Sponsor of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. 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;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written 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.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). 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; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) No later than 5 days after bid opening as a matter of **responsibility**.
- (5) Use of the Utilization Statement and Letter of Intent contained in Attachment 4 are suggested formats that meet the solicitation information requirements of paragraph (2) of this section. Sponsors may use other formats provided their solicitation bid documents require the information addressed in paragraph (2).

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 5 days [*consider that administrative reconsideration must be offered before making an award decision*] of being informed by the Airport Sponsor that it is not [*responsive OR responsible*] because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: [*provide name, address, phone number, e-mail address*]. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. [*Ensure also that the reconsideration official is not someone who reports to the DBELO who made the original determination. You must ensure that the reconsideration official is well-acquainted with the requirements outlined in Appendix A of 49 CFR Part 26.*]

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 the reconsideration official to discuss the issue of whether the goal was met, or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent 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 procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Airport Sponsor. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Airport Sponsor agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed 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. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory 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 1,200 or applicable state law;
- (6) [Recipient] determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides [Recipient] 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;
- (10) Other documented good cause that [Recipient] has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Airport Sponsor a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Airport Sponsor and TDOTAD DBELO, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the Airport Sponsor and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Airport Sponsor as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Airport Sponsor 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the Airport Sponsor requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. The Airport Sponsor shall provide a written determination to the contractor stating whether good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the Airport Sponsor may 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 default proceeding.

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

In accordance with Section 90-11 of FAA Advisory Circular 150/5370-10H, the Contractor's Final Project Documentation shall include a certified statement signed by the subcontractors, indicating actual amounts paid to the DBE subcontractors and/or suppliers that participated in the contract. TDOT's CC-3 Form, CERTIFICATION REGARDING MONEY PAID TO DISADVANTAGED BUSINESS ENTERPRISES, is a template form that can be used by the Contractor for such certifications. This form can be found in Attachment 7 or online at https://www.tn.gov/tdot/tdot-construction-division/const-div-main-lnav-civil-rights_rd.html.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

TDOTAD is a non-certifying member of the Tennessee Unified Certification Program (TNUCP). TNUCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying TNUCP members make all certification decisions based on the facts as a whole.

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

David Neese
Small Business Development Program Director
James K. Polk Building, Suite 1800
505 Deaderick Street
Nashville, TN 37243

Phone: 615.741.3681 / 615.253.1075

Email: David.Neese@tn.gov

The Uniform Certification Application form and documentation requirements are found in Attachment 1 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Uniform Certification Programs

The TDOTAD is a member of a Uniform Certification Program (UCP) administered by the Tennessee Department of Transportation. The UCP will meet all the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Airport Sponsor

The Airport Sponsor understands that if it fails to comply with any requirement of this part, the Airport Sponsor may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.105 Enforcement Actions in FAA Programs

Any person who knows of a violation of this part by a recipient of FAA Funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or

appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The Airport Sponsor, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Airport Sponsor understands that it is in noncompliance with Part 26 if it violates this prohibition.

PROPOSED

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 website link
- Attachment 2 TDOT DBE Directory website link
- Attachment 3 Overall Goal Calculations
- Attachment 4 Demonstration of Good Faith Efforts– Utilization Statement and Letter of Intent
- Attachment 5 Contract Commitments-Awards and Payments Report for Airport Grants
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 TDOT Form CC-3 Certification Regarding Money Paid to Disadvantaged Business Enterprises

Attachment 1 49 CFR 26 website link

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Office of the Secretary of Transportation

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§ 25.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 25.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 25.500 through 25.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 25.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the *FEDERAL REGISTER* a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[65 FR 62866, Aug. 30, 2000]

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.

- 26.1 What are the objectives of this part?
- 26.2 To whom does this part apply?
- 26.5 What do the terms used in this part mean?
- 26.7 What discriminatory actions are forbidden?
- 26.9 How does the Department issue guidance and interpretations under this part?
- 26.11 What records do recipients keep and report?
- 26.13 What assurances must recipients and contractors make?
- 26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- 26.21 Who must have a DBE program?
- 26.23 What is the requirement for a policy statement?
- 26.25 What is the requirement for a liaison officer?
- 26.27 What efforts must recipients make concerning DBE financial institutions?
- 26.29 What prompt payment mechanisms must recipients have?
- 26.31 What information must you include in your DBE directory?
- 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- 26.39 Fostering small business participation.

Subpart C—Goals, Good Faith Efforts, and Counting

- 26.41 What is the role of the statutory 10 percent goal in this program?

ATTACHMENT 2 TDOT DBE Directory Website

<https://www.tdot.tn.gov/Applications/DBEDirect/Search>

PROPOSED

ATTACHMENT 3 Overall DBE Three-Year Goal Methodology

Name of Recipient: Tennessee Department of Transportation Aeronautics Division

Goal Period: FFY-2021-2022-2023 – October 1, 2020 through September 30, 2023

DOT-assisted contract amount:	FY-2021	\$17,200,000
	FY-2022	\$17,200,000
	FY-2023	<u>\$17,200,000</u>
	Total	\$51,600,000

Overall Three-Year Goal: 8.28%, to be accomplished through 8.28% Race Conscious and 0% Race Neutral

Total dollar amount to be expended on DBEs: \$4,272,480

Market Area: State of Tennessee and surrounding areas

Goal Setting Methodology

The TDOTAD chooses to use its Department's DBE Directory and Census Bureau Data to complete Step 1 of the goal setting methodology.

Determination of Market Area

Market Area determination is of significant importance to the Goal Setting Methodology. The area where the majority of prime contractors, subcontractors and projects are located is considered the Market Area. In fiscal year 2018, \$3,230,608 (24% of total project work) was awarded to 7 prime contractors located outside Tennessee. \$10,291,441 (76% of total project work) was awarded in the same year to 5 contractors inside Tennessee. In fiscal year 2019, \$5,320,526 (100% of project work) for 6 projects was awarded to firms within Tennessee. Therefore, the Market Area appears to coincide largely with the geographical and political boundary of the State of Tennessee and closest portions of neighboring states.

Step 1. Actual relative availability of DBEs

The base figure for the relative availability was calculated as follows:

- A. A document search of the 2017 North American Industry Classification System Manual presented specific NAICS Codes for industries generally encountered in airport construction projects.

Example:

- Installing utilities on a subcontract basis for land subdividers—are classified in Industry Group 2371, Utility System Construction;
- Preparing land owned by others for building construction—are classified in Industry 238910, Site Preparation Contractors;
- Constructing buildings, for rent or lease, on lots they subdivide—are classified in Industry Group 5311, Lessors of Real Estate;
- Subdividing and servicing land for cemetery development—are classified in Industry 812220, Cemeteries and Crematories; and
- Legal subdivision of land without land preparation—are classified elsewhere in the classification system based on the primary activity of the establishment.

2373 Highway, Street, and Bridge Construction^T

23731 Highway, Street, and Bridge Construction^T
See industry description for 237310.

237310 Highway, Street, and Bridge Construction

This industry comprises establishments primarily engaged in the construction of highways (including elevated), streets, roads, airport runways, public sidewalks, or bridges. The work performed may include new work, reconstruction, rehabilitation, and repairs. Specialty trade contractors are included in this industry if they are engaged in activities primarily related to highway, street, and bridge construction (e.g., installing guardrails on highways).

Illustrative Examples:

Airport runway construction	Pothole filling, highway, road, street, or bridge
Highway line painting	Elevated highway construction
Causeway construction	Resurfacing, highway, road, street, or bridge
Painting traffic lanes or parking lot lines	Guardrail construction
Culverts, highway, road, and street, construction	Sign erection, highway, road, street, or bridge

Cross-References. Establishments primarily engaged in—

- Constructing tunnels—are classified in Industry 237990, Other Heavy and Civil Engineering Construction;
- Highway lighting and signal installation—are classified in Industry 238210, Electrical Contractors and Other Wiring Installation Contractors;
- Painting bridges—are classified in Industry 238320, Painting and Wall Covering Contractors;
- Road decommissioning or removing culverts or bridges—are classified in Industry 238910, Site Preparation Contractors; and
- Constructing parking lots, private driveways, sidewalks, or erecting billboards—are classified in Industry 238990, All Other Specialty Trade Contractors.

2379 Other Heavy and Civil Engineering Construction^T

23799 Other Heavy and Civil Engineering Construction^T
See industry description for 237990.

237990 Other Heavy and Civil Engineering Construction

This industry comprises establishments primarily engaged in heavy and civil engineering construction projects (excluding highway, street, bridge, and distribution line construction). The work performed may include new work, reconstruction, rehabilitation, and repairs. Specialty trade contractors are included in this industry if they are engaged in activities primarily related to heavy and civil engineering construction projects (excluding highway, street, bridge, distribution line, oil and gas structure, and utilities building and structure construction). Construction

^T—Canadian, Mexican, and United States industries are comparable.

census.gov/naics

- B. Census Bureau data for Tennessee was examined for businesses with these specified codes. Number of businesses with those codes were counted. The most recent table was from 2018 and included businesses with Tennessee locations only. This yields the number of businesses ready, willing and able to perform work generally encountered at airports.



Note: This is a modified view of the original table produced by the U.S. Census Bureau.

Note: This download or printed version may have missing information from the original table.

All Sectors: County Business Patterns by Legal Form of Organization and Employment Size Class for U.S., States, and Selected Geographies: 2018

Survey/Program:
Annual Economic Surveys
Year:
2018
Table ID:
CB1800CBP
Dataset:
CBP2018

Geographic Area Name	2017 NAICS code	Meaning of NAICS code	Meaning of Legal form of organization code	Meaning of Employment size of establishments	Year	Number of establishments	Annual payroll (\$)
Tennessee	237310	Highway, street, and b...	All establishments	All establishments	2018	176	34
Tennessee	237310	Highway, street, and b...	C-corporations and other corp...	All establishments	2018	72	14
Tennessee	237310	Highway, street, and b...	S-corporations	All establishments	2018	48	9
Tennessee	237310	Highway, street, and b...	Individual proprietorships	All establishments	2018	23	4
Tennessee	237310	Highway, street, and b...	Partnerships	All establishments	2018	33	10
Tennessee	237310	Highway, street, and b...	All establishments	Establishments with less than...	2018	61	11
Tennessee	237310	Highway, street, and b...	C-corporations and other corp...	Establishments with less than...	2018	22	4
Tennessee	237310	Highway, street, and b...	Partnerships	Establishments with less than...	2018	9	1
Tennessee	237310	Highway, street, and b...	Individual proprietorships	Establishments with less than...	2018	16	3
Tennessee	237310	Highway, street, and b...	S-corporations	Establishments with less than...	2018	14	3
Tennessee	237310	Highway, street, and b...	S-corporations	Establishments with 5 to 9 em...	2018	6	1
Tennessee	237310	Highway, street, and b...	C-corporations and other corp...	Establishments with 5 to 9 em...	2018	12	2
Tennessee	237310	Highway, street, and b...	All establishments	Establishments with 5 to 9 em...	2018	25	5
Tennessee	237310	Highway, street, and b...	Individual proprietorships	Establishments with 5 to 9 em...	2018	5	1
Tennessee	237310	Highway, street, and b...	All establishments	Establishments with 10 to 19 ...	2018	27	11
Tennessee	237310	Highway, street, and b...	Partnerships	Establishments with 10 to 19 ...	2018	11	3
Tennessee	237310	Highway, street, and b...	S-corporations	Establishments with 10 to 19 ...	2018	4	1
Tennessee	237310	Highway, street, and b...	C-corporations and other corp...	Establishments with 10 to 19 ...	2018	10	2

[https://data.census.gov/cedsci/table?q=0400000US47&d=ANN Business Patterns County Business Patterns&table=CB1800CBP&tid=CBP2018.CB1800CBP&hidePreview=true&lastDisplayedRow=15&...](https://data.census.gov/cedsci/table?q=0400000US47&d=ANN+Business+Patterns+County+Business+Patterns&table=CB1800CBP&tid=CBP2018.CB1800CBP&hidePreview=true&lastDisplayedRow=15&...) 1/2

- C. The TDOT DBE Directory was examined for businesses conducting work within Tennessee. Number of businesses with those codes were counted. The Directory from 2018 was used to match the Census Bureau data. This yields the number of DBE businesses ready, willing and able to perform work generally encountered at airports.
- D. Number of businesses from the Census Bureau information and the TDOT DBE Directory were compared to arrive at the baseline number.

Comparison of US Census Bureau County Business Pattern v. TDOT DBE Directory
CY 2008

NAICS	Type of Work	2018 CBP Firms	All DBEs Firms	TN Only Firms
236220	Commercial and Institutional Building Construction	656	114	65
237310	Highway, Street and Bridge Construction	176	117	59
238210	Electrical Contractors and Other Wiring Installation Contractors	1,092	47	29
334511	Instrument landing system instrumentation, airborne or airport manufacturing	3	0	0
335129	Lighting fixtures, airport	1	1	1
335311	Lighting transformers, street and airport manufacturing	4	0	0
484220	Specialized Freight (except Used Goods) Trucking, Local	420	50	27
541320	Landscape Architectural Services	70	16	5
541330	Engineering Services	818	123	45
561730	Landscaping Services	1,679	73	42
		4,919	541	273
			11.00%	5.55%

1. Census Bureau information obtained from <https://www.census.gov/programs-surveys/cbp/data/tables.html>
2. All DBE information obtained from TDOT Civil Rights Office, November 2018 DBE Directory

An analysis indicates that only 5.55% of all firms offering services in the indicated NAICS codes are certified DBE Firms operating in Tennessee. When you expand your geographic area of consideration to all certified firms offering services, within and outside Tennessee, the percentage increases to 11.00%.

To determine the base figure, the percentage of certified DBE firms based in TN was averaged with the percentage of all certified DBE firms registered in TDOT's DBE Directory.

$$\frac{\text{All DBE Firms} + \text{TN only Firms}}{2} = \frac{11.00\% + 5.55\%}{2} = 8.28\%$$

The base goal projection is as follows: 8.28%

Step 2: Adjustments to Step 1 base figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal.

Disparity Studies

No disparity studies have been conducted for the Market Area.

Past History Participation

Federal Fiscal Years 2016-2019 Performance

	FY 2016	FY 2017	FY 2018	FY 2019	Average
Goal	7.45%	7.45%	7.45%	7.45%	7.45%
Completed Contracts	8.26%	8.74%	N/A	8.56%	8.52%

An examination of past performance indicates that prime contractors can attain a goal of 8.52% on DBE subcontractor participation. However, most achievements gravitate around a race conscious level of 7.5 to 8.0 total.

Records suggest levels of past participation are very similar to the Step 1 base figure of 8.28%. Due to this fact, it is not necessary to make any adjustment for past participation. This methodology is consistent with the Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program, published by the U.S. Department of Transportation; available online at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>. TDOTAD believes this base figure goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Overall Three-Year Goal: 8.28%

Step 3: Race/Gender-Neutral and Race/Gender-Conscious Split

In 2019 a DBE was awarded a prime contract on an airport project. That was the only instance of a Race/Gender-Neutral award in our recent records. Historically, we have not assigned a Race/Gender-Neutral goal due to the lack of DBE awards for prime contracts and participation on contracts that did not carry a DBE goal. We have been consistently meeting our goals with Race/Gender-Conscious requirements.

Therefore, we are not projecting a Race/Gender-Neutral goal under this plan.

**ATTACHMENT 4 Demonstration of Good Faith efforts – Letter of Intent and
Utilization Statement**

LETTER OF INTENT

https://www.faa.gov/airports/central/airports_resources/media/dbe-letter-of-intent.pdf

UTILIZATION STATEMENT

https://www.faa.gov/airports/central/airports_resources/media/dbe-utilization-statement.pdf

PROPOSED

ATTACHMENT 5 Contract Commitments/Awards and Payments Report

<https://www.tn.gov/content/dam/tn/tdot/aeronautics/CONTRACT%20COMMITMENTS-AWARDS%20AND%20PAYMENTS%20REPORT.pdf>

PROPOSED

ATTACHMENT 6 DBE Monitoring and Enforcement Mechanisms

The TDOTAD or Airport Sponsor may invoke other remedies available by law and/or in the contract to enforce the DBE requirements.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

PROPOSED

**ATTACHMENT 7 TDOT Form CC-3, CERTIFICATION REGARDING MONEY
PAID TO DISADVANTAGED BUSINESS ENTERPRISES**

https://www.tn.gov/content/dam/tn/tdot/construction/old_web_page/CC-3_Form.pdf

PROPOSED