

Tennessee Department of Transportation



Disadvantaged Business Enterprise Plan

Civil Rights Office Small Business Development Program

2015

Revised April 23, 2015

TABLE OF CONTENTS

Subpart A – General

Objectives /Policy Statement (§§26.1, 26.23)	1
Definitions (§26.5)	1
Nondiscrimination (§26.7)	2
Monitoring Payments to DBEs (§26.11)	2
Federal Financial Assistance Agreement Assurance (§26.13)	3

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

Who Must Have a DBE Program (§26.21)	3
DBE Liaison Officer (DBELO) (§26.25)	3
Prompt Payment (§26.29)	5
DBE Directory (§26.31)	5
DBE Over-Concentration (§26.33)	6
Business Development / Mentor Protégé Programs (§26.35)	6
Monitoring and Enforcement Mechanisms (§26.37)	6
Fostering Small Business Participation (§26.39)	7

Subpart C—Goals, Good Faith Efforts, and Counting

Quotas (§26.43)	10
Setting Overall Goals (§26.45)	10
Data Collection (§26.45)	12
Failure to Meet Overall Goals (§26.47)	12
Transit Vehicle Manufacturers (TVM) (§26.49)	13
Contract Goals (§26.51)	13
Demonstration of Good Faith Efforts (§26.53)	14
Counting DBE Participation (§26.55)	16

Subpart D—Certification Standards

Burdens of Proof (§26.61)	17
Membership Determinations (§26.63)	18
Business Size Determinations (§26.65)	18
Social and Economic Disadvantage (§26.67)	18
Ownership Determinations (§26.69)	19
Control Determinations (§26.71)	23
Other Certification Rules (§26.73)	27

Subpart E – Certification Procedures

Uniform Certification Programs (§26.81)	28
Rendering Certifications (§26.83)	28
Interstate Certification (§26.85)	29
Denial of Initial Requests for Certification (§26.86)	30
Removal of Eligibility (§26.87)	30
Certification Appeals to USDOT (§26.89)	31

Subpart F—Compliance and Enforcement

Noncompliance (§26.103)	33
Confidentiality (§26.109)	33

ATTACHMENTS

Attachment A	Organizational Chart
Attachment B	DBE Directory
Attachment C	Supportive Services Scope of Work
Attachment D	DBE Certification Application/PNW Statement
Attachment E.....	Appeals/Third Party Committee By-Laws Appeals, Procedures and List
Attachment F	No Change Declaration
Attachment G	Uniform On-Site Inspection/Owner Interview Report
Attachment H	Commercially Useful Function (CUF) Checklist
Attachment I.....	TDOT Prequalification Application
Attachment J	Prompt Payment Brochure
Attachment K	DBE Commitment Confirmation
Attachment L.....	State Special Provisions
Attachment M	Title VI Assurances
Attachment N	Prompt Payment
Attachment O	DBE Newsletter
Attachment P.....	Subcontractor Bid Quotes Form

Subpart A – General

Objectives /Policy Statement (§§26.1, 26.23)

Tennessee Department of Transportation Disadvantaged Business Enterprise Program Objective and Policy Statement

As a recipient of federal financial funding of the United States Department of Transportation, The Tennessee Department of Transportation (TDOT) has established a Disadvantaged Business Enterprise (DBE) Program as set forth herein and hereby provides its assurance that it will comply with the provisions of this program and the regulations of the United States Department of Transportation as set forth in 49 C.F.R. Part 26.

TDOT is committed to the objectives of the DBE Program and it is their policy to fully support and comply with 49 C.F.R. Part 26 and all other applicable statutes, regulations and guidelines of the United States Department of Transportation. In order to achieve these goals, it is the policy of TDOT:

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

TDOT has designated a DBE Liaison Officer (DBELO) within the Office of Civil Rights who is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is in accordance with the same priority as compliance with all other legal obligations incurred by the TDOT in its financial assistance agreements with the Department of Transportation.

The Small Business Development Office Certification Officers are tasked with certifying eligible DBEs as required by 49 C.F.R. Part 26 in order to participate in federally assisted contracts. Certified, eligible DBEs are included in a DBE directory. To meet the maximum feasible portion of its overall goal by race-neutral means, TDOT will make this policy statement available to all branches of State government and post it online for public viewing. It will be distributed to DBE and non-DBE communities that perform work on USDOT-assisted contracts by newspaper legal notices, and other appropriate means. In meeting its race-neutral participation policy, TDOT will make DBEs aware of contract opportunities and projects.


John C. Schroer, Commissioner
Tennessee Department of Transportation

Date: 1/29/15

Definitions (§26.5)

The terms used in this program have the meanings defined in 49 C.F.R. §26.5. In the administration of its DBE Program, TDOT will act in accordance with guidance and interpretations when issued by USDOT in accordance with 49 C.F.R. §26.9.

Nondiscrimination (§26.7)

TDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age or disability. In administering its DBE program, TDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration, that effect or defeat or substantially impair accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, age or disability.

Monitoring Payments to DBEs (§26.11)

TDOT 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 the TDOT. This reporting requirement also extends to any certified DBE subcontractor.

TDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This information will be submitted to a dedicated email address: dbe.runningtally@tn.gov. **See Attachment N.**

Construction Period Requirements

We utilize a Commercially Useful Function (CUF) Checklist. This document is a joint effort between the Construction Division and the SBDP. This checklist is attached to Circular Letter 1247-01 and is revised as needed. **See Attachment H.**

Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Engineer certification of the dollars paid to each DBE firm, using Form CC3, Certification of DBE Accomplishment. The certification shall be dated and signed by a responsible official legally representing the Contractor. Falsification of this certification may result in suspension of bidder qualifications per Special Provision 1247. **See Attachment L.**

Contractor Compliance

Upon completion of the project, the Contractor and the DBE shall certify to the Project Engineer and SBDP the amount of money paid to the DBE on the project. The final estimate will not be paid to the Contractor until the proper certifications have been made.

Federal Financial Assistance Agreement Assurance (§26.13)

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

The Commissioner of TDOT has signed an assurance applicable to all USDOT-assisted contracts and their administration: *TDOT sub-recipients will adhere to the DBE program. Contract information about the program along with the requirements will be in full effect. Monitoring will be stressed to the recipients. TDOT shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26.*

Contract Assurance

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate per FHWA 1273 required contract provisions. See Attachment L.

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

Who Must Have a DBE Program (§26.21)

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

DBE Liaison Officer (DBELO) (§26.25)

TDOT has designated the following individual as its DBE Liaison Officer (DBELO): Director of the Civil Rights Office, 505 Deaderick Street, Suite 1800,

Nashville, TN 37243-0347, phone number (615) 741-3681 or toll-free 1-888-370-3647. In the capacity of the DBELO, the Civil Rights Director along with the Construction Office, the Director of the Design Division and other Division Directors within TDOT, are responsible for implementing the DBE program and ensuring that TDOT complies with all provisions of 49 CFR Part 26. The Civil Rights Office Director, via the TDOT Deputy Commissioner, has access to the Commissioner of TDOT concerning DBE program matters. The Civil Rights Office/Small Business Development Program has a staff assigned to the DBE program on a full- time basis and supportive services personnel who devote a great portion of their time to the program in regards to training, business planning and technical computer assistance. An organizational chart displaying the Civil Rights Office is provided in **Attachment A**.

TDOT and the Small Business Development Program, along with the Construction Division are responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors those results.
5. Analyzes Tennessee Department of Transportation's progress toward goal attainment and identifies ways to improve progress.
6. Advises the Commissioner and executive staff on DBE matters and achievements.
7. Participates with the legal counsel and Construction Office engineers to determine contractor compliance with good faith efforts.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Certifies DBEs according to the criteria set by USDOT.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains the Tennessee Department of Transportation's updated

directory of certified DBEs.

13. Monitors DBE work to assure performance of a commercially useful function.
14. While the Small Business Development Program, within the TDOT Civil Rights Office, is charged with the responsibility of assuring the enforcement of 49 CFR Part 26 for the Disadvantaged Business Enterprise (DBE) Program, it is understood that the success of the program is incumbent upon a cooperative and coordinated compliance monitoring effort shared with the Construction Division, along with other divisions within the department.
15. The Civil Rights Office operates in accordance with a Manual of Standard Operating Procedures (MSOP) that adheres to rules of the DBE program as set forth in the federal regulations.
16. The Construction Division operates under various Circular Letters. These letters are posted to their website. In addition, the Construction Division and CRO have implemented a Commercially Useful Function (CUF) Checklist.

Prompt Payment (§26.29)

TDOT will include the following clause in each USDOT-assisted prime contract:

Pursuant to TCA, Section 12-4-707, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contractor receives from TDOT. **See Attachment N.**

“Satisfactorily performance” means that the work has been inspected by TDOT and is accepted as complete according to the required TDOT specifications prior to the submission deadline for monthly estimates and after the information has been so recorded in the field office. Also, all required certifications must be in the field office and accepted according to the same time frame. Any delay or postponement of payment from the above referenced time frame will result in accrual of interest as provided under TCA, Section 12-4-707(b). Delays or postponements of payments to subcontractors may occur only for good cause following written approval of the TDOT, and approval of delays or postponements are also subject to interest accrual pursuant to TCA, Section 12-4-707(b). This clause applies to both DBE and non-DBE subcontractors.

DBE Directory (§26.31)

TDOT maintains a directory/certified listing identifying all firms eligible to participate as DBEs. The directory lists the firm’s name, address, and phone number, email address, and the type of work the firm has been certified to perform as a DBE. The Department revises the Directory as needed. The Department also makes the Directory available as follows through mailings, through the Small Business

Development Program Web-site and of course upon request. A link to the Directory is shown in **Attachment B**.

DBE Over-Concentration (§26.33)

Over concentration is monitored after each Letting through the creation of a DBE Utilization Memo. This memo is available online and is a record of the DBEs committed for each goal project by DBE name and specialty area(s). Any patterns or trends that may exist would become evident via this document which is available on the TDOT website. At this time, we have not received any comments or complaints that non-DBEs are unduly burdened from participation in any specific types of work. When monitoring the utilization of DBEs, if an over-concentration is found that meets the definition as described in 26.33, implementation of one or more of the measures suggested in the regulations will be employed (subject to the approval of the concerned USDOT operating administration).

Business Development / Mentor Protégé Programs (§26.35)

Business Development Program

The purpose of a Business Development Programs (BDP) is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient. BDPs, while highly encouraged, are optional until the 2015 Federal Fiscal Year. Beginning in 2015, FHWA will no longer allocate DBE/Supportive Services funds to state transportation agencies (STAs) without an approved BDP.

Many of the services required through the BDP are currently being provided though TDOT's Supportive Services consultant. The consultant's contract stipulates they are to provide technical assistance (including business development and business planning), as well as to provide assistance in areas not unique to the transportation industry, including helping with reading plans and bid preparations. However, these services do not encompass the full BDP guidelines and adjustments have been made to implement a full BDP that consistent with FHWA guidelines beginning in April 2015.

Mentor- Protégé Program

TDOT has researched Mentor- Protégé programs in the past for viability within this program, but as of now there are no formal plans for a Mentor- Protégé Program.

Monitoring and Enforcement Mechanisms (§26.37)

The CUF Checklist, **Attachment H**, is a way of monitoring contracts to ensure that work committed to DBEs on TDOT projects are actually being performed by

the DBE. A CUF Checklist is completed on-site by a TDOT representative for each DBE and is sent to the Civil Rights Office for recordkeeping. A running tally of actual DBE attainments (e.g., payments actually made to DBE firms), is also maintained to compare actual DBE payments to DBE commitments (see **Attachment N**).

TDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. TDOT will also consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Reporting to USDOT

Reporting of the TDOT's DBE participation to USDOT is as follows:

TDOT reports DBE awards, commitments and payments biannually using the **Uniform Report of DBE Commitments/Awards and Payments** document provided by FHWA. The report due June 1 will cover data from October 1 – March 31, and the report due December 1 will cover data from April 1 – September 30. All dollar amounts reported reflect the Federal share of such contracts.

Fostering Small Business Participation (§26.39)

In order to comply with 49 CFR Part 26.39, The Tennessee Department of Transportation (TDOT) has established a race-neutral Small Business Enterprise (SBE) Program. The SBE facilitates competition and expands opportunities for small business concerns in contracting opportunities with TDOT. As a recipient of federal-aid highway funds, TDOT implemented this SBE program as a part of our existing DBE Program as specified in **49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs**.

Participation in the SBE program is available exclusively to those firms that meet the program standards contained in this document - with no regard to race, ethnicity, or gender of the business owner. This element of the DBE program encourages small business participation in the competition for contracting opportunities. Businesses certified as Disadvantaged Business Enterprises by TDOT and the Tennessee Uniform Certification Program are presumed eligible for participation in all small business element contracting opportunities.

Program Eligibility

TDOT shall ensure SBE firms meet the following requirements:

- Total gross receipts of the business shall not exceed ten million dollars (\$10,000,000) averaged over a three-year period

- The business shall not employ more than thirty (30) persons on a full-time basis
- The business must be independently owned and operated
- The business must be a “for profit” business which performs a commercially useful function
- The owner must demonstrate "real and substantial" control of the daily operation of the business, as expressed through an understanding and competence of the type of business owned
- The firm must not be under the control or influence of a non-SBE firm

Certification Overview

SBE Certifications shall be conducted through Tennessee’s Governor’s Office of Diversity Business Enterprise Program (Go-DBE). Go-DBE has been in operation since 2004 certifying minority owned, woman owned, service-disabled veteran owned and small businesses for use in state procurement and contracting opportunities. Utilizing Go-DBE’s *Small Business Enterprise* certification, TDOT will have the advantage of having an established pool of small businesses for use from the onset of the SBE Program.

Another advantage to using the Go-DBE certification is that Go-DBE maintains a searchable database of all certified SBEs. Prime contractors or other interested parties may find small businesses by business name, description, location, activity and category.

Procedures for Certification

- Electronic registration through the TN Go-DBE software system
- SBE Applicants must submit Federal Tax returns in order to prove they meet the eligibility guidelines for annual sales
- SBE Applicants must submit copies of three (3) most recent *Employer’s Quarterly Statement Form 941* to verify the number of employees
- Upon receipt of all required and requested documentation, the processing time for certification is 45 (forty-five) days or less
- Out of State Firms – Firms meeting eligibility requirements must provide a copy of current certification from their home state
- Firms that complete the certification process and have met program guidelines will receive an electronic notification of their certification
- Certifications are valid for period of two years, after which they expire on the date of certification
- Businesses must provide copies of their prior tax return and three (3) most recent Employer Quarterly Statements Form 941 in order to renew their Small Business certification

- Denials - if applicants wish to file for reconsideration, they must send a letter within 10 days from the date of denial to request reconsideration

Removal of SBE Status

SBE certification status may be removed for any of the following reasons:

- Exceeding the gross receipt and business size limit
- Failing to renew or maintain SBE status
- Attempting to evade or subvert the intent of the SBE program
- Submission of fraudulent or falsified information

Small Business Participation

In providing contracting opportunities to facilitate competition, the SBE Program may include, but is not limited to, the following:

- **Project Unbundling:** TDOT will consider unbundling projects, or separating large contracts into smaller contracts (which may be more suitable for small business participation), when feasible. TDOT utilizes a very conservative approach to its project development from design to construction. By employing this method, TDOT projects are typically much smaller than those of our counterparts. Throughout the year, TDOT contracts typically average out to around \$2 million per contract, while the mean contract size is even smaller. Even though most contracts are already of a size that facilitates small business participation, TDOT will conduct contract reviews on FHWA-assisted contracts to determine whether portions of the project could be packaged in such a way as to promote more inclusive participation by SBEs. This determination will be made based on several factors, including the estimated availability of small businesses able to provide specific scopes of work and will consider any economic or administrative burdens which may be associated with unbundling. Note: many TDOT contracts are already at a size that could facilitate SBE participation as a prime contractor.
- **Project Set asides:** TDOT may establish that a portion of FHWA-assisted contracts be set aside for participation by small businesses, when feasible. A set-aside is the reserving of a contract or a portion of a contract exclusively for participation by small businesses (DBEs are presumed eligible for participation on any and all project set-asides). A small business set-aside is open to all small businesses regardless of the owner's gender, race or geographic location. TDOT will review all contracting projects utilizing FHWA funding to assess the small business opportunities, giving consideration to the size and scope of each project to

establish if a set-aside is warranted. This determination will be made based on several factors, including the estimated availability of small businesses deemed able to provide the scope of work required in the contract. These set-asides will be in addition to DBE contract goals. All construction projects designated as set-asides will be advertised as part of TDOT's normal letting process.

- **SBE Marketing** - TDOT will promote and market the SBE Program, as well as ensure easy and direct access to program information, through outreach efforts on the website, through electronic and print media, through Industry partners, and through other mediums.
 - TDOT's Construction Division and Civil Rights Office webpage will provide links and electronic information concerning the Go-DBE Small Business Enterprise Program. The TDOT Civil Rights Webpage will provide an outline of 49 CFR 26.39, a description of how TDOT is complying with this directive, and any other relevant information as deemed necessary as the program proliferates.
 - SBE related activities, as they will also affect the DBE community, may be posted in the Quarterly DBE newsletter, through e-mail notifications, and through other marketing endeavors.
 - TDOT will encourage small businesses to create joint ventures qualified to bid and perform work on contracts. Emphasis will be placed on this approach during outreach efforts.
 - Promote awareness of the SBE program at trade fairs, workshops, conferences, DBE Annual Meeting etc.

Small businesses who meet the criteria of a DBE will be encouraged to complete the necessary paperwork to become certified with TDOT. TDOT will promote the benefits of DBE certification on the same webpage concerning the Small Business Element. Small Businesses can then see firsthand the additional benefits and training available through TDOT and its Supportive Services staff for TDOT-certified DBEs. A link to the certification page will be made available on the page.

Subpart C—Goals, Good Faith Efforts, and Counting

Quotas (§26.43)

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

Setting Overall Goals (§26.45)

The current three-year (2012-2014) TDOT DBE Goal is 7.60% (5.74% Race-

Conscious and 1.86% Race-Neutral)

The 2015-2017 *proposed* TDOT DBE Goal is 8.10% (6.59% Race-Conscious and 1.51% Race-Neutral).

Goal Setting Process

Beginning August 2011, TDOT was required to submit its overall goal to USDOT every three years.

Before establishing the overall goal each cycle, TDOT will consult with the construction office, and the certified DBE list from the Small Business Development Program to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the TDOT efforts to establish a level playing field for the participation of DBEs.

Consultation will also include meeting and/or interacting with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. TDOT's proposed DBE Goal is shared locally for consultation at the TDOT DBE Annual Meeting, with the Association of General Contractors, TDOT DBE Advisory Committee, Tennessee Road Builders Association, as well as other local groups and associations.

Following this consultation, a notice of the proposed overall goal will be published informing the public that the proposed goal and its rationale are available for inspection during normal business hours in the Civil Rights Office, 505 Deaderick Street, Suite 1800, Nashville, TN 37243, for 30 days following the date of the notice, and informing the public that TDOT and USDOT accepts comments on the goals for 45 days from the date of the notice.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

TDOT will meet the maximum feasible portion of its overall goal by using race-neutral and race conscious measures of facilitating DBE participation.

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

- 1) DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- 2) DBE participation through a subcontract on a prime contract that does not carry a DBE goal;

- 3) DBE participation on a prime contract exceeding a contract goal;
- 4) and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Data Collection (§26.45)

For the 2015-2017 proposed DBE goal, TDOT has utilized new methods for collecting data in regard to goal setting. In July of 2013, TDOT's Construction Office began tracking contractor bid information by capturing the lowest (winning) bid for each contract. This Bid List method allows us to measure availability of the number of firms that have directly participated in, or attempted to participate in, our DOT-assisted contracting program in the recent past. This data calculates the relative availability percentage of DBEs who quoted bids in relation to the overall number of all contractors quoting bids.

U.S. Census County Business Patterns (CBP) data was also used in conjunction with TDOT's DBE Directory to determine the percentage of ready, willing and able (RWA) DBEs in the Tennessee market area. The results were an analysis of firms in those NAICS codes in comparison to the 2011 CBP NAICS codes for all businesses in Tennessee.

TDOT's Prequalified Contractor's List is another method used in data collection. Contractor prequalification considers such things as: financial ability, equipment availability, work experience, the size of organization of each contractor, and whether or not they are prime or sub-contractors, DBEs or non-DBEs. The evaluation of this information allows TDOT to determine a contractor's prequalification status and its work capacity value, which establishes the total amount of outstanding work that the contractor desires to have under construction at any given time, thus helping to determine if they are RWA.

Other data collection methods used include employment data from the U.S. Bureau of Labor Statistics, past DBE participation and census educational information [*Educational Attainment by State: 1990 to 2009*].

Failure to Meet Overall Goals (§26.47)

If the awards and commitments shown on the **Uniform Report of Awards or Commitments and Payments** at the end of any fiscal year are less than the stated overall goal, TDOT will follow the steps as outlined in 49 CFR 26.47. Such steps would include analyzing the details for why the goal was not attained and providing corrective measures and steps to insure the goal is met in the next fiscal year. This information will be submitted in writing to FHWA within 90 days of end of the fiscal year. TDOT will then utilize the submitted plan if accepted by FHWA or, in the event the submittal is rejected, shall implement further good faith efforts as dictated by FHWA.

Transit Vehicle Manufacturers (TVM) (§26.49)

The TDOT Multimodal Transportation Resources and the Aeronautics Division will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA – assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, TDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicle in lieu of the TVM complying with this element of the program.

Contract Goals (§26.51)

TDOT will use contract goals to meet any portion of the overall goal that is not projected and met by using race-neutral means.

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

TDOT will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Department need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

TDOT will express contract goals as a percentage of the total amount of the USDOT assisted funds with the aspirations of achieving the state's goals with the Federal share of the USDOT assisted contracts.

TDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any situation in which a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, and/or did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts). Race-Neutral means include, but are not limited to, the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;

- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Demonstration of Good Faith Efforts (§26.53)

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. Requirements for good faith efforts are found in – **Tennessee Special Provision 1247 Regarding DBE Contract Goal – See Attachment L.**

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

TDOT treats bidder/offerors' compliance with *Good Faith Effort* 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 before the project is awarded:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participation;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Dollar amount verbal confirmation from the DBE that it is participating in the

- contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts as spelled out in TDOT S.P. 1247, must be submitted with bidding documents and approval by TDOT prior to award.

A panel has been established to review all GFE submittals.

TDOT developed a written DBE Commitment Verification form to be submitted by DBEs to comply with 49.26.53(b)(2)(iv) and utilization began in the June 17, 2011 Letting. **See Attachment K.**

Good Faith Effort Procedures Implemented Through:

SP1247 Contract Award Procedures Page 5 – C3; c and d

If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award.

Failure of the bidder to meet the DBE goal in its bid or failure to provide documentation clearly evidencing good faith efforts to meet the goal, may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but in liquidation of damages sustained.

STEPS

- 1. Prime Contractor must submit sufficient DBE participation, to meet goals, 3 business days after letting (Wednesday by 4:00 pm).*
- 2. GFE Panel meets on day 4 after letting once GFE notification is received.*
- 3. Day 5 (after letting) a determination is made and a letter is submitted to the potential contractor (apparent low bidder) regarding acceptance of effort or denial of GFE. Construction Division is also notified at this time.*
- 4. After the GFE panel makes a determination of GFE, or lack thereof, by a contractor, an additional step takes place, which is the reconsideration official.*
- 5. The reconsideration official will review the case after the GFE panel renders a decision and the contractor makes a request of reconsideration.*

Administrative Reconsideration

Within two days of being informed by TDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the Construction Office Engineer responsible for contracts. The

Reconsideration Official shall be TDOT's Staff Attorney and 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 then 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. The Department 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 USDOT.

Good Faith Efforts when a DBE is Replaced on a Contract

The Department 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. We will require the prime contractor to notify the Small Business Development Program immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Any consideration for DBE termination must fall within the parameters and guidelines as outlined in 49 CFR 26.53(f). Prime contractors may not terminate a DBE subcontractor without the written consent of the SBDP Office. See – **Tennessee Special Provision 1247 Regarding DBE Contract Goal in Attachment L.**

Counting DBE Participation (§26.55)

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

In TDOT's September 1, 2012 Circular Letter, **Section 108.1: Subletting of Contract**, the Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or Contracts or any portion thereof or of his right, title, or interest therein, without written consent of the Engineer. In case such consent is given, the Contractor will be permitted to sublet a portion thereof but shall perform with his own organization, work amounting to not less than 30 percent of the total original contract cost, except that any items designated in the contract documents as "Specialty Items" may be performed by subcontract and the cost of any such Specialty Items so performed by subcontract may be deducted from the total original cost before computing the amount of work required to be performed by the Contractor with his own organization.

When any portion of the Contract is to be sublet, the Contractor shall furnish to the Engineer, on the proper form and with the required number of copies, all statements of proposed subcontracts. The Department must approve each proposed subcontract before that particular subcontract is put into effect. The Department upon request will furnish the proper forms to the Contractor.

As a part of this proposal the Contractor agrees to abide by all special provisions. Violation of the terms of this section or failure to carry out these requirements is a material breach of this contract and may result in the termination of this contract or subject the Contractor or Subcontractor to suspension from eligibility to bid on construction projects, at the discretion of the Commissioner.

TDOT utilizes a Commercially Useful Function (CUF) Checklist. This document is a joint effort between the Construction Division and the SBDP. This checklist is attached to Circular Letter 1247-01 and is revised as needed. **See Attachment H.**

No subcontracts, or transfer of Contracts, shall in any case release the Contractor of his liability under the Contract and bonds.

Trucking Guidelines

TDOT will continue to utilize the trucking regulations, under 49 CFR Part 26.55. This regulation allows for DBE goal hauling-credit in either DBE trucks or in trucks leased to DBE firms. Leases cannot be TDOT contract-specific. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations. See revised guidelines in **Attachment L (Special Provision 1247)**.

Subpart D—Certification Standards

TDOT will use the certification standards of 49 CFR 26, Subpart D and the certification procedures of 49 CFR 26, Appendix E to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. TDOT will make certification decisions based on the facts as a whole.

Burdens of Proof (§26.61)

Certification is required to participate in the DBE Program. The DBE certification process is separate and distinct from the prequalification process.

Firms applying for DBE Program certification have the burden of demonstrating by a preponderance of evidence, that they meet the group membership, disadvantaged, business size, ownership and control requirements of 49 CFR 26, Subpart D and Appendix E.

Firms owned and controlled by individuals identified to be socially and economically disadvantaged are presumed to be eligible to participate in the TDOT DBE Program. As a result, these individuals are not required to bear the burden of proving their eligibility. However, the eligibility presumption is rebutted based upon the individual owner(s) ability to meet the personal net worth threshold of \$1.32 Million.

Firms owned by individuals who are not presumed to be socially and economically disadvantaged, and firms owned by individuals about whom the

presumption has been rebutted, have the burden of proving, by a preponderance of evidence that they meet the requirements of 49 CFR 26, Appendix E.

Membership Determinations (§26.63)

Firms owned and controlled by individuals about whom a question arises concerning his or her membership in a presumptively eligible group, must prove by a preponderance of evidence that its owner(s) are members of the group. Group memberships are appealable to USDOT.

In making such determinations, the Small Business Development Program (SBDP) shall consider whether the individual has held himself/herself out to be a member of the group over a long period of time prior to applying for certification, and whether the individual is regarded as a member of the group by the relevant community. The firm must submit appropriate documentation of group membership. If it is determined that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

Business Size Determinations (§26.65)

To be an eligible DBE, a firm (including its affiliates) shall be an existing small business, as defined by the SBA standards. The SBDP shall apply the current SBA business size standards found in 13 CFR 121 appropriate to the type of work the firm seeks to perform on USDOT-assisted contracts.

Even if the firm meets the requirements of 49 CFR 26, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (13 CFR Part 121.402), over the firm's three (3) previous fiscal years, in excess of \$23.98 million. USDOT adjusts this amount for inflation from time to time.

Social and Economic Disadvantage (§26.67)

Determinations of social and economic disadvantage are made by the SBDP in accordance with 49 CFR 26.67.

1. Affidavit Social and Economic Disadvantage

It shall be rebuttably presumed that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. Applicants will be required to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. If the individual's personal net

worth exceeds \$1.32 million, the individual's presumption of economic disadvantaged is rebutted.

2. Statement of Personal Net Worth

Each individual who makes this certification must support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. If needed, and on a case-by-case basis, additional financial information may be required from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

Personal net worth determinations made by the SBDP shall exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. A contingent liability does not reduce an individual's net worth (e.g., an applicant cannot use the risk of a judgment in a pending lawsuit to reduce his or her personal net worth).

Individual applicants are required to submit their personal income tax information to the SBDP so that an accurate determination of applicant eligibility for participation in the DBE Program can be made.

The value of a retirement accounts will be calculated in accordance with the standard set forth in 49 CFR 26.67.

All disadvantaged business owner applicants and currently certified DBEs whose eligibility under Part 26 is reviewed, are required to submit a statement of personal net worth annually. **Attachment D** –sets forth the Personal Net Worth Statement.

Ownership Determinations (§26.69)

Determinations of ownership for purposes of DBE eligibility are made by the SBDP in accordance with 49 CFR 26.69. All of the facts relative to ownership must be viewed as a whole.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

Corporations - socially and economically disadvantaged individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

Partnerships - 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

Limited liability firms - at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

Ownership

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements.

Contributions of Securities

All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided below:

- (a) No securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:
 - a. The beneficial owner of securities or assets held in trust is a disadvantaged individual and the trustee is the same or another such individual; or
 - b. The beneficial owner of securities or assets held in trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary and trustee.

Contributions of Capital

The contributions of capital by the socially and economically disadvantaged owners to acquire ownership interests must be real and substantial in accordance with 49 CFR 26.69(e).

Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual or mere participation in the firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Contributions Expertise

The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

The owner's expertise must be:

- (a) In a specialized field;
- (b) Of outstanding quality;
- (c) In areas critical to the firm's operations;
- (d) Indispensable to the firm's potential success;
- (e) Specific to the type of work the firm performs; and
- (f) Documented in the records of the firms. These records must clearly show the contribution of expertise and its value to the firm.

The individual whose expertise is relied upon must have a significant financial investment in the firm.

Assets Gained Through Divorce, Inheritance, or Death

The SBDP will consider all interests in a business or other assets obtained by the individual resulting from a final property settlement or court order a divorce or legal separation, provided that no term or condition of the agreement divorce decree is inconsistent with this section; or through inheritance, or otherwise because of the death of the former owner, as held by a socially and economically disadvantaged individual, for purposes of determining ownership.

Gifts or Transfer

The SBDP must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

- (a) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- (b) Involved in the same or a similar line of business; or
- (c) Engaged in an on-going business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the SBDP, by clear and convincing evidence, that:

- 1) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- 2) The disadvantaged individual actually controls the management policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

Marital Assets

The SBDP shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:

- (a) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the SBDP must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of state in which either spouse or the firm is domiciled. The SBDP does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm; and
- (b) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

Situations Warranting Additional Investigation

The SBDP may consider the following factors in determining the ownership of a firm. However, the SBDP cannot regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- (a) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than through the exception in 49 CFR 26.69(h);
- (b) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- (c) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is such an individual. In

this case, the SBDP must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Control Determinations (§26.71)

Determinations of whether a disadvantaged individual controls the firm are made in accordance with 49 CFR 26.71. In determining whether socially and economically disadvantaged owner(s) controls a firm, the SBDP shall consider all the facts in the record, viewed as a whole.

Independence

Only an independent business can be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. The SBDP may consider several factors when determining whether the applicant DBE firm is independent:

- Relationships with non-facilities, equipment, financial and/or bonding support, and other resources.
- Present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms compromise the independence of the potential DBE firm.
- The firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
- The consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

Restrictions on Control

The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management and policy.

A DBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners to operate the firm. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of

any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR 26.69 (j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

- (a) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president);
- (b) In a corporation, disadvantaged owners must control the board of directors; and
- (c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Involvement of Non-DBEs

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policy making, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals.

The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability. (per 49 CFR 26.71(p))

DBE's Knowledge of the Business

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and

experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policy making. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

Business Licenses

If state law requires a person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged person(s) who own and control a potential DBE firm of that type must possess the required license or credential. If state law does not require such a person to have such a license or credential to own and/or control a firm, the SBDP shall not deny certification solely on the ground that the person lacks the license or credential. The SBDP, however, may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

Compensation of the DBE Owner

The SBDP may consider differences in compensation between the socially and economically disadvantaged owners and other participants in firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The SBDP may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the SBDP may consider a difference between the compensation of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

Outside Employment by the DBE Owner

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

Participation of Family Members

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided, the SBDP must make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as is done in other situations, without regard to whether or not the other persons are immediate family members.

If the SBDP cannot determine that the socially and economically disadvantaged owners as distinct from the family as a whole-control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in firm's activities. Where a firm was formerly owned and controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to the SBDP by clear and convincing evidence, that:

- (a) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- (b) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

Ownership of Equipment

In determining whether a firm is controlled by its socially and economically disadvantaged owners, the SBDP may consider whether the firm owns equipment necessary to perform its work. However, the SBDP must not

determine that a firm is not controlled by socially and economically disadvantaged individual(s) solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

Certification for Specific Types of Work

The SBDP shall grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate to the SBDP only that it's socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The SBDP may not, in this situation, require that the firm be recertified or submit a new application for certification; but must verify the disadvantaged owner's control of the firm in the additional type of work.

The type(s) of work each firm can perform shall be described in terms of the most specific available NAICS code for that type of work. At TDOT's discretion, a descriptor from a classification scheme of equivalent detail and specificity may be used in conjunction with the NAICS code. Each code should describe, as specifically as possible, the principal goods or services which the firm would provide to TDOT recipients, and are to be kept up-to-date. Multiple NAICS codes may be assigned where appropriate.

Operating under a Franchise/License Agreement

A business operating under a franchise or license agreement may be certified if it meets the standards in subpart 49 CFR 26.71 and the franchiser or licenser is not affiliated with the franchisee or licensee. (49 CFR 26.71(o))

Use of Leased Employees

The socially and economically disadvantaged individual(s) controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individual(s) from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Other Certification Rules (§26.73)

- CUF is not a certification issue unless there is a pattern of conduct to evade the requirements of this part.
- Evaluate certification on basis of present circumstances.

- TDOT must not refuse to certify based solely on historical information or the age of the firm if it currently meets the eligibility standards.
- Applicants must cooperate fully with request for information.
- Firm must be for-profit.
- Firm must be owned by socially and economically disadvantaged individuals (not firms - with the possible exception of Indian tribal and Alaska Native Corp).
- Pre-qualification cannot be a condition of certification unless this is conditional for all businesses.
- Sufficient proof must be shown the firm is an independent business, owned and controlled by an economically disadvantaged individual.

Subpart E – Certification Procedures

Uniform Certification Programs (§26.81)

- Agreement signed by all USDOT recipients.
- Requires approval by Secretary.
- UCP must meet this part just as recipients.
- Commitment to have sufficient resources and expertise to carry out requirements.
- Implementation schedule to be fully operational 18 months after approval.
- Does not prescribe a specified form.
- Once submitted, Secretary has 180 days to respond.
- Mechanism to explain delays in meeting schedule due to circumstances beyond ones control.
- Makes all certification decisions for all USDOT recipients.
- Pre-certification made prior to due date for bids.
- Must be certified first in state that firm has its principle place of business.
- Home state is required to share information.
- Maintain a uniform DBE directory accessible electronically (revisions made as they occur) and in print (revised annually).
- UCPs subject to same certification requirements as recipients.

Rendering Certifications (§26.83)

- Only eligible DBEs can participate (49 CFR 26 -Subpart D).
 - 8 criteria to determine eligibility (49 CFR 26.83(c)(1)).
- Use federal standard application form (49 CFR 26 - Appendix F).
- Applicants are to be informed within thirty (30) days of receipt of applications as to whether the application is complete or as to what additional information or action may be required.
- Applicant swears to accuracy and truthfulness under the penalty of perjury.

- Make an informed decision based on all of the facts.
- Must share information on certification among recipients.
- May impose a reasonable fee.
- Must safeguard against disclosures of proprietary or other confidential business information consistent with all laws.
- Written sworn statement within 30 days of any changes in its circumstances affecting the firm's ability to meet all certification standards.
- If a DBE fails to comply, it's considered a failure to cooperate.
- On the firm's anniversary date, the firm must provide a sworn affidavit that it continues to meet the requirements including supporting documentation on the firm's size and gross receipts.
- If not timely, this will be considered failure to cooperate.
- Must process within 90 days after receipt of all required information. (may extend once for an additional 60 days).
- If recipient fails to meet processing time, it is considered a constructive denial and a basis for appeal to USDOT by the firm.
- Once certified, a DBE shall remain certified until and unless TDOT removes its certification, in whole or in part, through the procedures outlined in section 26.87.
- Additional on-site reviews may be conducted as necessary if TDOT is informed of misconduct or possible changes in a DBE's eligibility.
- Any firm that withdraws their application before a decision has been rendered may resubmit their application at any time.

Interstate Certification (§26.85)

For any firm located out-of-state desiring certification by TDOT, they must complete the TNUCP/DBE Program Application for out-of-state firms. As part of their certification application, prospective DBEs must submit a complete DBE/ACDBE application with supporting documents (as needed), notices/correspondence from any and all other states (including their home state) regarding DBE status, a completed Affidavit of Certification and a Letter of USDOT Appeal/Response (if applicable).

Barring any issues with the application and/or prior certification(s), TDOT will certify the firm within sixty (60) days of receipt of all required information. However, should TDOT feel the previous certification is erroneous or would somehow not apply to Tennessee, it must, no later than 60 days from receipt of all the required information from the firm, send the firm a notice stating the reasons for its determination and offer it an opportunity to respond. The firm then has to prove by a preponderance of the evidence that the issue which was in question is unjust. TDOT will then either certify or deny. If denied, the firm has an option to appeal to the Departmental Office of Civil Rights under §26.89.

Continuation of Eligibility

TDOT will review the eligibility of certified DBEs to make sure that they meet the standards of 49 CFR 26, Subpart D. The review may take place no later than five

to seven years, with renewal on-sites conducted based on the firm's construction-related work categories and TDOT subcontract work history. In addition, inquiries from other State DOT's requesting a most current on-site for a DBE certified through our agency may be considered a priority based upon the urgency from the other State DOT. See Attachment G – Uniform On-Site Inspection and Owner Interview Report. See **Attachment G – Uniform On-Site Inspection and Owner Interview Report**.

No Change Declaration

TDOT requires all DBEs to provide the Small Business Development Program in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with application for certification.

The Small Business Development Program also requires all DBEs who are certified to submit, on the anniversary date of their certification, an affidavit meeting the requirements of §26.83(j). See **Attachment F – No Change Declaration**.

TDOT will notify all currently certified DBE firms of these obligations to renew their certification. This notification will inform DBEs that to submit the No Change Declaration, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. TDOT also requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts. A firm's owner knows or should know when he or she has had a change in Part 26 eligibility requirements (e.g., personal net worth).

Denial of Initial Requests for Certification (§26.86)

- TDOT must give a written explanation with reason(s) for denial and must reference evidence in the record in support of denial.
- Reapplication can be no longer than 12 months.
- State's (UCP) denial is appealable to USDOT.

Removal of Eligibility (§26.87)

- Third party may file a complaint alleging ineligibility.
 - Recipient not required to accept general allegations.
 - Review record in light of allegations.
 - If reasonable cause, notify firm of ineligibility with explanation and evidence in support of finding.
- Recipients can act as third parties.
 - Apply same approach as above.
- Operating Authority (OA) can act as third party and direct a proceeding to remove firm's certification.
 - OA will notify recipient and firm of reasons.
 - TDOT must immediately take action to remove eligibility.
- Under this process the firm has right to an informal hearing with the

- recipient.
- The burden is on the recipient to prove by a preponderance of the evidence that standards have not been met.
- A complete record must be maintained.
- Separation of functions in final determination.
 - Implementation to be spelled out in DBE program.
 - Must be a knowledgeable decision-maker.
 - Apply to small airports/transit to the extent feasible.
- Grounds for decision.
 - Changes in firm's circumstances.
 - New information or evidence not previously available.
 - Information previously concealed, misrepresented.
 - New standards or requirements by USDOT.
 - Documented finding that certification decision was factually erroneous.
- Notice of decision in writing and offering rights of appeal.
- Firm remains eligible during process and is removed upon notification of action by recipient.
- Effects of removal.
 - No contract: ineligible firm does not count, must be replaced.
 - Has contract: total amount performed counts towards contract goal, however it's only the portion performed before notice that counts towards overall goal.
 - Exception if reason due to size: total performed counts towards both contract and overall goal.
- Appealable to USDOT.

Certification Appeals to USDOT (§26.89)

- Firms denied or removed have right to appeal to USDOT.
- Third party complainant may appeal if no action by recipient.
- Recipient's decision remains in effect.
- Must submit within 90 days after receipt of recipient's decision.
- Extension allowed if USDOT determines good cause.
- Appellant must identify all other recipients that have denied or decertified it within one year of the appeal; failure to do so may be deemed failure to cooperate.
- Recipient must provide the full administrative record within 20 days upon receipt of request from USDOT.
- USDOT expects record to be well organized, indexed, and paginated.
- USDOT will affirm a recipient's decision unless based on the entire administrative record that the decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of Part 26.
- USDOT's final administrative decision is binding on recipient and appellant.
- USDOT is not required to reverse a decision if there is a procedural error unless the error resulted in a fundamental unfairness to the

appellant or substantially prejudice the appellant to present its case.

- USDOT may remand the record back to recipient if the record is sufficiently incomplete or unclear with respect to matters significant to the outcome of the case.
- USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

The certification application form and documentation requirements are found in **Attachment D – Certification Application**.

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

**The Tennessee Department of Transportation
Civil Rights Office Small Business Development Program
505 Deaderick Street, Suite 1800
Nashville, TN 37243-0347
1-888-370-3647/615-741-3681**

In the event Small Business Development Program proposes to remove the DBE's certification, the Department will follow procedures consistent with §26.87.

If a firm's application is denied or if its eligibility is removed, the firm may not reapply until twelve months after the denial by the Office of Civil Rights or by USDOT.

Uniform Certification Program

The Uniform Certification Program (UCP) has been conditionally approved in Washington.

Any firm or complainant may appeal the TDOT's decision in a certification matter to the USDOT. Such appeals may be sent to:

**U.S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Program Development Division (S-33)
1200 New Jersey Ave., S.E.
Room W78-338
Washington, DC 20590
Phone: 202-366-4754 TTY: 202-366-9696 Fax: 202-366-5575**

The Department will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for State USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that our denial of its application was erroneous).

Subpart F—Compliance and Enforcement

Noncompliance (§26.103)

Any person who believes that TDOT has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b).

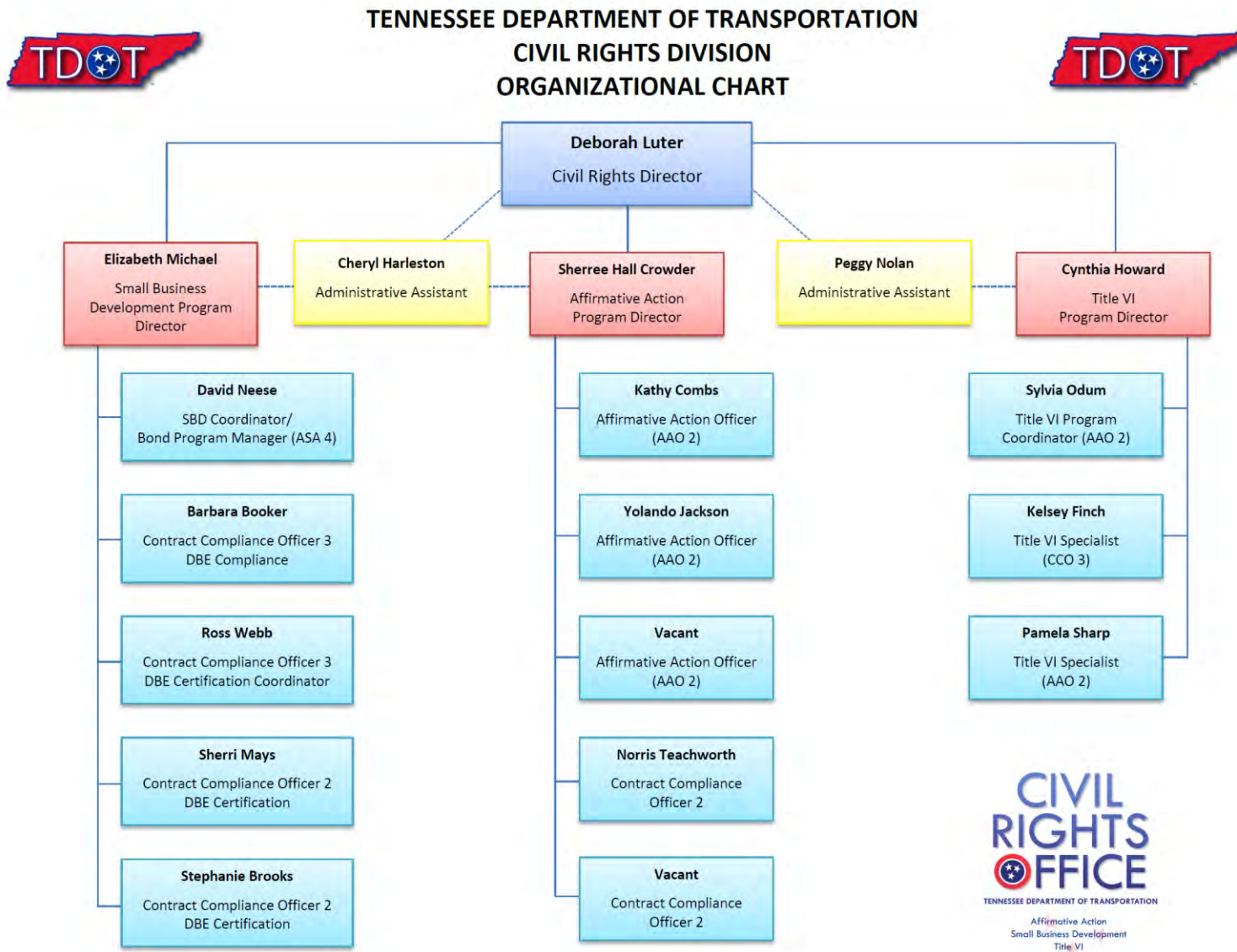
Confidentiality (§26.109)

TDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law [program should summarize applicable state and local law, such as state FOIA laws and how they apply]. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal Law. TDOT does not allow financial information from DBE files to be reviewed by any outside parties, excluding legal and internal audit.

ATTACHMENTS

ATTACHMENT A



ATTACHMENT B

The TNUCP Directory may be found at:

<http://www.tdot.state.tn.us/dbedirectinternet/>



Tennessee Department of Transportation
John Schroer, Commissioner

Home | [About the Commissioner](#) | [FAQ](#) | [Online Services](#) |

To get a complete listing of all DBE Companies, click the "VIEW REPORT" button now (before entering "Tab" information). Otherwise, you may narrow the search by making selections using the TABs. TABs provide lists, to select multiple items from a list, hold down the Control Key and Left Mouse click on the desired selections. Once you have made your selections, click "VIEW REPORT" to get your report. To clear ALL options, click the "RESET" button. Please make sure your browser(s) Pop-Up blockers are turned OFF.

Specialty	Company Types	Regions	Work County	Location County	Company Name	NAICS Codes
Specialty Begins With: <input type="text"/> <input type="button" value="Apply Filter"/> <input type="button" value="Clear Filter"/>						
Available					Selected	
<div>"SHEET \$, +E +E+E - -SALE -SITE</div>		<div>> >> << < <input type="button" value="Help"/></div>			<div></div>	
<div><input type="button" value="Reset"/> <input type="button" value="View Report"/> <input type="button" value="Home"/></div> <div><input type="button" value="Region/County Map"/></div>						

Version 1.00.007

[Tennessee.gov Home](#) | [TN.gov Directory](#) | [Web Policies](#) | [Survey](#) | [Site Map](#) | [Contact](#)



Department of Transportation
James K. Polk Building, Suite 700
Nashville, TN 37243-0349
615.741.2848

ATTACHMENT C

Disadvantaged Business Enterprise Supportive Services Scope of Work

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Background Information. Providing educational support programs for Small and Disadvantaged Business Enterprises (DBEs) is a vital component of the State's Small Business Development Program (SBDP). The activities planned and implemented by the Contractor is critical to the ongoing growth and development of those DBEs and small businesses needing and seeking assistance. A small business shall be defined to include certified DBEs as defined by 49 Code of Federal Regulations, Part 26 and any business that otherwise qualifies as a DBE with the exception that the owner is not disadvantaged.

According to the Code of Federal Regulations, 23 CFR § 230.202 (b) Supportive Services means "those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts."

DBE is defined as a for-profit small business concern that meets the following criteria:

- At least fifty-one percent (51%) is owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and
- Management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it
- Owners must not possess a personal net worth of more than one million, three hundred and twenty thousand dollars (\$1,320,000)
- A small business is as defined by Small Business Administration (SBA) standards, as found in 13 CFR, Part 121

There are currently 294 TDOT-certified DBEs doing business in Tennessee; 120 are out-of-state, and 174 firms are in Tennessee.

A.3. The Contractor shall provide specific information, communication, and materials regarding contracting and subcontracting opportunities to assist DBEs participating in the supportive services program. These supportive services shall be provided only to those small businesses meeting requirements and certified DBEs determined to be eligible for participation in the federal-aid highway program in accordance with 49 CFR, Part 26 and who have a work specialty in the highway construction and transportation industry. The Contractor shall provide a wide range of assistance to small and disadvantaged businesses that are pre-qualified to perform work for prime contractors.

Overall administration and coordination of the program will be provided by the Contractor. Contract Administration includes all of the tasks with the exception of the training activities. The Contractor shall track the development of DBE and small business participants for growth and the development of new DBEs for the program. The Contractor will maintain statistical data on certified DBEs obtaining State contracts to assess project progress.

The Contractor shall assemble a team skilled in the various disciplines, including but not limited to, accounting, office management, technical expertise, business development, bonding marketing and special events planning and bidding and estimating.

- A.4. The Contractor shall report directly to the Civil Rights Office Executive Director (CRO-ED) and/or SBDP Director or her/his designee(s), The Contractor will be responsible for communicating to the SBDP Director the plan of action, status of the program and any other matters of significance to the program or contract. Dates, times and locations of meetings, training and/or seminars will be mutually agreeable to both parties. Under the direction of the CRO-ED/SBDP Director, the Contractor Administrator will be asked to perform the tasks described here to include but not be limited by the following:
- a. The Contractor shall perform individual evaluations of each in-state DBE firm within the first year of the contract. The Contractor shall verify the work areas identified on the DBE's certification listing. The Contractor shall gather equipment lists and current contracts prior to each of these meetings and shall prioritize the meetings as follows:
 - (1) DBEs currently active in Tennessee who have bid on State construction projects.
 - (2) New DBEs in Tennessee who are prepared to bid on State construction contracts,
 - (3) New DBEs who need direction to resources outside state government (federal and city work). After each meeting, the Contractor shall prepare a written report for the State. The report should include any recommendations for improvements.
 - b. The Contractor shall offer their services in developing a business plan for all current, in-state TDOT-certified DBEs. Each business plan should be kept in electronic format to be viewed by the State on request. For any DBE already having a Business Plan, an attempt should be made to retrieve a copy for their DBE files. For any DBE that refuses the offer to provide a business plan, this should also be noted for their file.
 - c. The Contractor shall maintain a toll-free hotline that is available Monday through Friday, 8:00a.m. to 4:30 a.m. (Central Standard Time) with voice mail capability. The phone will be manned a minimum of 7.5 (seven and one half) hours per day to receive calls from DBEs and Prime Contractors.
 - d. The Contractor shall organize meetings quarterly, if necessary, in each of the State's four (4) regions for DBEs to meet and discuss concerns in an informal manner (frequency of meeting dates subject to CRO-ED/SBDP Director's discretion.) Meetings may be scheduled to coincide when information crucial to DBEs needs to be disseminated, therefore there may not be a need for a meeting in every region, every quarter.
 - e. The contractor shall coordinate and organize, with prior approval from the CRO-ED/SBDP Director, an Annual DBE Meeting at a local Nashville hotel. This is traditionally a 2-day event open to DBEs, Prime Contractors and Small Business Owners wishing to network and receive training on a diverse range of topics, and may also include a matchmaker event between TDOT and Aeronautic staff, Prime contractors, DBEs and others.
 - f. The Contractor shall maintain a website in order to display current information and news vital to the State's DBEs. This website should be maintained and updated at least weekly (or as new information is received). This website should also provide contact information for potential DBEs who may view the site and have inquiries into the program, and for those wishing to make comments on the website in general or activities presented therein. The State should be able to submit documentation for the website to the contractor and have it posted within two business days of receipt. The States SBDP web page will add a link to the Contractor's website.
 - g. The Contractor shall have clerical assistance to answer phones and submit paperwork to the State as required.
- A.5. The Contractor will work with DBEs on how to market their services to government agencies and prime contractors. The marketing development responsibilities will be to implement and promote a strong outreach program designed to attract and assist eligible non-certified minority and women-owned firms doing highway, road and bridge construction in becoming certified DBEs with the State.

- A.6. The Contractor shall submit a written progress report each month to the CRO-ED/SBDP Director. The report shall include:
- Staff allocation of time, giving dates and hours spent per task, per staff member
 - Subcontractor allocation of time, giving dates and hours spent per task, per subcontractor
 - Marketing efforts including any trade shows or industry meetings attended or planned.
 - Contacts with State Personnel.
 - Contacts with prime contractors
 - Cumulative expenditures to date with detailed explanation
 - Accomplishments to date
 - Problems encountered and resolutions implemented
 - Additional items impacting work plan
- A.7. The Contractor shall submit a monthly event calendar to the CRO-ED/SBDP Director by the last Wednesday of each month. This report shall include a calendar of events which will show the meetings and activities planned for the next month.
- A.8. The Contractor shall attend regional and national Civil Rights meetings of the Federal Highway Administration, the American Association of Highway and Transportation Officials, the Southern Transportation Civil Rights Executive Council, and other similar entities as feasible. The Contractor shall receive prior approval by the CRO-ED/SBDP Director before attending regional and national conferences.
- A.9. The Contractor shall make available and staff an exhibit booth for conferences, trade shows and the like as deemed necessary by the CRO-ED/SBDP Director to promote TDOT's DBE Program. The State's Civil Rights Office has an 8 x 10 Exhibit Booth that may be used if necessary.
- A.10. The Contractor shall attend a monthly staff meeting (at a minimum) at the Nashville Headquarters with the CRO-ED/SBDP Director and other pertinent staff. The State and the Contractor will mutually agree upon the date and time. Teleconferences may substitute for in-person meetings as deemed feasible by the CRO-ED/SBDP Director.
- A.11. The Contractor shall contact at least 25% of the State's in-state certified DBE contacts by phone or in person every ninety (90) days.
- A.12. The Contractor shall seek speaking engagements and other public appearances at trade conferences in the State to promote the supportive service effort as directed by the State.
- A.13. The Contractor shall make DBEs/small businesses aware of the following information the State provides via the Internet, hardcopy or both:
- Prime Contractor Listing
 - Pre-Qualification application
 - Notice to contractors in construction, maintenance/mowing and engineering
 - Enhancement Grants
 - Other information as required
- A.14. The Contractor shall provide the CRO-ED/SBDP Director, in writing, a resume of all potential instructors and consultants including qualifications for training courses prior to entering into any working agreements.
- A.15. The Contractor shall provide specific information, communication and materials pertaining to contracting and subcontracting opportunities available to the DBE/small businesses. The construction planning responsibilities include the following:
- a. Contractor shall provide one-on-one consultation with firms on cost estimating and bidding, project scheduling, construction management and contract review. The contractor will be expected to assist the Director of the SBDP and the engineer from the State's Construction Division with Goal Setting on state and federally funded highway projects

prior to each letting. Experience in the construction industry with bidding and estimating is extremely important.

- b. The Contractor shall become familiar with highway and/or bridge construction projects across the State of Tennessee. The Contractor is responsible for knowing what projects exist and where these projects are located. This is necessary because the Contractor will be responsible for assisting in the goal setting process for construction projects.
 - c. The Contractor should ensure the DBEs are aware of the pre-qualification form and that it is required for contractual work on state transportation projects. A pre-qualification questionnaire is required by the Construction Division to bid as a prime or subcontractor. This document shall be filed with the Department prior to 12:00 noon of the day preceding the date of any letting.
 - d. The Contractor shall recruit new DBE firms and work with CRO SBDP staff to clarify work areas of current DBEs. The Contractor will be responsible for seeking out new firms to qualify as DBEs. This will involve marketing the Supportive Services Program at various activities in the business community such as Vendor Opportunity Days, Trade Shows, Small Business Administration Expositions and others as deemed necessary. It may also include activities such as Minority Enterprise Development Week (MED week) where small businesses convene for a certain period of time to highlight and showcase what is being done with minority entrepreneurs around the city and the nation, or any other venue of which Contractor may have knowledge.
 - e. The Contractor shall prepare and deliver the "Notice to Contractors" via internet to all DBEs prior to every letting. The Contractor should also include estimated goal percentages by project and by county. The State's Construction Division has specific guidelines for Goal Setting. This information should be mail ready when delivered to the State on a schedule approved by the CRO-ED/SBDP Director.
 - f. The Contractor shall develop and post a quarterly electronic newsletter publication. This e-newsletter will include, but is not limited to, information concerning the Supportive Services Program. The newsletter shall explain issues in the construction industry, define available classes, and describe assistance that is available to DBEs. The primary goal of the newsletter is to keep the DBEs informed regarding issues in the construction industry. The Contractor is responsible for the content and layout of the newsletter. The CRO-ED/SBDP Director shall review all preliminary and final proofs before posting. After final review, the Contractor will e-mail the final finished product to the DBEs electronically at a designated time. Hard copies should also be made available for view at the CRO. The newsletter must conform to State printing standards.
 - g. The Contractor shall participate with Tennessee Road Builders Association (TRBA) as deemed necessary. The TRBA provides its members with a number of services that help them effectively run their business. In addition, the association conducts training programs, runs a federally approved on-the-job training program, rewards members for safe work sites, and holds a mid-year meeting and convention each year.
 - h. The Contractor shall visit with prime contractors to promote the State's DBE Program. The SBDO will provide the Contractor with a list of the major prime contractors across the state by region. The Contractor shall have a working knowledge of the major prime contractors that bid on State projects because the DBEs will work as subcontractors with them.
- A.16. The Contractor shall develop training programs which will assist minority and women-owned contractors and construction suppliers on an individualized, as well as group, basis. The general training coordinator responsibility services will be designed to increase the total number of minority and women businesses active in the highway construction program and contribute to the growth and eventual self-sufficiency of these businesses so that they may achieve proficiency to compete on an equal basis for prime contracts and sub-contracts. The Contractor shall work with Historically Black Colleges and Universities (HBCUs) and other state colleges and universities to use their facilities for courses. These institutions can be utilized when conducting training seminars, hosting meetings and finding qualified instructors

to teach classes. The State's Regional Offices and online courses may also be used to present this training. Prior contact with the CRO-ED/SBDP Director should be made before scheduling courses at any venue.

a. Accounting and Small Business Management Planning

The Contractor shall assist firms concerning general management, accounting and marketing, and on understanding the importance of establishing a good accounting and record keeping system. The Contractor shall provide assistance and instruction in processing and submitting certified payrolls, accounts receivable and all other cash flow management techniques.

b. Workshop Training

In addition to one-on-one training, classroom group training or webinars shall be scheduled and rotated throughout the State in each of its four regions based on need during the contract year. The Contractor shall determine the need for classes during the monthly staff meetings. The Contractor shall notify all DBEs about class availability electronically to increase attendance at any given class. The Contractor shall develop a proposed training schedule and deliver it to the State.

The Contractor shall determine when each workshop will be taught, and the location for that workshop, after prior approval from the State. In addition, the Contractor shall find and secure a site for each workshop, preferably on a State College or University, or if feasible, held online. The length of each workshop will be dependent on the material that is covered. The Contractor shall hire qualified instructors (with prior approval from the State) to teach all workshops.

Classes may also be presented online, so DBEs may participate at their own convenience. Online training is encouraged as many DBEs are unable to participate in meetings or seminars throughout the day, but may benefit from courses that are accessible through the internet. DBEs may request which classes to take and will then be granted access. Online training should be available to all key members of a business's management class.

c. The Contractor shall be responsible for offering courses each year of the contract. The list of courses to be taught may include but not be limited to the following:

How to do Business with TDOT –This workshop will teach the business owners' who have not worked on a project with the State what to expect in the event that they do land a contract.

Business and Management Planning Module –This workshop will offer practical "how-to" suggestions on organizing the business and management function, writing a business plan, and keeping financial and marketing efforts on track.

Business Plan Development

- Who should have one?
- Executive Summary
- Company Overview
- Market Insights
- Marketing Strategy
- Operational Strategy
- Financial Projections

Financial Planning and Budgeting

- What is a budget? Other Considerations
- The Budget Process
- Using the Budget to get More
- Guidelines to an Effective Budget
- How to Cut Costs

- How to Project Sales

Human Resources

- Retirement and benefit planning
- EEOC Employment Laws

Accounting and Financial Management Module – This workshop will teach the business owner how to read and interpret the income statement, including such components as gross revenue, net revenue, direct and indirect expenses, net profit before taxes, gross profit net profit after taxes. It will examine the primary benchmarks of performance: multiplier, utilization rate, direct expense ratios and overhead. In addition, the workshop should examine the balance sheet components of assets (current, fixed and other), liabilities (current and long-term), stockholders equity and important benchmarks such as: current ratio, quick ratio, receivables turnover, aging receivable, and debt to equity ratio need to be explored. Workshops shall cover the following topics:

Accounting System Setup

Understanding & Using the Financial System Quick Books Pro

- Financial Statements
- Income Statements
- Balance Sheets
- Statement of Cash Flow
- Accrual vs. Cash Basis

Financial Statement Analysis

- Analytical Review
- Ratio Analysis
- Industry Standards / Comparison

Using Annual Reports

- Management's Discussion and Analysis
- Generally Accepted Accounting Principles (GAAP) Footnotes
- Audit reports

Banking, Borrowing & Bonding

- The State's Bonding Prep Program

Pricing and Bidding Module – This workshop will break down the job cost accounting and construction cost process into an easy, straightforward and logical manner. The workshop will demonstrate how to price work based on a firm's actual cost structure. Instructors shall show a step-by-step illustrated procedure on how to obtain the most accurate costs for a firm, including reviewing the strategic balance between cost and time and how they affect profit.

Job Cost Accounting – The Estimating and Pricing Module

- General and Administrative Cost
- Direct Cost (material, labor, equipment and other)
- Indirect Cost
- Labor burden and Fringes
- Overhead
- Fee/Profit

Bidding and Contracting Administration – This workshop should prepare for the complexities of construction contracting.

The Meaning of Contract Documents

- General Conditions
- Type of Contracts
- Estimating and Bidding
- The Estimating System
- Work Breakdown Structure (WBS)

- Estimating Cost to Complete
- Profit Analysis
- Project Management
- Documentation
- Cases in Construction Law
- Change Orders
- Claims
- Contract Closeout

- A.17. Construction Management Development Program (CMDP). The Contractor shall develop a program of instruction to teach groups of individuals who are State-certified DBEs (or TDOT-certified small businesses (CSB)), skills to enhance, improve or develop skills needed to successfully perform construction projects. This program shall consist of classroom and/or online instruction, as well as on the job instruction if the need arises. The CMDP is also a required precursor and critical component of the Bond Guarantee Program (BGP), although participants do not have to continue into the BGP to take advantage of CMDP classes.

Before enrolling in any CMDP classes, participants must complete a CMDP/Small Business Application. If continuing into the Bond Guarantee Program, a Needs Assessment Package must be filled out with all requested information attached. The Needs Assessment Package will be evaluated by the Contractor and sent back to TDOT for review where a decision will be made into whether the DBE/CSB shall be eligible to continue into the BGP. These forms, along with a program overview and Standard Operating Procedures Manual, are available from TDOT's Bond Guarantee Program website. The CMDP Program is governed under Rules of Tennessee Department of Transportation - Chapter 1680-8-3 - Construction Management Development Program.

- A.18. An Annual Report will be provided both in hard copy and in electronic format at least two weeks prior to the end of each calendar year. The report should include the following items:

- Success in providing opportunities for DBEs
- Lessons learned from program
- DBE Accomplishments and statistical information
- Suggestions for future advancement of the participating DBEs

- A.19. A Final Report will be provided at least two weeks before the contract ends. This should include the same information as in Section A.18 above, but would be for the duration of the entire contract to show the growth over the contract period.

- A.20. Oral presentation. This presentation will be designed to show an increase in emerging participation by selected DBEs on State highway projects. This presentation shall be made after the final report, above, has been approved, but no later than the last day of the contract period.

ATTACHMENT D

The following member agencies process DBE applications. Please forward your completed certification packet to one of the agencies serving the area where your firm has its principal place of business:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888)370-3647
(615)741-3681
www.tdot.state.tn.us/civil-rights/smallbusiness/

Memphis Area Transit Authority
1370 Levee Road
Memphis, TN 38108-1011
(901)722-7138
www.matatransit.com

Chattanooga Area Regional Transportation
Authority
1617 Wilcox Blvd.
Chattanooga, TN 37406
(423)629-1411
www.gocarta.org

Nashville Metropolitan Transit Authority/
Regional Transportation Authority [Middle TN]
430 Myatt Drive
Nashville, TN 37115
(615)880-3977
www.nashvillemta.org

If you wish to be considered for ACDBE certification, you will need to complete the Airport Concession DBE certification application package, which can be accessed at:

Memphis/Shelby County Airport Authority
3505 Tchulahoma Road
Memphis, TN 38118-2718
(901)922-0255
www.mscaa.com

Metropolitan Nashville Airport Authority
One Terminal Drive, Suite 501
Nashville, TN 37214-4114
(615)275-1620
www.flynashville.com

Chattanooga Metropolitan Airport Authority
1001 Airport Road, Suite 14
Chattanooga, TN 37421
(423)855-2214
www.chattairport.com

Metropolitan Knoxville Airport Authority
P.O. Box 15600
Knoxville, TN 37901-5600
(865)342-3062
www.flyknoxville.com

The following member agencies can be accessed for your information:

Smyrna Airport Authority – (615)459-2651	www.smyrnaairport.com
Tri Cities Airport Commission – (423)325-6044	www.triflight.com
Jackson Airport Authority – (731)423-0995	www.mklairport.com
Jackson Transit Authority – (731)423-0200	www.ridejta.com
Clarksville Transit System – (932)553-2430	www.cityofclarksville.com
Knoxville Area Transit – (865)215-7830	www.katbus.com
Johnson City Transit – (423)434-6269	www.johnsoncitytransit.org
Bristol Tennessee Transit – (423)989-5519	www.bristoltn.org
Murfreesboro Rover Public Transit – (615)893-6441	www.murfreesborotn.gov
Kingsport Area Transit Service – (423)224-2613	www.kingsporttransit.org

TDOT utilizes the **DBE Certification Application** and **DBE Personal Net Worth Statement** found at the *United States Department of Transportation - Departmental Office of Civil Rights* webpage: <https://www.civilrights.dot.gov/disadvantaged-business-enterprise/ready-apply>

Direct DBE Application link:

https://www.civilrights.dot.gov/sites/default/files/New%20DBE_Certification_Application.pdf

Direct PNW Statement link:

<https://www.civilrights.dot.gov/sites/default/files/NewDBEPersNetWorthStmt.pdf>

SCREENSHOTS

TDOT SBDP webpage

Related Documents

[TNUCP Partner List](#)

[TNUCP/DBE Program Application \(TN firms\) \(PDF\)](#)

[TNUCP/DBE Program Application \(out-of-state firms\) \(PDF\)](#)

[Pre-Qualification Forms for Contractors \(Fillable\) \(MS Word\)](#)

[Pre-Qualification Forms/Information for Consultants](#)

USDOT-DOCR webpage

Forms, Instructions, Applications & Links

- [New DBE Certification Application](#)
- [New DBE Personal Net Worth Statement](#)

ATTACHMENT E

By – Laws

of

Tennessee State Certification Program

Third Party Challenge Committee

Article I. Purpose

The purpose of the Third Party Challenge Committee is to provide firms whose DBE certification has been challenged alleging that a currently certified firm may be ineligible, an opportunity for an informal hearing or to present in writing reasons that its certification should not be removed.

Article II. Membership

Members – The committee shall consist of five (5) Tennessee State Certification Program partners with an alternate in the case that one of the partners is the one who is the original certifying partner, in which the partner will reclude himself. Members shall serve a maximum term of three (3) years.

Article III. Officers

Section 1. Elections – The members of the Third Party Challenge Committee shall elect on the first meeting a Chairperson and a Vice-Chairperson.

Section 2. Chairperson – The Chairperson shall be the principal executive officer of the committee and in general shall supervise and control all of the business and affairs of the committee. The chairperson when present shall preside at all meetings of the committee. Whoever is elected will serve for two years from the date of election.

Section 3. Vice Chairperson - The Vice Chairperson in the absence of the chairperson shall perform the duties of the chairperson and when so acting shall have all the powers of and be subject to all the restrictions upon the chairperson and shall perform such other duties as from time to time may be assigned by the chairperson.

Article IV. Meeting

Section 1. Place of meetings – The chairperson may designate any place within the headquarters office of the Tennessee Department of Transportation or any other selected location as the place for any committee meeting(s), hearings, special meeting, telecommunication or teleconferencing

Section 2. Notice of Meetings – Written notice stating the place, day and hour of the meeting and, in case of special meeting, the purpose or purposes for which the meeting is called shall be delivered before the date of the meeting either personally or by mail. In the alternative, the chairperson may otherwise advise the members of said meetings.

Section 3. Quorum - Three (3) members of the committee shall constitute a quorum at a committee meeting. If less than a quorum is represented at a meeting, those committee

members present must adjourn until a time when a quorum is present. No business may be conducted unless a quorum is present.

Article V. Sub-Committees

The Chairperson may appoint sub-committees from with the TSCP (including consultants) as the need arises.

Article VI. Order of Business

The following order of business shall be observed at all meetings: (a) call the roll; (b) reading corrections, and approval of minutes of previous meeting; (c) report of/from sub-committees; (d) new business relating to DBE Review Committee; and (e) hearing of appeals or reviewing of submitted rebuttal.

Article VII. Rebuttals

Procedure – The office or TSCP member presenting the DBE's removal will be given an opportunity to present their information and reasons for the proposal of removal. The respondent(s) and other interested parties will be given an opportunity to appear in person and/or be appropriately represented and will be given an opportunity to rebut the findings of TSCP member. The Committee shall render a decision when all information has been heard within seven (7) working days from the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time. If the DBE elected to present in writing their rebuttal, the Committee shall review the submitted rebuttal and render a decision within seven (7) working days form the date of the hearing unless due to extenuating circumstance a majority of the committee votes to extend such time.

Third Party Challenge Committee Members

Ross Webb, TDOT

Joe Claiborne, MSCAA

Alan Jones, MKAA

Kebbyn Connell, MNAA

Annie Powell, CARTA

ATTACHMENT F

Tennessee Uniform Certification Program

Member Agencies

Tennessee Department
of Transportation

Metropolitan Knoxville
Airport Authority

Chattanooga Metropolitan
Airport Authority

Memphis Shelby County
Airport Authority

Metropolitan Nashville
Airport Authority

Chattanooga Area Regional
Transportation Authority

Memphis Area
Transit Authority

Jackson Transit Authority

Smyrna Airport Authority

Tri-Cities Airport Commission

Clarksville Transit System

Regional Transportation
Authority [Middle TN]

Nashville Metropolitan
Transit Authority

Knoxville Area Transit

Jackson Airport Authority

Johnson City Transit

Bristol Tennessee Transit

Murfreesboro Rover
Public Transit

Kingsport Area Transit Service

TO: Name of DBE Applicant
Company Name
Address
City, State Zip Code

EMAIL: *****

FROM: TNUCP Recipient (i.e., Tennessee Department of Transportation)
Name of TNUCP Officer
Title of TNUCP Officer

DATE: ******DATE******

RE: Annual No Change Declaration

Our records show that you are due to submit your annual No Change Declaration. To continue your certification as a Disadvantaged Business Enterprise (DBE) Program participant, please read, fill out the necessary information and supply the required documentation as listed on the attached document in order to maintain your certification in accordance with 49 CFR 26.83(j). The items needed by ******DATE****** are as follows:

→DBE Firm's Gross Receipts (**attach a copy for the firm's most recent tax return** and all attachments, if applicable**)

** Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships.

→**Tennessee Uniform Certification Program (TNUCP) No Change Declaration**
(This attached document *must* be filled out in its entirety, *signed and dated by the DBE owner(s)*).

The No Change Declaration should be submitted to:

***Recipient
Office
Address
City, State Zip Code
Phone Number direct
Phone Number toll free
Attn: Name of TNUCP Officer
Email: ********

Thank you for your participation in the TNUCP. If you have any questions, please contact our office at your earliest possible convenience.

TENNESSEE UNIFORM CERTIFICATION PROGRAM (TNUCP)

No Change Declaration

I/we, _____ {name(s) of DBE applicant(s)}, declare that there have been no changes in _____ (company name) circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 121. I/we further declare there have been no material changes in the information provided with _____ (company name) application for certification, except for any changes about which I/we have provided written notice to the TNUCP pursuant to 49 CFR § 26.83(i).

I/we declare that I am (or we are) socially disadvantaged because I/we have been subjected to racial ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my/our identity member(s) of one or more of the groups identified in 49 CFR § 26.5, without regard to my/our individual qualifications. I/we further declare that my/our personal net worth does not exceed \$1,320,000.00, and that I am (or we are) economically disadvantaged because my/our ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

In addition, I/we specifically declare that _____ (company name) continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipt cap of 49 CFR Part 26. I/we specifically declare that _____ (company name) average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed the SBA size standard pursuant to 49 CFR § 26.65(b). I/we provide the attached size and gross receipt documentation to support this declaration. Number of employees (part-time/full-time) is _____.

I/we declare under penalty of perjury that the foregoing is true and correct.¹

Executed on (date) _____

Signature _____ Print Name _____

Signature _____ Print Name _____

Signature _____ Print Name _____

Signature _____ Print Name _____

If there are changes in the firm's disadvantaged status, ownership, control and/or management or a material change in the information provided previously in the application form, please submit a letter on the firm's letterhead and describe any changes in disadvantaged status, ownership, control and management of the firm, along with supporting documents.

Please assist us in updating our files by providing the following information:

Name of Firm _____

Mailing Address _____

City, State, Zip Code _____

Telephone# _____ Fax# _____ E-mail Address _____

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both. All owners claiming social and economic disadvantaged status must sign this declaration.

ATTACHMENT G

TENNESSEE UNIFORM ON-SITE INSPECTION AND OWNER INTERVIEW REPORT

Purpose

The purpose of this on-site inspection is to solicit information from the owner(s) of record of the below named company to determine if his/her ownership and control is real, substantial and continuing and is consistent with the day to day control requirement contained in the governing federal regulations of 49 CFR, Part 26.

General Information

Review Conducted by: _____ Date: _____

Firm: _____
(Why do you call it that?)

Location _____ Time: _____

Mailing Address _____

Participants at the Review (List all owners and check the names of any not present):

Name	Title	Race/Sex	Percentage of Ownership
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How long at present location: _____

Telephone: _____

Contact Person: _____ Title: _____

Type of Company

___ Corporation ___ Partnership ___ Sole Proprietorship
___ Joint Venture ___ Other: _____ (Specify)

Type of Review: ___ New Application ___ Renewal ___ Challenge

Date of Last On-site Review: _____ Interviewer: _____

Company Information (List Board of Directors by name, title, race and sex)

Name	Title	Race/Sex	Percentage of Ownership

1. What is the company's primary line of business? Please be specific.
2. Does/Do any of the owner(s) of the company have any stock, management, or ownership interest in another company? If so identify the company and state the percent of interest.
3. Date company was established and by whom?
4. Detail in specific terms how the company was initially capitalized.
5. Has the company made any changes in ownership since the schedule A (application/affidavit) was submitted? If so, what changes have been made?
6. Is the company a successor of any other company or has it conducted business under any other name? If so, identify that company, and indicate if it is still conducting business, or has it been dissolved.
7. Is the company operating under a license issued to a previous owner? Is so, please describe the circumstances.
8. Describe all real estate owned by the firm and provide proof of ownership.
9. How are stockholders, directors and key personnel of the firm compensated?

Management of Applicant's Company

1. Indicate how each owner received his/her share of ownership in the business.
2. List the current positions held by management and owners of the company. Identify tasks and responsibilities of each. Be specific in defining day to day management activity. Attach an organizational chart if helpful in expressing these activities.

3. How many hours per day do either owner(s) devote to the business?
4. Identify the individual(s) responsible for the following:
 - Who negotiates financing, contracts, bonding, and insurance for the company?
 - Who is authorized to make loans for the firm and sign the loan agreement?
 - Who has the authority to sign payroll and creditor checks?
 - Who actually signs payroll and creditor checks?
 - Who monitors job sites and administrative functions?
 - Who sets salaries for personnel?
 - Who hires and terminates employees?
 - Who signs contracts to perform work and subcontractors work for the company?
 - Who decides and signs notes and leases for equipment?
 - Who estimates work in preparation of submitting a bid or quotation in the firm's name?
 - Who established policy and procedure for the company? Explain.
5. When was the last time an employee was hired and fired and by whom?
6. How does the firm learn of projects to bid?
7. What material suppliers does the firm use? (Include company name (s) and contact name (s).) **[Review Purchase Orders / Invoices and checks for purchases and signatures.]**
8. Is the company being assisted financially or otherwise by anyone other than the owner?

9. If a major problem occurs on a project, who has responsibility for deciding whether the job is halted and how is the decision made?
10. Does any member of your firm work part time for any other company? If so, what is the name of company, their position and hours per day/week devoted to that position.
11. Is the company currently operating under a license? If so, please specify.
12. What bank or financial institutions does the firm have accounts with as well as loans?
13. Does the company have a financial line of credit? If the applicant is a new firm without a line of credit, what sources have you used to procure equipment and materials?
14. Did the company have any contract on which it had a joint agreement with the prime contractor to provide financial procurement of materials, equipment, manpower, use of office or warehouse space necessary to perform on the job? If yes, please state circumstances and review the contract(s).
15. Do you work primarily as a prime or a subcontractor?
16. Has firm ever subcontracted any of its company's contract (s)? Yes ___ No ___
If yes, provide the name of subcontractor (s), dollar value of contract (s) and reason (s).

Reviewer's Comments on Physical Environment of Company

1. Is the firm identified by name on a sign at its location and listed in the phone book and/or yellow pages? ___ Yes ___ No
2. Does the firm conduct business from any other office location or share any facilities with a non-disadvantaged firm? ___ Yes ___ No
3. Is the owner(s) office distinct? ___ Yes ___ No
4. Are persons working in the office during the on-site interview employed by the firm? ___ Yes ___ No
5. Was a job site visited and employees interviewed on the job site? ___ Yes ___ No
6. Where does the firm store its equipment?
(Attach List)

7. Is office space owned or leased? By whom? **(Obtain copy)**
8. Identify any other structures or other businesses that share the premise or facility and give address.
9. What items of equipment have been purchased during the last year?
10. Does the company lease equipment? If so state the nature of the lease agreement and whose signature(s) appears on the lease.
11. What equipment was seen on premises and did it have the firm's logo?
12. Review a sample of W2's and W4's of current and past employees and record findings.
13. Does the firm maintain a life insurance on the principal(s) of the firm?
14. What type of insurance does the company have and who is the agent? **(Obtain copy)**
15. Who obtained the insurance for the company?
16. Does the company have a bond? Is so, specify the bond limit, name of company holding bond, name of the agent and the name of the individual(s) that obtained the bond?
(Obtain copy)
17. Review cancelled checks - check for signatures and to whom those checks are addressed.
18. List the amounts paid to owners.
19. Who approves the rate of pay for new employees?

Job Estimates and Contracts

1. Explain and describe the negotiation process.

2. Review contracts, list the following information for each:

Firm
Location
Signature and Title on Contract
Date

3. Has your firm or any principal of your firm ever failed to complete any contract awarded to your company? Describe the circumstances.

4. Is the firm certified in any other state, jurisdiction or is it an SBA 8(A)?

5. Who negotiates disputed billings with prime contractors?

6. How many supervisors does the company employ? Explain their duties and responsibilities.

Materials

1. Are materials stored on premises? ____ Yes ____ No If not, then where?

2. What materials were viewed?

3. Who owns office equipment used by firm?

4. Who orders and purchases materials?

5. If the firm is a supplier, indicate the lines of products supplied.

6. Does the firm keep the goods supplied to its customers on property that is owned or leased?

owned	_____	Yes	_____	No
leased	_____	Yes	_____	No

7. Does the firm take ownership title to the goods supplied? ____ Yes ____ No

Additional Information

8. If the firm is a corporation, how many shares of stock does each owner hold?
(**Number of outstanding shares**)

9. Who performs accounting functions for the firm?
10. Does the firm have a CPA? Who?
11. Who prepares the payroll?
12. What is the background of the related business and educational experience of the principal owner?
13. Explain the daily business operations of the firm and the responsibility of the principal owner(s).
14. Number of employees: _____
Number of minority employees: _____
Number of female employees: _____
15. Please provide the names of all permanent employees in this company.
15. Why do you want to be a DBE with the TN Uniform Certification Program?
16. What areas within the State of TN are you willing to work?

Comments/Notes Section

To be signed upon completion of on-site inspection by:

Certification Specialist _____

Applicant/Representative _____

ATTACHMENT H

DBE Company Profile

(To be provided by the Civil Rights Office Small Business Development/Disadvantaged Business Enterprise Program on all projects with DBE subcontractors)

1. Date: _____
2. Contract No.: _____ Project No.: _____ County: _____
3. Contract Description: _____

4. Prime Contractor: _____
5. DBE Firm: _____
6. Areas of Certification: _____

7. Type of Operation:
Contractor _____ Trucker _____ Regular Dealer _____ Manufacturer _____
 - a. If DBE is classified above as a Regular Dealer, does the DBE have an established storage facility and inventory?
YES _____ NO _____ N/A _____
(If no, this is a red flag.)
 - b. If DBE is classified above as a Manufacturer, is the DBE's primary function to manufacture construction products?
YES _____ NO _____ N/A _____
(If no, this is a red flag.)
8. Legal contract executed by the DBE to perform a distinct element of work is on file in the Civil Rights Office (DBE Goal Contracts Only)?
YES _____ NO _____
(If no, this is a red flag.)
If no, has construction field office been contacted? Yes _____ No _____

Subcontract Date: _____
9. Has the Regional Construction Office submitted an approved TDOT Subcontract Form?
YES _____ NO _____
(If no, this is a red flag.)
If no, has construction field office been contacted? Yes _____ No _____
10. DBE on-site representative/contact for hiring, firing, or modifying the contract

11. Has a two party/joint check been approved by the Civil Rights Office?
YES _____ NO _____
12. Has a 2nd-Tier Subcontract been approved by the Civil Rights Office?
YES _____ NO _____

COMMERCIALLY USEFUL FUNCTION CHECKLIST

Checklist Instructions:

1. To be completed by the Project Inspector for each DBE on *every* project.
2. **If at any time a DBE is observed not performing a CUF or if there are any items that are suspicious, red flags or warrant further attention, this must be reported to the Regional Construction Supervisor and HQ Civil Rights Office Small Business Development Program Director immediately.**
3. Submit the completed form to the HQ Civil Rights Office Small Business Development Program.

Date of Review: _____ Reviewer's Name: _____

Contract No.: _____ Project No.: _____ County: _____

Contract Description: _____

Prime Contractor: _____

DBE Firm: _____

Start Date(s) of DBE Work: _____

Describe the type of work observed: _____

A. Management

1. Who does the DBE on-site representative contact for hiring, firing, or modifying the contract?

2. Name of on-site representative: _____

3. On-site representative reports to: _____

4. Has the on-site representative been identified as an employee of the DBE?

YES _____ NO _____

If not, then by whom? _____

(If no, this could be a red flag.)

Action taken: _____

5. Did the DBE sublet any items or portions of work to any other firm?

YES _____ NO _____

If yes, what percent was sublet/what items were sublet? _____

Name of the firm: _____ DBE? _____ Non-DBE? _____

(If yes, this could be a red flag.)

6. Does the DBE on-site representative effectively manage the job site without interference from any other non-DBE contractor/subcontractor?

YES _____ NO _____

(If no, this could be a red flag.)

If no, explain: _____

7. Has the DBE owner been present on the jobsite?

YES _____ NO _____

8. Is the DBE submitting its own payroll?

YES _____ NO _____

(If no, this could be a red flag. This question may be better answered by the Construction Field Office)

Action taken: _____

9. Who makes arrangement and schedule for delivery of materials?

(If not the DBE, this is a red flag.)

Action taken: _____

10. Does the prime contractor direct who the DBE is to obtain the material from and at what price?

YES _____ NO _____

(If yes, this could be a red flag.)

Action taken: _____

B. Equipment including Trucks

Major Equipment Used	Serial Number	DBE's Markings?		DBE's Operator?		Leased?	
		Yes or No	If no, list other company's markings if seen	Yes or No	If no, list company operator works for	Yes or No	If yes, list company leased from

Attach additional sheets if necessary

1. If equipment was leased, were copies of lease agreements provided?

YES _____ NO _____

If not, action taken: _____

C. Workforce

1. List the name and position of each DBE employee observed during today's operation.

(If names do not match attached list, this is a red flag.)

If not, explain:

2. Has any of this crew ever appeared on any other contractor's payroll?

YES _____ NO _____

(If yes, this could warrant more attention or be a red flag. This question may be better answered by the Construction Field Office.)

If yes, list crew member(s):

Name of contractor:

Action taken:

D. Materials

1. Did the DBE order and pay for materials? In order to verify the DBE contractor ordered and paid for the materials they have agreed to purchase in their subcontract, the DBE must submit copies of all invoices from each of their suppliers to the Project Inspector.

YES _____ NO _____

(If no, this could warrant more attention or be a red flag. Two party checks are a red flag.)

If yes, have material invoices been submitted: YES _____ NO _____

If no, action taken:

E. Performance

1. Does the DBE appear to be executing the work of the contract by actually performing, managing, and supervising the work involved? YES _____ NO _____

(If no, this could be a red flag.)

If no, explain:

2. Has any other contractor performed any amount of work specified in the DBE's contract?

YES _____ NO _____

(If yes, this could be a red flag.)

If yes, who performed this work and why?

F. Complete this section only if DBE is a regular dealer or manufacturer

_____ Check here if this section does *not* apply (DBE is *not* a regular dealer or manufacturer).

1. Does the dealer have a business that sells to the public on a routine basis on the product being supplied?

YES _____ NO _____

(If no, this is a red flag.)

If no, explain: _____

2. Does the business stock the product for the use on the project as a normal stock item?

YES _____ NO _____

3. Who is delivering and unloading the material?

4. Who are the material invoices made out to?

5. In whose name are materials shipped?

(If material is not shipped to the DBE, this is a red flag.)

If not, explain: _____

Construction Staff (Field and Office) Comments (including red flags noted):

Actions Taken:

Reviewer's Signature: _____

ATTACHMENT I

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Nashville, Tennessee**



**PREQUALIFICATION
QUESTIONNAIRE**

(Begin Date Last Fiscal Year)

(End Date Last Fiscal Year)

By

Legal Business Name as Registered with Tennessee Secretary of State (if applicable)

- ☐ An Individual ☐ A Corporation ☐ A Limited Liability Company
☐ A General Partnership ☐ A Limited Liability Partnership ☐ A Limited Partnership

Street Address _____

City _____ State _____ Zip Code _____

Telephone _____ Fax Number _____

E-mail Address _____

Tennessee Contractors License No. _____

Tennessee Secretary of State
Registration Control No. _____

**NOTE: INFORMATION PROVIDED IN THIS QUESTIONNAIRE IS NOT CONFIDENTIAL
THE QUESTIONNAIRE MUST BE COMPLETED IN FULL
DO NOT OMIT ANY PAGES FROM THE QUESTIONNAIRE**

Submitted as required by the State of Tennessee, Department of Transportation,
under the provisions of Section 54-5-117, Tennessee Code Annotated, and Tennessee Department of
Transportation Rule 1680-5-3, Prequalification of Contractors.

INSTRUCTIONS TO APPLICANTS FOR PREQUALIFICATION

1. Any individual or organization that wishes to bid on a Department contract or to be approved as a subcontractor under any contract awarded by the Department must be prequalified by the Department.
2. As a prospective bidder or subcontractor you shall make yourself familiar with the Department's rules for the prequalification of contractors (Chapter 1680-5-3), which may be obtained from the TDOT Construction Division by calling (615) 741-2414 or reviewed online at www.tdot.state.tn.us/construction/.
3. An application for prequalification must be filed on the Department's Prequalification Questionnaire form. The Prequalification Questionnaire must be completed and submitted annually. Supplemental information may be required at the discretion of the Department.
4. This Prequalification Questionnaire must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant.
5. The Prequalification Questionnaire must be filed with the Department at least fourteen (14) days prior to the date of any letting in which the applicant wishes to submit a bid to the Department, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the Department.
6. You are required to notify the Department if there is any subsequent change in the name, organization or contact information provided on the front page of this Questionnaire or if there is a subsequent change in the information provided in response to Questions 7 through 10 of this Questionnaire. (See TDOT Rule 1680-5-3-.04(4) for additional information on this requirement.)
7. Prequalification with the Department, if approved, is effective for a period of one year, plus a three-month grace period, beginning with the Fiscal Year End date shown on the front page of this Questionnaire. A new Prequalification Questionnaire may be filed at any time.
8. All questions in this Prequalification Questionnaire must be answered. Attachments are permissible to any page where there is not enough space provided.
9. To avoid delay, be sure that all information is provided and that all signatures are affixed and notarized where indicated. No questionnaire will be approved if any required signature or notary seal is omitted.
10. Upon completion of this Prequalification Questionnaire, send the completed form and all attachments to:

Tennessee Department of Transportation
Construction Division, Prequalification Office
505 Deaderick Street
Suite 700, James K. Polk Building
Nashville, TN 37243-1402
11. It is recommended that you keep a copy of this completed form for your records.

T-0656

PLEASE NOTE: The Board for Licensing Contractors is not a part of this Department and its licensing requirements are separate from this Department's prequalification requirements.

ADDITIONAL INFORMATION

1. The Department reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.
2. The applicant may submit an audited financial statement, documentation of its maximum bonding capacity, or other financial information for the Department's Prequalification Office to consider.
3. Additional information and/or documents requested by the Department or offered by the applicant will not be considered confidential except to the extent authorized or required by law.

GENERAL QUESTIONNAIRE

1. How many years has your organization been in business as a contractor under your present business name? _____
2. How many years of experience in construction work has your organization had?
- A. As a Prime Contractor _____ B. As a Subcontractor _____

(Question 3 is voluntary)

3. a. Is your organization a minority owned or minority controlled business?
- ☐ yes ☐ no
- b. What is the race of the majority owner?
- ☐ Caucasian ☐ African American ☐ Hispanic
- ☐ Other (please specify) _____
- c. What is the gender of the majority owner?
- ☐ male ☐ female
4. Identify your firm's gross annual receipts for most recent fiscal year (check appropriate range) :
- | | |
|--|--|
| <input type="checkbox"/> \$0 - \$500,000 | <input type="checkbox"/> \$5,000,000 - \$10,000,000 |
| <input type="checkbox"/> \$500,000 - \$1,000,000 | <input type="checkbox"/> \$10,000,000 - \$20,000,000 |
| <input type="checkbox"/> \$1,000,000 - \$2,000,000 | <input type="checkbox"/> \$20,000,000 - \$50,000,000 |
| <input type="checkbox"/> \$2,000,000 - \$5,000,000 | <input type="checkbox"/> \$50,000,000 and greater |
5. Give the names and addresses of all surety bonding companies and agencies which have written surety bonds for you covering construction contracts during the last three (3) years.

Name of Bonding Company _____

Name of Agent _____

Agent Street Address _____

Agent City, State and Zip _____

Name of Bonding Company _____

Names of Agent _____

Agent Street Address _____

Agent City, State and Zip _____

6. Give the name, address and phone number of the person responsible for completing this Questionnaire.
- _____
- _____
- _____

AUTHORIZED SIGNATURES

7. Please provide the names and addresses of all individuals within your organization who are authorized to sign bid proposals and contracts on behalf of your firm. In the event any of these individuals is an officer, general partner or authorized representative of, or owns 10% or more of any other firm that is prequalified, or which has applied for prequalification, with the Department, please identify the affiliation or involvement with these other firms. The executed signature must be identical to signatures on future bid proposals submitted to the Department.

A.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm
B.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm
C.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no Involved in Another Firm?				
		Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm

Prequalification Questionnaire (cont.)

D.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involved in Another Firm?	Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm	
E.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involved in Another Firm?	Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm	
F.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involved in Another Firm?	Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm	
G.				
Print Name	Signature	Position In Firm	Address	
<input type="checkbox"/> yes <input type="checkbox"/> no				
Involved in Another Firm?	Name of Other Firm	Position Held In Other Firm	Financial Interest in Other Firm	

If additional space is needed, please make attachments to this page.

T-0656

OFFICERS, PARTNERS AND OWNERS

8. In the table below, please provide the names and addresses of all officers of your firm (if any), all individuals or organizations that are general partners in your firm (if any), and all individuals or organizations that own 10% or more of your firm.

NAME	ADDRESS *	POSITION/OFFICE	% OWNERSHIP

* Only if different from the address of the Applicant.

If additional space is needed, please make attachments to this page.

AFFILIATES

9. Use the table below to identify all affiliates of your firm.

Affiliate's Name	Address	Percent Ownership	Affiliate's Type of Work	Affiliate's Relationship to Applicant

If additional space is needed, please make attachments to this page.

BUSINESS RELATIONSHIPS OF OFFICERS, PARTNERS AND OWNERS

10. For each officer, general partner, and owner of your firm identified in response to Question 8 of this Questionnaire, use the table below to identify whether such officer, general partner, or owner is also an officer, general partner or authorized representative of, or owns 10% or more of, any other firm that is prequalified with or has applied for prequalification with the Department.

Name of Officer, Partner, or Owner	Involved With Other Prequalified Firm or Applicant?	Name & Address of Other Firm	Position Held in Other Firm	% Ownership in Other Firm

If additional space is needed, please make attachments to this page.

BUSINESS RELATIONSHIPS OF IMMEDIATE FAMILY MEMBERS

11. For each officer, general partner, owner, and authorized representative of your firm identified in response to Questions 7 and 8 of this Questionnaire, use the table below to identify whether such officer, general partner, owner, or authorized representative has an immediate family member (a spouse, mother, father, son, daughter, brother, or sister – including step, half and adoptive relationships) who is an officer, general partner, authorized representative, or owner of 10% or more of any other firm that is prequalified with or has applied for prequalification with the Department.

Name of Officer, Partner, Owner or Authorized Rep.	Relative's Name	Relationship	Name of Other Prequalified Firm in Which Relative Has an Interest	Relative's % Ownership in Other Firm	Relative's Position in other Firm	Type of Work That Other Firm Performs

If additional space is needed, please make attachments to this page.

WORK CLASSIFICATIONS

12. Check all work classifications in which your company has prior experience and wishes to be given consideration for prequalification.

<input type="checkbox"/>	ASPHALT PAVING	<input type="checkbox"/>	NON-ROADWAY CONSTRUCTION – BUILDINGS, REST AREAS, ETC.
<input type="checkbox"/>	BARRIERS-PARAPETS, CONCRETE BARRIERS, ETC.	<input type="checkbox"/>	PAVEMENT MARKING
<input type="checkbox"/>	BASE – AGGREGATE BASES OR AGGREGATES	<input type="checkbox"/>	RIPRAP
<input type="checkbox"/>	BRIDGE PAINTING	<input type="checkbox"/>	REMOVAL – BUILDINGS, STRUCTURES, ETC.
<input type="checkbox"/>	CONCRETE PAVING	<input type="checkbox"/>	RAILROAD
<input type="checkbox"/>	DRAINAGE – PIPE CULVERTS AND PRECAST BOXES	<input type="checkbox"/>	SALT BINS
<input type="checkbox"/>	ENGINEERING	<input type="checkbox"/>	SCALES AND WEIGHING
<input type="checkbox"/>	EROSION CONTROL	<input type="checkbox"/>	SLOPE PIPE
<input type="checkbox"/>	EARTHWORK	<input type="checkbox"/>	SNOW AND ICE REMOVAL
<input type="checkbox"/>	CONCRETE FLATWORK	<input type="checkbox"/>	STRUCTURES – BRIDGE
<input type="checkbox"/>	FENCE	<input type="checkbox"/>	STRUCTURES – DRAINAGE
<input type="checkbox"/>	GUARDRAIL/ATTENUATORS	<input type="checkbox"/>	SWEEPING AND DRAINAGE CLEANING
<input type="checkbox"/>	INCIDENTAL OR MISCELLANEOUS ITEMS	<input type="checkbox"/>	TRAFFIC CONTROL – PERMANENT
<input type="checkbox"/>	INTELLIGENT TRAFFIC SYSTEMS	<input type="checkbox"/>	TRAFFIC CONTROL – TEMPORARY
<input type="checkbox"/>	LANDSCAPING – SEEDING, SODDING, TREES, ETC.	<input type="checkbox"/>	TUNNELS
<input type="checkbox"/>	LIGHTING – ELECTRICAL, ETC.	<input type="checkbox"/>	UTILITIES
<input type="checkbox"/>	MOWING AND LITTER REMOVAL	<input type="checkbox"/>	WALL – RETAINING WALLS

TYPE OF PREQUALIFICATION STATUS REQUESTED

13. Please indicate whether you are seeking a general or limited prequalification within the work classifications indicated in response to Question 12.
(See TDOT Rule 1680-5-3-.05(2)(b) for additional information regarding the difference between general and limited prequalification status.)

☐ General

☐ Limited

(If limited please indicate the total number of contracts and/or aggregate amount of contracts that you would seek to perform at any given time.)

EXPERIENCE QUESTIONNAIRE

14. Current and recently completed contracts: Give adequate information to permit inquiry for references. Include all private and public projects.

Contract Number or Project Number	Project Owner	Sub/Prime	Classifications of Work Performed (List as many as possible)	Contract Amount	Completed on Time?	Status (% Complete or Date Completed)	Liquidated Damages or Disincentives Assessed?
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no
					<input type="checkbox"/> yes <input type="checkbox"/> no		<input type="checkbox"/> yes <input type="checkbox"/> no

If additional space is needed, please make attachments to this page.

15. What is the construction experience of the principal individuals of your organization?

Name	Present Position/ Office	Years Construction. Exp.	Magnitude/ Type of Work	In What Capacity?

If additional space is needed, please make attachments to this page.

EQUIPMENT

16. List equipment owned by your firm, and then list separately equipment leased or otherwise available to you. Indicate whether the other firm from which you lease or otherwise obtain the equipment is prequalified with or has applied for prequalification with the Department. (You may attach your own equipment list in lieu of completing this page if all the required information is provided.)

Quantity	Item	Size or Capacity	Age	Owner of Equipment

If additional space is needed, please make attachments to this page.

CONTRACTOR RESPONSIBILITY

17. In the last five years has any of the following occurred?

A. The applicant or an affiliate associated with the applicant filed for bankruptcy.

☐ yes ☐ no (If yes, explain below)

B. The applicant or an affiliate associated with the applicant defaulted on or failed to complete a public contract or had a public contract terminated for cause.

☐ yes ☐ no (If yes, explain below)

C. The applicant or an affiliate associated with the applicant had a surety take over the payment or performance obligations of a public contract.

☐ yes ☐ no (If yes, explain below)

D. The applicant or an affiliate associated with the applicant had liens, claims or stop work orders filed against it on a public contract.

☐ yes ☐ no (If yes, explain below)

18. In the last five years has any of the following occurred?

A. The applicant, an affiliate of the applicant, or a general partner, owner, officer or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been denied prequalification or has been suspended, debarred or otherwise excluded from bidding on or participating in any public contract by the Department or any other state, federal or local government agency.

☐ yes ☐ no (If yes, explain below)

B. The applicant, an affiliate of the applicant, or a general partner, officer, owner, or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been convicted of, is currently under indictment for, or has been held liable in a civil judgment for any of the following:

(i) The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.

☐ yes ☐ no (If yes, explain below)

(ii) A violation of Federal or State antitrust statutes, including those prohibiting price fixing between competitors, allocation of customers between competitors, and bid rigging.

☐ yes ☐ no (If yes, explain below)

(iii) The commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.

☐ yes ☐ no (If yes, explain below)

(iv) The commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects such person's or organization's present responsibility.

☐ yes ☐ no (If yes, explain below)

C. The applicant, an affiliate of the applicant, or a general partner, officer, owner, or authorized representative of the applicant (as identified in response to Questions 7 and 8 above) has been convicted of or is currently under indictment for any criminal violation of the Federal Water Pollution Control Act; has been convicted of any criminal violation of the Tennessee Water Quality Control Act; or has been convicted of any criminal violation of any other state's water quality or water pollution control act.

☐ yes ☐ no (If yes, explain below)

D. The applicant, an affiliate of the applicant, or a general partner, officer, owner, authorized representative of the applicant (as identified in response to Questions 7 and 8 above) received an enforcement order finding a violation of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other state's water quality or water pollution control act.

☐ yes ☐ no (If yes, explain below)

CONTRACTOR SAFETY HISTORY

19. Complete the required safety information (If requested Contractor must provide supporting information).**A. Provide the information submitted on your OSHA Form 300A (Summary of Work-Related Injuries and Illnesses) and your calculated "Total Recordable Case Rate" and "DART Incidence Rate" for the most recent three (3) years. (Please refer to the USDOL Forms for Recording Work-Related Injuries and Illnesses for additional information)**

YEAR	Total Number (#) of deaths	Total # of cases with days away from work	Total # of cases with job transfer or restriction	Total # of other recordable cases	# of hours worked by all employees	Total Recordable Case Rate	DART Incidence Rate

Explanation required if not applicable

B. Identify the number of TOSHA/OSHA inspections, the number of citations issued, and the total dollar amount of citations for the most recent year.

YEAR	Number (#) of TOSHA/OSHA Inspections	Total # of Citations issued	Total dollar amount of citations (\$)

AFFIDAVIT

_____, being duly sworn, deposes

and says that he/she is _____ of
(Title)

_____,
(Name of Applicant's Organization)

and he/she further states that the answers to the foregoing questions and all statements therein contained are true and correct. A person who makes a false statement in this prequalification is subject to penalties of perjury.

By _____
Signature of Authorized Employee

The authorized employee, whose signature appears on this document, having personally appeared before me, and being sworn, deposes and says that the above statements are true and correct.

Sworn to and subscribed before me this _____ day of _____, _____

(Notary Public)

My commission expires _____ day of _____, _____

(Seal)

ATTACHMENT J

In accordance with T.C.A. § 12-4-707, a prime contractor agrees to pay each subcontractor for work under its subcontract no later than thirty (30) days from receipt of each payment the prime contractor receives from the Department.



Release of payment from TDOT for any work is confirmation that the department has determined the work to have met the standards of satisfactory completion as defined in this brochure. If the prime contractor has concerns about the satisfactory completion of subcontractor work items, bring to the engineer's attention in advance of payment to the prime contractor. This notice may give the prime contractor the option to not release all subcontractor funds within the thirty (30) days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.

In the event of non-payment or incomplete payments, please contact TDOT immediately

DBEs, please contact:

TN Department of Transportation
Civil Rights Office
Small Business Development Program
505 Deaderick St., Suite 1800
James K. Polk Building
Nashville, TN 37243

1-888-370-3647

Non-DBEs/All other subcontractors, please contact:

TN Department of Transportation
Construction Division
505 Deaderick St., Suite 700
James K. Polk Building
Nashville, TN 37243

615-741-2414



PROMPT PAYMENT

PROVISION FOR
SUBCONTRACTORS



John C. Sutter, Commissioner
www.tn.gov/tdot/civil-rights

The prompt payment provision, required by 49 CFR 26, was established so that subcontractors would receive payment in a timely manner for satisfactorily completed work. This regulation is mandatory for any Disadvantaged Business Enterprise (DBE) Program. There is a clause written into the contract to require prime contractors to pay subcontractors for satisfactory performance of their contracts, and this payment must be made no later than 30 days from receipt of each payment made to the prime contractor.

In order to comply with this requirement, TDOT no longer holds retainage from prime contractors, and prohibits prime contractors from holding retainage from its subcontractors. (Effective August 2005)

TDOT added supplemental specifications to the Standard Specifications for Road and Bridge Construction (Subsection 109.02- Scope of Payment) to detail the specifics on Prompt Payment between a prime and subcontractor. This can be accessed from TDOT's website at www.tn.gov/tdot/construction/specs.htm. These specs are included in every contract with subcontracting and is reprinted in full below:

In accordance with TCA, Section 12-4-707, the prime Contractor agrees to pay each subcontractor under this contract for work under its subcontract no later than 30 days from receipt of each payment the prime Contractor receives from the Department. The Contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form." An officer of the contractor shall sign the "Prompt Payment Certification Form." TDOT will hold estimate payments if information is not submitted. Also, all required certifications must be in the field office and accepted before such work is deemed satisfactorily completed. Any delay or postponement of payment from the above

referenced time frame will result in accrual of interest as provided in TCA, 12-4-707 (b).

The Contractor shall not withhold any retainage from progress payments to their subcontractors.

The Tennessee Code allows interest to accrue for late payments to subcontractors

T.C.A. § 12-4-707. Payments to subcontractors — Interest. —

- Upon payment by an agency, a business which has acquired under contract, property or services in connection with its contract with such agency from a subcontractor or supplier shall pay the subcontractor or supplier within thirty (30) days after receiving payment from the agency.
- Interest at the rate of one and one-half percent (1½%) per month shall accrue and is due any subcontractor or supplier who is not paid within thirty (30) days after the business receives payment from the agency, unless otherwise provided by contract between the agency and the business, or by contract between the business and the subcontractor or supplier. Interest begins to accrue on the thirty-first day at the rate specified in this subsection.



Monthly Progress Payments by Contract

NOTE: You can view payments made each month to contracts currently in progress on TDOT's website. Each contract lists when the prime contractor was paid along with payment information. This can be accessed here: www.tn.gov/tdot/construction/progresspayments

Each TDOT Contract with a DBE Goal contains SPI247 - Special Provision Regarding DBE Contract Goal. This includes the following information:

The Contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide Contractor with the Prompt Payment Certification Form. An officer of the contractor shall sign the Prompt Payment Certification Form. TDOT will hold estimate payments if information is not submitted. Reasons for non payment to a DBE could include the following:

- Whether the DBE is performing satisfactorily;
- Whether Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps Contractor is taking to rectify the situation.

In the event the Contractor promptly reports questions on the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering contractor compliance measures.

This provision is found at: www.tn.gov/tdot/construction/Special%20Provisions/1247.pdf

See also construction circular letter 109.02-05 at: www.tn.gov/tdot/construction/Circular_Letters/circletr.pdf

RECOURSE

A subcontractor may file a claim against a Prime Contractor if they believe they were not paid in accordance to the Prompt Payment regulations. A claim form, with instructions, may be downloaded from www.tn.gov/tdot/construction/forms/claimform.pdf

ATTACHMENT K

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
CIVIL RIGHTS OFFICE
TDOT.DBE.Program@TN.gov

TDOT DBE Federal-aid Project Bid DBE Written Commitment Form

Small Business Development Program
Telephone No. 615 741-3681, Fax No. 615-741-3169

YOUR FAILURE TO COMPLETE & RETURN THIS FORM
MAY JEOPARDIZE THE AWARD OF THIS PROJECT

Prime Contractor :

Bid Letting Date:

Contract # & County :

Required DBE Percentage: % \$

Proposed DBE Percentage: % \$

Bid Dollar Amount :

Directions: This section is to be completed by the DBE then emailed or faxed back to the TDOT DBE Program Office within 3 business days. Thank you (Fax No. 615-741-3169 TDOT.DBE.Program@TN.gov)

I, _____ certify that

A. Name of DBE Owner/Authorized Representative B. Name of DBE Contractor

Submitted a bid to the above identified Prime Contractor in the amount of: \$ _____.

The DBE certified work type to be performed for this project includes:

On Contract No.: _____; In County: _____.

I further certify that I am duly authorized to make this certification to the **TDOT DISADVANTAGED BUSINESS ENTERPRISE Program** on behalf of the above named contractor.

SIGNATURE: _____ **DATE:** _____

TITLE: _____

Small Business Development Program
Revised 2/28/2013

email address: TDOT.DBE.Program@TN.gov

ATTACHMENT L

SP1230

SP1230

Sheet 1 of 6

STATE

OF

TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

EQUAL EMPLOYMENT OPPORTUNITY

Reference:

Federal-Aid Highway Program Manual

Transmittal 147, June 26, 1975

Replaces FHWA Order Interim 7-2(1)

Specific Equal Employment Opportunity Responsibilities

GENERAL

- a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA-1273 or PR-1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
 - b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
 - c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, exceeding \$10,000, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors). The contractor will include these requirements in every subcontract exceeding \$10,000 with such modification of language as is necessary to make them binding on the subcontractor.
-

Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, sex, national origin or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Equal Employment Opportunity Officer

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy

- (a) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
 - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.
 - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

- (b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:
 - (1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

- (a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- (b) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- (c) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).
- (d) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

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

- (a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- (c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- (d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion

- (a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- (b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.
- (c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

- (d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- (a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- (b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, religion, sex, national origin or disability .
- (c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the Tennessee Department of Transportation and shall set forth what efforts have been made to obtain such information.
- (d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to age, race, color, religion, sex, national origin or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the Tennessee Department of Transportation.

Subcontracting

- (a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

- (b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

Records and Reports

- (a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
 - (1) The number of minority and non-minority group members and women employed in each work classification on the project.
 - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - (b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.
 - (c) Each contractor and subcontractor shall submit to the Tennessee Department of Transportation an annual report for every July during which work is performed indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391 and is to be received by the Department not later than the 20th of the month following the reporting period.
 - (d) The contractor and/or sub-contractor will be required to complete other reports as instructed by the Engineer.
 - (e) Current estimates may be withheld by the Project Engineer when reports are not received within the above specified time limits.
-

STATE

OF

TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

- 1) As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941
 - d. "Minority" includes:
 - I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);
 - III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
 - 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
-

- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals (including goals and time tables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 - 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goal set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
 - 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.
 - 6) In order for the nonworking training hours of apprentices and the trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
 - 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
-

- (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.
 - (c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7b above.
 - (f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
-

- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.
 - (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.
 - (m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor
-

association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
 - 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of age, race, color, religion, sex, national origin or disability.
 - 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
 - 12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
 - 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
 - 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records
-

shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
-

STATEOFTENNESSEE

Revised 10-19-2012

March 1, 2006 |

SPECIAL PROVISIONREGARDINGNOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTIONTO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

<u>County</u>	Goals for Female Participation <u>in each Trade</u>
All Counties	6.9

<u>County</u>	Goals for Minority Participation <u>for each Trade</u>
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5

<u>County</u>	<u>Goals for Minority Participation for each Trade</u>
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, DeKalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work whether or not it is Federal or federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs at the following address within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation:

U.S. Department of Labor – Regional Office
Office of Federal Contract Compliance Program
61 Forsyth Street, Room 7B75
Atlanta, GA 30303

The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE

OF

TENNESSEE

(Rev. 03-23-09)

(Rev. 05-11-09)

March 1, 2006

SPECIAL PROVISION

REGARDING

TRAINING PROGRAM REQUIREMENTS

Reference:

Federal-Aid Highway Program
Transmittal 147, June 26, 1975
Replaces FHWA Order Interim 7-2(2)

This Training Special Provision supersedes subparagraph 7b of the Special Provision Regarding Equal Employment Opportunity, and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of training hours under this Special Provision will be indicated in the Proposal.

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, however, the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to pre-construction conference, the contractor shall submit to the Tennessee Department of Transportation OJT Program Coordinator for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort

to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision.

This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the Tennessee Department of Transportation and the Federal Highway Administration. The Tennessee Department of Transportation and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, or with a State apprenticeship agency recognized by the Department of Labor and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Office of Apprenticeship, Employment and Training Administration, shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-Aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by Change Order and the AAPO, reimbursement will be made for training persons in excess of the number specified herein.

This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. Failure of the contractor to employ a trainee in the classification he has requested by the time 15 percent of that type work has been performed will be just cause for withholding progress estimates unless the contractor has furnished the AAPO a satisfactory explanation in writing of his failure to do so. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision. However, in no case will the trainee be paid less than the minimum wage shown in the contract for the classification of laborer.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

Payment is to be made under item 109-10.01, Trainee, at the unit price of \$0.80 per hour, for each hour of approved training provided. In any case the number of training hours for which payment is made will not exceed number of hours specified for the approved classification by the approved Training program.

The contractor shall not be permitted to commence construction without an approved training program. Failure of the contractor to provide an approved training program shall not be considered "As a condition not under the control of the contractor" in regards to Contract Time.

S T A T E

O F

Sheet 1 of 1
T E N N E S S E E

(Rev. 06-01-03)
(Rev. 06-23-08)
(Rev. 11-10-08)

March 1, 2006

SPECIAL PROVISION

REGARDING

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of contracts let by the Department. Consequently, the disadvantaged business enterprise requirements of 49 CFR Part 23/26 apply to this contract.

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23/26 to ensure that disadvantaged enterprises, including enterprises owned and controlled by women, have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of age, race, color, religion, national origin, sex or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Office Small Business Development Program copies of any agreements with DBE/WBEs upon execution.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy deemed appropriate by the Department.

STATE

OF

TENNESSEE

(Rev. 12-01-06)
(Rev. 11-10-08)
(Rev. 9-17-11)
(Rev. 4-17-15)

January 1, 2015

SPECIAL PROVISION

REGARDING

DBE CONTRACT GOAL

All contractors shall pursue affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises as set forth in this specification which is imposed pursuant to 49 CFR 26. The bidder shall arrange for the percentage of the work specified on the cover of the Proposal Contract to be performed by Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprises (DBEs) or clearly demonstrate adequate good faith efforts as described herein.

A. Disadvantaged Business Enterprise Policy

The Contractor shall accept as operating policy and include in all subcontract agreements the following statement, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

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 26 in the award and administration of Department 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 Department deems appropriate.

B. Counting DBE Participation toward Meeting Goals

The Contractor shall count DBE participation toward goals in accordance with 49 CFR 26. The Contractor may count toward the goals only expenditures to DBEs that perform a commercially useful function of a contract, including those functions as a subcontractor. 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. 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 (where applicable) and paying for the material itself. Work performed by a DBE firm

in a particular transaction may be counted toward the goal only if the Department determines that it involves a commercially useful function. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. The bidder may count the following DBE expenditures towards the DBE commitment:

1. **Projects where the DBE is the Prime Contractor** - The portions of the contract to be completed by certified DBE firms will be counted toward meeting the goal. Items of the contract subcontracted to non-DBE firms will not be counted in the commitment.
 2. **Portions of a bid from a Joint Venture** - A bid from a joint venture, between a DBE and non-DBE Contractor, shall include an explanation of DBE commitments on DBE Form 1247A, which must be approved by the Department's Civil Rights Office - Small Business Development Program (CRO - SBDP) prior to the Letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to the awarding of the contract.
 3. **DBE Subcontractors** - The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. Cost of materials purchased from or the cost of equipment leased from the Contractor will not count toward the project DBE commitment. Prior written approval must be obtained from the (CRO - SBDP) for any DBE use of the Prime Contractor's personnel or equipment.
 4. **Manufacturers** - The Contractor may count toward the DBE commitment 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE firm produces and supplies goods manufactured from raw materials or substantially alters them before resale.
 5. **Regular Dealers (e.g. Material Suppliers)** - The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the DBE firm performs a commercially useful function in the supply process. For purposes of this section, a regular dealer is a firm that owns; operates; or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates the distribution equipment. If the DBE supplier does not own the distribution equipment, a lease containing the terms of the agreement shall be available and must be approved in writing by the CRO - SBDP.
-

6. **Brokers and Packagers** - Brokers and packagers will not be regarded as regular dealers within the meaning of this section. Only the amounts charged for fees and commissions may be used towards meeting the DBE commitment.
7. **Transportation or Hauling of Materials** –The Department will continue to utilize the trucking regulations under 49 CFR 26.55. This regulation allows for DBE goal hauling-credit in either DBE trucks or in trucks leased to or by DBE firms. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations.
- a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e) 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 the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - f) For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. Leases cannot be Department contract-specific, must be long term, and must be approved by the CRO - SBDP Staff. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
 - g) Prior to hauling, the Contractor and DBE shall provide the Department's Project Supervisor a complete list of trucks that will be used on the project for DBE goal participation. The Department will provide a form that shall be used by the Contractor and the DBE to identify the trucks. A revised list will be required any time the trucks used changes. The Contractor and DBE must be able to adequately document the actual amount of hauling eligible for DBE goal participation.
-

8. **Contracted Labor / Temporary Employment Agencies** – utilization of these services via subcontract will be allowed to count toward DBE goal commitment, in accordance with 49 CFR Part 26.55. The Department will count the entire amount of fees or commissions charged by a DBE for providing a bona fide service. Provided, the Department must find the fee to be reasonable and not excessive as compared to the fees customarily allowed for similar services.
9. **Other Commercially Useful Functions** - The fees paid to certified DBE firms, which are necessary for the completion of the contract and commonplace outside of the DBE program, may be counted towards the commitment.

C. Contract Award Procedures

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage of participation goals set by the Department, the bidder shall, within three (3) business days from the bid openings, propose sufficient additional DBE participation to meet the goal or shall clearly demonstrate by documentation that good faith efforts were made to meet the goal.

1. Bidder's Responsibility

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

The Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

2. DBE's Responsibility

In order to receive goal credit on a TDOT project, a DBE must perform a commercially useful function through execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself.

Before bidding and subsequently entering into a contract (as a contractor or subcontractor), the DBE should consider the scope and size of the project, as well as if they are certified to receive credit for the type of work performed. As with any contract, this is a legally binding document and should be executed to the best of one's ability. However, should a DBE ever have to withdraw from a contract, they should provide the CRO-SBDP and Prime Contractor with written documentation.

A DBE should only withdraw when there is no other option, as non-completion of their duties may result in temporary disqualification of a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or becoming an approved subcontractor, as outlined in Chapter 1680-5-3 of the Rules of The Tennessee Department of Transportation.

3. Proposals with Established Project DBE Goals

For proposals with established project goals, the bidder will be required to complete computer generated Form 1247A. The bidder shall list the following information on Form 1247A that is submitted:

- a. All DBE firms being used or being considered for use as part of the bidder's DBE commitment.
- b. The work classification(s) for each DBE on the contract.
- c. The "Amount to DBE" which has been committed to each DBE firm which will be used on the contract.

The completed DBE Form 1247A form shall be submitted within three (3) business days of the Letting. Failure to provide a completed form or documentation clearly evidencing a good faith effort, as detailed in Section 4 below, within three (3) business days of the Letting may cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access this information on the DBE list by viewing the Department's website or the certified DBE listing.

When DBE goal projects are involved and the Prime Contractor subcontracts to a non-DBE, and the non-DBE subcontractor in turn subcontracts to a DBE as a second tier subcontractor, the Prime Contractor must affirm in writing his/her knowledge and approval of such an arrangement. Recognition of a second tier arrangement with a DBE subcontractor for goal work must be forwarded to the Director of the CRO - SBDP for verification, in writing, prior to any work performed by the DBE which will be counted toward the goal.

4. Bidder Selection and Good Faith Efforts

- a. Bidders shall submit proposals that meet the DBE goal or shall submit documentation clearly evidencing that they made a good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as Prime Contractors will be considered to have met the goal.
 - b. The following are illustrative of factors which will be considered in determining whether the bidder has made adequate good faith efforts:
 - 1) Whether the bidder selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.
-

- 2) Whether the bidder provided notice to a reasonable number of specific DBEs, including those not regularly used by the bidder, that their participation in the contract is being solicited in sufficient time to allow them to participate effectively.
 - 3) Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
 - 4) Whether the bidder advertised in general circulation, trade association, or minority-focus media concerning participation opportunities or effectively used the services of available minority, community organizations, minority contractors groups, local, state or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.
 - 5) Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
 - 6) Whether the bidder made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.
 - 7) Whether the bidder submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet contract goal.
 - 8) Whether the bidder has adequate records of its contacts and negotiations with DBEs
- c) If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award.
 - d) Failure of the bidder to meet the DBE goal in its bid or failure to provide documentation clearly evidencing good faith efforts to meet the goal, may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but in liquidation of damages sustained.

As soon as practical after award of the contract, the Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the respective Project Supervisor and the CRO- SBDP Director. No progress estimate shall be processed until this information is received.

5. Joint Checking Allowance for DBE

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted, by the DBE, to the CRO - SBDP prior to the contract agreement.

The following are some general conditions that must be met regarding joint check use:

- a. The second party (typically the prime contractor) acts solely as a guarantor.
- b. The DBE must release the check to the supplier.
- c. The use of joint checks must be a commonly recognized business practice in the industry.
- d. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1)
- e. The DBE is not required to use a specific supplier nor the Prime Contractor's negotiated unit price.
- f. The DBE shall submit receipt/copy of cancelled checks to the CRO - SBDP.

D. Construction Period Requirements**1. Process for Removal of a DBE**

At no time shall a DBE be removed or substituted without prior written confirmation from the CRO-SBDP. Before terminating and/or substituting a DBE subcontractor on a project with SP1247 included in the Contract Proposal, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's CRO-SBDP, of its intent to request to terminate and/or substitute, and the reason for the request.

The Prime Contractor must then give the DBE five (5) days to respond to the Prime Contractor's notice. The DBE shall then advise TDOT's CRO - SBDP and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the CRO - SBDP should not approve the Prime Contractor's action. If approval is granted for removal, the TDOT CRO - SBDP will submit a letter to the Contractor and the DBE. Good faith efforts shall then 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 established.

The Prime Contractor has the responsibility to comply with 49 CFR 26.53 (f) and all applicable policies and regulation.

Reasons for termination and/or substitution must meet the reasons for good cause as outlined in the current 49 CFR 26.53(f), which include, but are not limited to, the following circumstances:

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirement.
- (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v). The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (vi) The Department determined that the listed DBE subcontractor is not a responsible contractor;
- (vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (viii) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (x) Other documented good cause that the Department determines to compel 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.

Each prime contract includes a provision for appropriate administrative remedies that will be invoked if the Prime Contractor fails to comply with the requirements of this section.

2. Brokering of work by DBEs is not allowed and is a material breach of contract. A DBE firm involved in brokering of work may have their certification removed or suspended. Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 100.20. Contractor shall place this provision in all subcontracts with DBEs.
3. A Department Project Supervisor/Inspector shall complete a Commercially Useful Function (CUF) Checklist to document the first date of work, work items, equipment, and forces of each DBE.
4. The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with a computer generated Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return via email to DBE.Runningtally@tn.gov. The Department will hold estimate payments if information is not submitted. Reasons for non-payment to a DBE could include the following:
 - a) Whether the DBE is performing satisfactorily;
 - b) Whether the Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps the Contractor is taking to rectify the situation.

In the event the Contractor promptly reports questions on the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering Contractor compliance measures as described below.

E. Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Project Engineer and CRO-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in the suspension of bidder qualifications. The final estimate will not be paid to the Contractor until proper certifications have been made.

F. Required Records

The Prime Contractor and all subcontractors shall retain, for a period of not less than 3 years after final acceptance of a project, copies of canceled checks or other documentation that

substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

G. Contractor Compliance

1. It is the intent of this Special Provision to require the Contractor to take full responsibility for the performance of a commercially useful function by all DBE subcontractors, manufacturers and materials suppliers who work on the project and are counted by the Contractor toward the project DBE goal. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved (49 CFR 26).
 2. If the Contractor fails to comply with this Special Provision 1247, the Department may take one or a combination of the following steps:
 - 1) Require the Contractor to have its entire management staff attend DBE training arranged by the Department and paid by the Contractor.
 - 2) The next bid when the Contractor is the low bidder on a DBE goal project, require that Contractor to achieve a DBE participation that is twice the stated goal.
 - 3) For the Contractor's failure to find another DBE subcontractor to substitute a DBE that is terminated or fails to complete its work on the contract for any reason or to provide the CRO - SBDP documentation clearly evidencing good faith efforts, as detailed in D.1. above, then the Department may withhold from the Contractor an amount not to exceed the amount of money originally committed to the non-complying DBE subcontractor, not as a penalty but as liquidated damages.
 - 4) Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.
 - 5) For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.
 - 6) Invoke other remedies available by law and/or in the contract.
 - 7) Invoke remedy agreed upon by the Commissioner and Contractor in writing.
-

FHWA 1273- Required Contract Provisions for Federal-Aid Construction Contracts

These provisions are included in all TDOT contracts utilizing Federal Funding

(Page 1 of 12 included below)

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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



**Tennessee Department of Transportation
Title VI Assurances – Appendix A**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Tennessee Department of Transportation) Or the (Federal Highway Administration) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the (Tennessee Department of Transportation), or the (Federal Highway Administration) as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, the (Tennessee Department of

Transportation) shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Tennessee Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (Tennessee Department of Transportation), and , in addition, the contractor may request the United States to enter into such litigation to protect the interests of the Unites States.

ATTACHMENT N

CIRCULAR LETTER

SECTION: 109.02 SCOPE OF PAYMENT
NUMBER: 109.02-05
SUBJECT: CERTIFICATION OF PROMPT PAYMENT AND DBE/SBE SUMMARY
DATE: SEPTEMBER 1, 2012

The Standard Specifications, in accordance with **TCA, Section 12-4-707**, and 49 CFR 26.29 requires the Prime Contractor to pay each subcontractor and material supplier no later than 30 days from receipt of each payment the Prime Contractor receives from the Department. In addition, all subcontractors, at all tiers, must make payment no later than 30 days to each subcontractor and material supplier for work and/or material provided for the project once they receive payment from the prime contractor or subcontractor.

In order to validate this payment, the Prime Contractor shall certify each month that these payments have been made. The certification shall run no more than 2 months in arrears. If circumstances arise where payment to the subcontractors has not been made, the Prime Contractor shall list reasons for nonpayment and note whether or not the subcontractors are Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE)* in the exception block. Also, the Prime Contractor shall be required to list all subcontractors or material suppliers where joint checks are utilized and note whether or not the subcontractors or material suppliers are DBEs/SBEs in the joint checks box.

Once completed by the contractor, the Certification Regarding Prompt Payment to Subcontractors and Material Suppliers and DBE/SBE Payment Summary shall be submitted electronically to the Project Supervisor. If DBEs/SBEs are utilized on the project and listed on the Certification Regarding Prompt Payment to Subcontractors and Material Suppliers and DBE/SBE Payment Summary, then the completed form shall also be submitted by email to the Small Business Development/DBE Office (DBE.runningtally@tn.gov). Copies of joint checks for DBEs/SBEs shall be attached to the email.

When exceptions or joint check subcontractors are listed, the Project Supervisor shall forward copies of the Certification to the Director of Construction and the Regional Construction office.

Monthly progress payments shall not be processed without this certification.

Use of the form Certification Regarding Prompt Payment to Subcontractors and Material Suppliers and DBE/SBE Payment Summary is required for contracts beginning with the September 14, 2012 Letting.

* Small Business Enterprise (SBE) as certified with the Governor's Office of Diversity Business Enterprise's Go-DBE System. All small businesses are encouraged to apply for certification with the Go-DBE System. More information is available at www.tennessee.gov/diversity.



**TENNESSEE DEPARTMENT OF TRANSPORTATION
CERTIFICATION REGARDING
PROMPT PAYMENT TO SUBCONTRACTORS AND MATERIAL SUPPLIERS
AND DBE/SBE PAYMENT SUMMARY**

Contract Number		Contractor		Report Period
Project Number		County		From:
Contract Amount		DBE Goal		To:

I certify that to the best of my knowledge, for the report period denoted above, that all subcontractors and material suppliers have been paid for the quantities estimated and paid to date by the Department. I have listed exceptions and reasons for non-payment to Subcontractors and where joint checks were utilized, as provided below. (TCA 12-4-707D & Section 109.02)

Subcontractor Name	Reason for Non-Payment

Only complete the following if joint checks were utilized:

Subcontractor or Material Supplier	DBE/SBE*	Payment Amount	Date	Payments made to date

Also, I certify that the following DBE/SBE* were paid the amounts listed during this estimate period.

DBE/SBE* Subcontractor or Material Supplier	DBE/SBE*	Payment Amount	Payment Date	Payment to Date

* SBE status should be used only if the firm is certified as a Small Business with the TN Go-DBE. www.tennessee.gov/diversity
Electronic submission of this form certifies the information contained within.

Certified by

Title

Date

ATTACHMENT O

Newsletter archive: www.tdot.state.tn.us/civil-rights/smallbusiness/newsletters.htm



In This Issue

- 2-3 How Will the Affordable Care Act Impact Your Business?
- 3 Affordable Care Act Workshop
- 4 Finding YOUR Right Solution
- 5 Guide to Bidding TDOT
- 6-7 DBE Profiles
- 8 2014 TDOT DBE Small Business Annual Meeting
- 9 New DBEs
- 9 Recently Renewed Firms
- 10 2014 Letting Dates

TDOT CIVIL RIGHTS OFFICE
Small Business Development Program
505 Deaderick Street, Suite 1800
James K. Polk Building
Nashville, Tennessee 37243
(615) 741-3681 or 888-370-3647

John C. Schroer
Commissioner of Transportation

Deborah Luter
Director of TDOT's Civil Rights Office

Elizabeth Michael
Director of the Small Business Development Program

DBE Supportive Services
Tyler Construction Engineers, P.C.
1-888-385-9022
DBE Supportive Services

We Welcome Change!

With our recent weather conditions this past winter, it's a joy for us to welcome springtime once again! It seems as though it was just the other day we were talking about moving our clocks in one direction and now we have moved them in another. This time they want us to spring forward, while some people are suggesting we don't "spring forward" or "fall back" again but simply remain on one constant time for the entire year! Psychologists would probably say it is human nature to resist change.

Speaking of change, there have been a few changes here in the Civil Rights Office.

Effective February 10, Deborah Luter was promoted to the Director of TDOT's Civil Rights Office. As many of you may know she has been the DBE Program Director for the past 13 years and has enjoyed it tremendously. Now, in addition to her involvement with the Small Business Development Program, her new responsibilities includes oversight of the Affirmative Action and Title VI programs.

Another change is Deborah's former position. Effective March 11, Elizabeth Michael was promoted as the Director of the Small Business Development Program. Elizabeth joined TDOT after having worked various HR administration positions in the Jacksonville and Tallahassee, Florida areas and has worked in the Contract Compliance Officer Three position for almost 4 years. Her interaction with both prime and DBE contractors should prove invaluable as she takes the reins and charts a new course.

Even though Elizabeth and Deborah have assumed new titles, responsibilities and telephone numbers, they are still first and foremost advocates for small and minority owned businesses. Their goal will always be that TDOT DBEs achieve the greatest amount of access and support in an industry not typically open to historically underutilized segments of the population.

As they do their best in continuing to serve your needs, they hope you will join them as we "Spring Forward" in 2014. **Congratulations Deborah and Elizabeth!**

Deborah Luter
Director of TDOT's Civil Rights Office



Elizabeth Michael
Director of the Small Business Development Program



www.tn.gov/tdot/civil-rights/smallbusiness

2

How Will the Affordable Care Act Impact Your Business?

Teresa Daniel, PHR, Human Resource Specialist

As a small business owner, you have probably seen much written on the HealthCare Reform Law/Affordable Care Act (ACA) and the proposed impact on the small business community.

Therefore, for the purpose of this article, we will simply focus on the following: (1) a reminder of a few key points regarding the ACA; (2) the importance of partnering with your legal and tax advisors to ensure compliance with the ACA; and last but not least (3) assisting you with building an ACA Tool Box of resources that will enable you to stay current on the rapidly changing ACA and the health insurance environment. In addition, it is important to understand the purpose of this article is to provide a general overview and a few key reminders of the ACA and is in no way intended to interpret the law, replace the law or substitute the advice from your legal and tax advisors.

First, let's review a few key points and reminders. It is important to note that the size of your business and the number of employees you have will determine how the ACA may impact your business. Also, for thorough compliance, we strongly recommend that you refer to the full version of the Affordable Care Act at the Department of Health and Human Services website: www.hhs.gov.

- Effective October 1, 2013 employers covered by the Fair Labor Standards Act (FLSA) are required to notify employees about the Health Insurance Marketplace. A full review of the notification requirements and forms can be found at The Department of Labor: www.dol.gov.
- Effective January 1, 2014 Sole Proprietors/Self Employed individuals are required to have minimal health insurance coverage or may be required to pay a penalty. For all tax regulations visit www.irs.gov and consult your tax advisor regarding how the law will apply to your specific business.
- Employers with fewer than 50 employees are not required to offer employer health insurance coverage to their employees. However, if these employers decide to offer insurance, they may be able to take advantage of a tax credit depending on business size and annual average salary of employees. Tax Credit Eligibility is determined by the Internal Revenue Service (IRS). For all tax regulations regarding the ACA refer to www.irs.gov and consult your tax advisor regarding how the law will apply to your specific business.
- Employers with 50 or more Full Time Equivalent (FTE) employees will be required to offer coverage and meet the

ACA Employers Shared Responsibilities (ESR) Provisions of the ACA by mid-2015 or face a fine. Please refer to the complete ESR Provisions, Transition Relief for 2015, and Certification Requirements at www.hhs.gov. Review with your legal and tax advisor to ensure compliance.

- For the purpose of the ESR Provisions of the ACA, the terms **Full-time Employee** and **Full-Time Equivalent (FTE) Employee** are defined as follows: A Full-Time Employee is an employee who is employed on average 30 hours or more per week or at least 130 hours of service in a given month. A FTE Employee is a combination of part-time employees (each employed less than 30 hours per week), whose combined work hours are counted as the equivalent of a full-time employee. Example: two employees who work 15 hours per week each are added together to equal one full-time employee. Please refer to www.irs.gov and your tax advisor regarding accurate calculation of employee totals to ensure compliance.

- Employers with up to 50 FTE employees may utilize the SHOP (Small Business Healthcare Options Program) Insurance Marketplace to purchase health insurance coverage for their employees. For a full review of SHOP, please visit www.healthcare.gov/marketplace/shop.

Second, as a DBE owner, you bring your own brand and value to the marketplace. You have specific circumstances that relate to your specific business needs. As we mentioned earlier, this article and all included references are not intended to interpret or replace the law but to serve as a reference tool. In no way should this be considered a substitute for legal and/or tax advisor advice. With that said, we have highlighted the following points to assist you;

- Always refer to the complete Affordable Care Act at www.hhs.gov for full compliance.
- Partner with your legal and tax advisors to ensure ongoing compliance regarding Tax Credits, ESR Provisions, and overall minimum requirements of the law.
- Also as a reminder, the IRS has issued specific guidelines regarding tax credits and calculation methods for business owner to determine their responsibility and how to comply with the law.
- Partner with a reputable and effective insurance agent or broker well versed in the ACA to guide and assist you with navigating the insurance marketplace to find the best coverage plan for your employees.
- Discuss your budget, needs of employees, and your overall business goals regarding benefits with your agent or broker.

Continued on page 3

CIVIL RIGHTS MISSION STATEMENT: The Mission of the Civil Rights Office is to ensure adherence to Equal Employment Opportunity, Title VI and Small and Disadvantaged Business Initiatives.

ATTACHMENT P



**TENNESSEE DEPARTMENT OF TRANSPORTATION
CERTIFICATION REGARDING
SUBCONTRACTOR BID QUOTES**

[illegible]

* SBE status should be used only if the firm is certified as a Small Business with the TN Go-DBE. www.tennessee.gov/diversity

- Electronic submission of this form certifies the accuracy and completeness of information contained within.
- Please email this form to Subcontractor Bid Quotes to BiddersList@tn.gov

Certified by	Date	Title
--------------	------	-------