

POLICY STATEMENT

FINAL- UPDATED December 2022

OBJECTIVES/POLICY STATEMENT

Section 26.1, 26.23

The Woodlands Township ("Township") has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the Federal Transit Administration (FTA). The Township has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Township has signed an assurance that it will comply with Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, 49 CFR Part 26.

It is the policy of the Township to facilitate, and assure that each Prime or Subcontractor participating on Township DOT-assisted contracts will facilitate DBE participation by:

1. Complying with 49 CFR Part 26;
2. Not discriminating on the basis of race, color, sex, or national origin;
3. Implementing the Township's DBE program; and
4. Verifying DBE Certification.

The Director of Transportation & Infrastructure has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the Director of Transportation and Infrastructure is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Township in its financial assistance agreements with the DOT and FTA.

The Township has disseminated this policy statement to the Board of Directors and all transit-related components within the Township. The Township will distribute this statement to DBE and non-DBE business communities that perform work for the Township on DOT/FTA-assisted contracts. This statement shall be included in all DOT/FTA-funded solicitation packages and communicated to local business groups and governments, chambers, and/or community organizations.



Monique Sharp
President / Chief Executive Officer
The Woodlands Township



Date

GENERAL REQUIREMENTS

Objectives – Section 26.1

The objectives are found in the policy statement on the first page of this program. The objectives of a DBE program, as listed in 49 CFR part 26.1, include:

- “To ensure nondiscrimination in the award and administration of U.S. DOT/FTA-assisted contracts in the transit financial assistance programs;
- To create a level-playing field on which DBEs can compete fairly for U.S. DOT/FTA-assisted contracts;
- To ensure that the Township’s DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part’s eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in U.S. DOT/FTA-assisted contracts;
- To assist the develop of firms that can compete successfully in the marketplace outside the DBE Program; and
- To provide appropriate flexibility to recipients of federal financial as assistance in establishing and providing opportunities for DBEs.”

The Township strives to achieve the listed objectives through this DBE Program.

Applicability – Section 26.3

The Township is the recipient of FTA funds authorized by Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fixing America’s Surface Transportation Act (FAST Act) and all extensions.

Definitions – Section 26.5

The Township accepts the definitions contained in 49 CFR Section 26.5 for this program.

Non-discrimination Requirements – Section 26.7

The Township will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Township will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Reporting and Record Keeping Requirements – Section 26.11

Reporting to FTA: 26.11(b)

The Township will report DBE participation to FTA on a semi-annual basis using the Uniform Report of DBE Awards or Commitments and Payments Form through the Transit Asset Management System (TrAMS).

Bidders List: 26.11(c)

The Township will create a bidders list, consisting of information about all DBE and non-DBE firms that wish to respond to, bid or quote on DOT/FTA-assisted contracts. The purpose of this requirement is to allow use of the bidders’ list approach to calculating overall goals. The bidders’ list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of the firms.

The Township will collect this information either by electronic means via the internet for advertised solicitations, or through the procurement process requiring prime respondent, bidder, or contractor to report the name, address, DBE, SBE, or non-DBE status, age, and annual gross receipts of all firms who propose or bid on procurement.

Assurances – Section 26.13

Every financial assistance agreement the Township signs with the DOT or FTA will include the following assurance per 26.13(a):

The Township shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA-assisted contract, in the administration of its DBE program, or the requirements of 49 CFR Part 26. The Township shall take all necessary and reasonable steps under Part 26 to ensure nondiscrimination in the award and administration of DOT/FTA-assisted contracts. The Township's DBE program, as required by Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Each contract the Township signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) or sub-recipient must include the following assurance per 26.13(b):

The contractor, subcontractor or sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT/FTA-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

ADMINISTRATIVE REQUIREMENTS

DBE Program Updates – Section 26.21

Since the Township has received, or will receive, a grant of \$250,000 or more in DOT or FTA planning capital, and/or operating assistance, the Township will continue to carry out this program until all funds from DOT financial assistance have been expended. The Township will provide to DOT updates representing significant changes in the program on an as needed basis.

Policy Statement – Section 26.23

The Policy Statement is provided on the first page of this program document.

DBE Liaison Officer (DBELO) – Section 26.25

The DBELO is responsible for implementing all aspects of the Township's DBE program. The DBELO has direct, independent access to the Township's President/General Manager concerning DBE program matters. An organization chart showing the DBELO's position in the organization is found in **Attachment A**. The Township has designated the following individual as the Township's DBELO:

Ruthanne Haut
Director – Transportation & Infrastructure
2801 Technology Forest Blvd.
The Woodlands, TX 77381
281-210-2019
rhaut@thewoodlandstowship-tx.gov

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO will have a staff of three (3) additional person to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT for the DBE Program.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with the finance, transportation, and purchasing departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner during the procurement process.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and, if necessary, contract specific goals attainment) and identifies ways to improve progress.
6. Analyzes the Township's progress toward goal attainment and identifies ways to improve progress.
7. Advises the President/CEO and Township Board of Directors on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding, and insurance.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.
10. Utilizes the Texas Unified Certification Program (TUCP), when necessary.
11. Analyzes shortfall if the overall goal is not reached. If required, the DBELO will develop a corrective action plan and submit the plan to DOT/FTA through the Triennial Review process.

DBE Financial Institutions – Section 26.27

The DBELO has thoroughly investigated the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the service area on the Federal Board's compilation of Minority-Owned Banks website, <http://www.federalreserve.gov/releases/mob>.

Additionally, the Township will make reasonable efforts to use these institutions and encourage prime contractors to use such institutions either through reference to the Township DBE Program or by including such language in solicitations.

Prompt Payment Mechanisms – Section 26.29

Prompt Payment: 26.29(a)

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

The Contractor shall pay all subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after the Contractor's receipt of payment from the Township for that work.

After 10 days, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is equal to the sum of one (1) percent and the prime rate, as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. The rate of interest is stated on the Texas Comptroller of Public Accounts' Prompt Payment Overview of Requirements, https://fm.x.cpa.state.tx.us/fm/pubs/purchase/prompt_pay/index.php?section=overview&page=rate

Retainage: 26.29(b)

The Contractor shall return retainage payments to each subcontractor no later than 10 days after receipt of incremental retainage payments from the Township. Any delay or postponement of payment from this time frame may occur only for good cause following

written approval of the Township. This clause applies to DBE, SBE, and non-DBE subcontracts.

Reporting

Contractor shall report DBE participation on a monthly basis on the Contractor Payment Report Form, **Attachment D**.

Monitoring and Enforcement: 26.29(d)

The Township has established a monthly Contractor Payment Report Form to monitor and enforce that prompt payment and return of retainage is in fact occurring. All DBE subcontractors are required to be tracked on the Contractor Payment Report Form. The Township will review this form when it is submitted and perform periodic checks via phone call to the subcontractor or project site visit with subcontractors to ensure Contractor Payment Report Form reporting matches payment. Any Failure to promptly pay subcontractors may incur the following activities:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
2. Work stoppage; and
3. Termination, suspension , or cancellation of the contract in whole or in part.

With prior written approval from the Township, a prime contractor may delay or postpone payment to a subcontractor for good cause.

Directory – Section 26.31

The Township provides instructions to potential bidders to access the State of Texas's online Uniform Certification Program Directory (TUCP), which identifies all firms eligible to participate as DBEs, and TxDOT's Small Business Enterprise Program Directory, which identifies all firms eligible to participate as SBEs. These directories list the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

The TUCP Directory is incorporated by web addresses in **Attachment B**.

Overconcentration – Section 26.33

There is an undue burden on non-DBEs if there is an overconcentration of in a certain type of work opportunity. The Township has not identified that overconcentration exists in the types of work that DBEs perform. If such overconcentration is identified, the Township will employ mechanisms and approvals for remedy per 26.33(a) and (b). The Township will re-evaluate for over concentration every three (3) years.

Business Development Programs – Section 26.35

The Township has not established a business development program. The Township will re-evaluate the need for a business development program every three (3) years.

Monitoring and Enforcement Mechanisms – Section 26.37

The Township shall employ mechanisms of enforcement as may be accorded to by Federal, State, and Local laws. See **Attachment C**, Monitoring and Enforcement.

Small Business Participation – Section 26.39

Business Size

The Township will require prime bidders/offerors to verify that subcontractors participating as Small Business meet the criteria as set forth by the Small Business Administration, and periodically independently verify such claims. The SBA small business size standards for employees and annual firm receipts are located at: <https://www.sba.gov/content/summary-size-standards-industry-sector>.

Encouraging Participation

The Township will endeavor to facilitate competition on DOT-assisted projects by small business concerns (both DBEs and non-DBE small businesses) either by: unbundling large contracts; and, encouraging bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation. Additionally, The Woodlands Township plans to award additional points for proposals or bids that show a viable DBE strategy that meets the Township's goal.

For contracts without DBE contract goals, the Township may require prime contractors to identify subcontracting opportunities that small businesses can reasonably perform, rather than self-performing all the work. During the procurement process and subsequent contract, and in order to meet the requirements of 26.39, the bidder/offeror may be required to:

- Identify work for small businesses and attempt to subcontract the work with small businesses. If the contractor cannot subcontract with a small business, then the contractor will be required to submit proof of their good faith efforts to find small businesses to perform the work;
- Verify the small business is eligible to participate as a small business.
- Submit Form 1: Disadvantaged Business Enterprise/Small Business Enterprise Utilization form (**Attachment D**) with the bid or proposal;
- Submit Form 2: Disadvantaged Business Enterprise/Small Business Enterprise Letter of Intent (**Attachment D**), which is completed by the small business, with the bid or proposal.

Outreach efforts include pro-active methods, including but not limited to soliciting bids or proposals from SBEs when the contract sizes allow them to have a SBE as a prime contractor; encouraging participation in pre-bid and pre-proposal meetings for subcontracting opportunities when contract sizes are larger; inviting SBEs to DBE Public Participation meetings; and providing information on becoming Certified SBE when requested.

Identifying Certified Small Businesses

The Township recognizes, through reciprocity, the Small Business Certification process employed by the Harris County Metropolitan Transit Authority (METRO). METRO's Small Business Program and a listing of certified small businesses can be located at: <https://ridemetro.sbdbe.com/>.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas – Section 26.43

The Township does not use set-asides and/or quotas in the administration of the Township's DBE program.

Overall Goals – Section 26.45

General Policy

In accordance with Section 26.45(f) the Township will submit its overall goal to the FTA by August 1st at three (3) year intervals based on a schedule as specified by DOT. The Township may adjust the three-year overall goal during the three-year period to reflect changed circumstance with FTA approval.

As part of establishing the overall goal every three (3) years, the Township will review local demographics, agencies and organizations, trade groups, and local contractors to determine the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and Township's efforts to improve the participation of DBEs.

Following the consultation, the Township will publish a notice of the proposed overall goal on the Township's website for a comment period. The notice will inform the public about the proposed goal, the rationale for establishing the goal and an address where comments can be sent. At the end of the public comment period, the Township will adopt the goal and submit an updated policy to the FTA. The Township's goal submission to FTA will include the comments received during the public comment process and the Township's responses, if needed. The Township will begin using the overall goal on October 1 of the year adopted unless the Township receives other instructions from FTA.

Overall Goal

The Township has established an overall goal for DBE participation on DOT-assisted contracts based on contracts anticipated and programmed to be solicited over the three (3) years identified. The DBE Goal can be obtained via request.

Methodology

The Township's goal is based on the availability of DBEs ready, willing, and able to perform on contacts as indicated in the "Overall Goal" section above.

Specifically:

- The Township identified the total number of establishments (by NAICS code) from the U.S. Census County Business Patterns data;
- The Township identified a three-year forecast of contracts likely to be let, broken down by work category (NAICS code), and each contract's percentage of the overall amount (dollars) of work;
- The Township identified the relative availability of DBEs ready, willing, and able (by NAICS code) to perform the work anticipated to be let;
- A Base Figure was calculated using weighting;
- Adjustments were taken into consideration (based on previous goal); and,
- An adjusted overall goal was established.

Goal Setting and Accountability – Section 26.47

If the awards and commitments shown on the Township's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal, the Township will conduct a DBE Shortfall Analysis which would include:

- Analyzing in detail the reasons for the difference between the overall goal and the actual awards/commitments; and,
- Establish specific steps and milestones for the next fiscal year to correct the problems identified.

Transit Vehicle Manufacturers Goals – Section 26.49

The Township will require each transit vehicle manufacturer, as a condition of being authorized to propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of Section 26.49.

The Township will only utilize those transit vehicle manufacturers (TVMs) listed on the FTA's certified list of TVMs or those that have submitted a goal methodology to FTA.

Within thirty (30) days of making an award, the Township will submit the name of the successful bidder and the total dollar value of the contract through the reporting website provided by the FTA.

With FTA approval, the Township may establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the TVM guidelines.

Race-Neutral and Race-Conscious Participation – Section 26.51

The breakout of estimated race-neutral participation can be found in DBE Goal Setting. The DBE Goal Setting will be updated every three years.

Race Neutral Measures include, but are not limited to:

- Pre-bid and advertisement notifications of prime or subcontracting opportunities
- Listing of the aspirational DBE Program Goal in all procurements
- Outreach efforts to business organizations and listed DBEs on the TUCP
- Providing information about becoming a registered DBE to current contractors
- Facilitating relationships between DBEs and Prime Contractors, if requested

In race neutral procurements, the Township will request the prime contractors to identify DBE participation in their subcontractors. If the prime contractor is a DBE, the Township requests the information in their bid package.

In race conscious procurements, the Township will identify the contract goal in the procurement. The respondent will be required to submit the following information:

- The names and addresses of subcontractors that will participate in the contract;
- A description of the work that each subcontractor will perform;
- Whether the firm is a DBE, SBE, or non-DBE;
- The ethnic code, as described in the form;
- The age of the firm;
- The annual gross receipts from the firm;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE or SBE 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.

Written and signed confirmation from the DBE or SBE that it is participating in the contract as provided in the prime contractor’s commitment.

Good Faith Efforts Procedures – Section 26.53

Good faith efforts will be used for race-conscious measures.

Demonstration of Good Faith Efforts (26.53(a) & (c))

The Township will deny award of a contract to a bidder/offeror that does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder/offeror to demonstrate it has made sufficient good faith efforts prior to submission of its bid. The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

Information to be Submitted (26.53(b))

For all DOT-assisted contracts for which a contract goal has been established, the Township will require the bidders/offerors to submit the following information:

- The names and addresses of subcontractors that will participate in the contract;
- A description of the work that each subcontractor will perform;
- Whether the firm is a DBE, non-DBE, or a Small Business;
- The ethnic code, as described in the form;
- The age of the firm;

- The annual gross receipts from the firm;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal (**Attachment D, Form 1**);
- Written and signed confirmation from the DBE or the Small Business that it is participating in the contract as provided in the prime contractor's commitment (**Attachment D, Form 2**) and
- If the contract goal is not met, evidence of good faith efforts by the Prime.

The Township will set the timeline to provide this information in each procurement that has a DBE Contract Goal. The information above is to be submitted no later than five (5) days after the bid opening for all projects.

Administrative Reconsideration (26.53(d))

Within 15 days of being informed by the Township that it is not responsive because it has not documented sufficient good faith efforts, a respondent may request administrative reconsideration. Respondents should make this request in writing to the following reconsideration official:

Ms. Kellan Shaw
 Administrative Reconsideration Official
 2801 Technology Forest Blvd.
 Township, TX 77381
 Phone 281-210-3800
 E-mail: KShaw@thewoodlandstowship-tx.gov

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

As part of this reconsideration, the respondent 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 respondent will have the opportunity to meet in person with the Township's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Township will send the respondent 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 FTA or DOT.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract (26.53(f))

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

The prime contractor must give notice in writing to the DBE subcontractor of its intent to terminate before transmitting its request to terminate the DBE or substitute a DBE subcontractor to the Township. A copy of this notice must be provided to the Township prior to consideration of the request to terminate or substitute. The DBE subcontractor will then have five (5) days to respond and advise the prime contractor of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's subcontract, the Township will require the prime contractor to make good faith efforts to replace a DBE subcontractor that is terminated or has otherwise failed to complete its work on a contract with another certified DBE subcontractor, to the extent needed to meet the contract goal. If the prime contractor is unable to find another DBE subcontractor to perform the work, the Township will require the prime contractor to obtain the Township's prior approval to substituting a non-DBE subcontractor and provide documentation of good faith efforts.

If the prime contractor fails or refuses to comply with the good faith efforts to terminate or replace a DBE subcontractor, then the Township may take action against the prime contractor as defined in **Attachment C, Monitoring and Enforcement**.

Sample Bid Specification:

*The requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs, apply to this contract. It is the policy of the Township to practice nondiscrimination based on race, color, national origin, or sex, in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of **six percent (6%)** has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (**Attachment D**), to meet the contract goal for DBE participation in the performance of this contract.*

The bidder/offeror will be required to submit the following information:

- *The names and addresses of subcontractors that will participate in the contract;*
- *A description of the work that each subcontractor will perform;*
- *Whether the firm is a DBE, SBE, or non-DBE;*
- *The ethnic code, as described in the form;*
- *The age of the firm;*
- *The annual gross receipts from the firm;*
- *The dollar amount of the participation of each DBE firm participating;*
- *Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*
- *Written and signed confirmation from the DBE or SBE 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.*

Counting DBE Participation: Section 26.55

The Township will count DBE participation toward overall and contract goals as provided in Section 26.55.

CERTIFICATION STANDARDS

Unified Certification Program: Section 26.81

The Woodlands Township is NOT a certifying agency. A listing of certifying agencies can be found in **Attachment B**. For DBE certification standards please refer to the Texas Unified Certification Program (TUCP).

All certification activities should be submitted to the TUCP certifying entity that services the Texas county in which the business' home or corporate headquarters is located. The appropriate TUCP certifying agency and contact information for businesses located in Harris County is listed below:

City of Houston
Office of Business Opportunity
Marsha Murray, Director
611 Walker, 7th Floor
Houston, TX 77002
PHONE: 832.393.0600
FAX: 832.393.0646
E-Mail: director.obo@houstontx.gov
www.houstontx.gov/obo/

Procedures for Certification Decisions – Section 26.83-26.91

The Township will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of TUCP's certification procedures is included in **Attachment G**, and/or is available at: <https://www.txdot.gov/inside-txdot/office/civil-rights/tucp.html>.

Any firm or complainant may appeal a TUCP decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

The Township will promptly implement any TxDOT certification appeal decisions affecting the eligibility of DBEs for the Township's TxDOT-assisted contracting (e.g., certify a firm if TxDOT has determined that the certifying agency denial of its application was erroneous).

COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation: Section 26.109

Consistent with Federal, state, and local law, the Township will safeguard third party information that may reasonably be regarded as confidential business information from disclosure. Pursuant to the Texas Public Information Act, none of the information that the prime contractor, DBE, and non-DBE subcontractors submits to the Township under the Township's DBE program is confidential.

Monitoring Work / Payments to DBEs

The Township will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Township, FTA and/or DOT. This reporting requirement also extends to any certified DBE subcontractor.

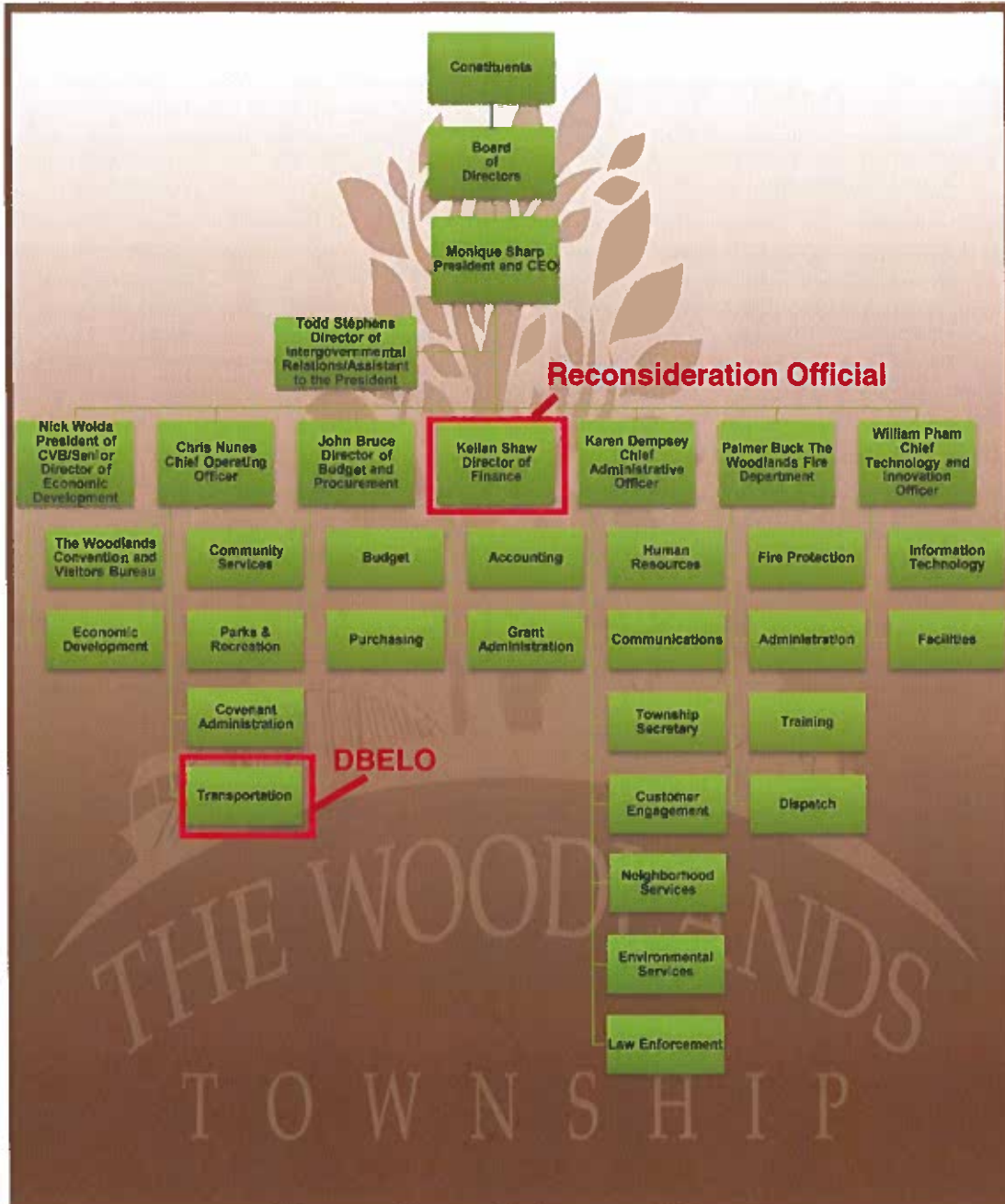
The Township will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the Contractor Payment Report Form.

ATTACHMENTS

Attachment A	Organizational Chart
Attachment B	DBE Directory
Attachment C	Monitoring and Enforcement Mechanisms
Attachment D	Race-Neutral & Race-Conscious DBE Forms 1 & 2 and Reporting Form, Evidence of Good Faith Effort
Attachment E	Certification Application Forms
Attachment F	Procedures for Removal of DBE's Eligibility
Attachment G	Regulations: 49 CFR part 26

Attachment A

Organization Chart



Attachment B

DBE and SBE Directories

A copy of the Texas Unified Certification Program DBE Information Directory can be obtained on the website, <http://www.dot.state.tx.us/apps-cg/tucp/>, or a copy can be requested from the DBELO.

A copy of the TxDOT SBE Directory can be obtained on the website, <http://www.dot.state.tx.us/apps-cg/sbe/sbeinfo.htm>, or a copy can be requested from the DBELO.

Attachment C

Monitoring and Enforcement Mechanisms

The Township will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

Monitoring

The Township will conduct and document periodic field reviews of DBE activities and DBE subcontractor interviews to verify that work committed to DBEs at contract award is actually performed by the DBEs and that the Contractor's monthly Contractor Payment Report Form (**Attachment F**) is accurate.

The Township will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award by reviewing the Contractor's monthly Contractor Payment Report Form (**Attachment F**) and recording the payments.

The Township will monitor the Contractor's compliance with the Township's DBE program and provide electronic certification in the Transportation Award Management System (TrAMS) system (or such system as shall supersede the TrAMS system) for every contract/project in which DBEs are participating.

The Township will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can investigate the alleged conduct. The Township may consider similar action under the Township's legal authorities.

Enforcement

The Township has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
2. Work stoppage;
3. Termination, suspension, or cancellation of the contract in whole or in part; and/or
4. In the event that a respondent or bidder fails to achieve the DBE goals of this program, after contract completion, the respondent's or bidder's eligibility to receive any future contract will be conditioned upon the respondent or bidder making up the deficit in DBE participation in such future contracts by having DBEs perform equal to double the dollar value of the deficiency in the DBE requirement in the prior contract.

The federal government may enforce DBE requirements under any applicable United States code or regulation and has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

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

The Township will monitor prompt payment from the contractors to subcontractors through the following methods:

1. Review Contractor Payment Report Form, which will be included with each pay application until final payment of the contract has been made; and

2. Perform periodic checks with subcontractors to ensure Contractor Payment Report Form matches payment.

Attachment D

Forms 1 & 2 for DBE Participation, Contractor Payment Report Form, and Guidance Concerning Good Faith Efforts

FORM 1 – SUBCONTRACTOR UTILIZATION

Instructions: The Respondent/Bidder/Contractor shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE, SBE or non-DBE, 5) Ethnic Code of firm 6) Age of the firm, and 7) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs and SBEs must have current certification as a DBE or SBE with a participating UCP certifying agency. The DBE or SBE certification must be complete by the time the bids/proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs or SBEs must complete Form 2, Subcontractor Letter of Intent, agreeing to the information listed herein.

RESPONDENT/BIDDER/CONTRACTOR: _____

ETHNIC CODES

- A) Black American B) Hispanic American C) Native American**
D) Sub-continental Asian American E) Asian-Pacific American
F) Non-Minority Women G) Other

PROJECT NAME: _____

1) Name of Subcontractor	2) Address, Telephone # of DBE Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) DBE, SBE or non-DBE	5) Ethnic Code	6) Age of Firm	7) % or \$ amount of Total Contract

THIS SCHEDULE MUST BE COMPLETED AS INSTRUCTED ABOVE AND INCLUDE EVERY SUBCONTRACTOR PROPOSED ON THIS PROJECT.

The undersigned will enter into a formal agreement with DBE and/or SBE contractors for work listed in this schedule upon execution of a contract with the Township. The Respondent/Bidder/Contractor agrees to the terms of this schedule by signing below and submitting the Form 2, as completed by the DBE or SBE subcontractor(s).

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

FORM 2
DBE AND SBE SUBCONTRACTOR LETTER OF INTENT

Note: DBE and SBE firms participating in the DBE or SBE Program must have "current" certification status with a UCP Certifying Agency by the due date established for this Invitation for Bid (IFB) or Request for Proposal (RFP).

1. TO: (Respondent/Bidder/Contractor): _____
2. The undersigned is either currently certified under a Unified Certification Program (UCP) as a DBE, SBE or will be at the time this IFB/RFP is due.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both)

and at the following price \$ _____ and/or _____% of the total contract amount (should be the same \$ or % found on **FORM 1** – Subcontractor Utilization).
4. The DBE or SBE subcontractor should complete this section only if the DBE or SBE is subcontracting any portion of its subcontract.

With respect to the proposed subcontract described above, the undersigned DBE anticipates that _____% of the dollar value of this subcontract will be awarded to other contractors. Any and all DBE subcontractors a DBE subcontractor uses must be listed on Form 1 and must also be DBE certified.

DATE: _____ DBE/SBE FIRM: _____
SIGNATURE: _____
PRINT NAME: _____
PHONE NUMBER: _____

DATE: _____ RESPONDENT/BIDDER/
PRIME CONTRACTOR: _____
SIGNATURE: _____
PRINT NAME: _____
PHONE NUMBER: _____

CONTRACTOR PAYMENT REPORT FORM

TO BE INCLUDED WITH EACH PAY APPLICATION UNTIL FINAL PAYMENT OF THE CONTRACT HAS BEEN MADE.

INCLUDED FOR REFERENCE ONLY

CONTRACTOR PAYMENT REPORT FORM

Instructions: Contractors are required to complete and submit this report, as specified in the contract or as requested, until final payment of the contract has been made. Failure to comply with the DBE provisions may result in contract termination, or the suspension or debarment of the contractor from doing business with the Owner in the future in accordance with the procedures set forth in the DBE Program. This report must be submitted with each invoice. Instructions for completing this report can be found on the following page.

1. Contract Number, if applicable	2. Invoice Number	3. Reporting Period From: _____ To: _____		4. Contractor's Business Name	5. Contact Person	6. Address
7. Telephone Number	8. Date of Contract Award	9. Schedule Date of Completion	10. Original Contract Amount \$ _____	11. Current Contract Modifications \$ _____	12. Total Amount Received to Date \$ _____	13. Total Amount Owed \$ _____
14. Committed DBE %	15. Actual DBE Participation to date \$ _____	16. Actual DBE % to Date #VALUE!				

17	18	19	20	21	22	23	24
Name of DBE Subcontractor	Description of Work	Amount of payments made during current invoice period	Date of payments made during current invoice period	Subcontract Dollars	Amount paid to date	Percent Paid to Date	Amount of this invoice allocated to DBE subcontractor

(Add rows to the table, as needed, to complete this section)

By completing this form, the Contractor acknowledges the Owner's prompt payment policy, which requires the Contractor to pay all subcontractors within 30 days of receiving payment from the Owner.

Signature	Date Signed	Name and Title of Individual Completing Report

GUIDANCE CONCERNING GOOD FAITH EFFORTS

Appendix A to 49 CFR Part 26

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith effort showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 1. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- D. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - E. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - F. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - G. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Attachment E

Certification Application Forms

The Texas Unified Certification Program (TUCP) website potential certified DBE Firms, <https://www.txdot.gov/inside-txdot/office/civil-rights/tucp.html>, and SBE Firms, http://www.dot.state.tx.us/business/business_outreach/sbe.htm, with applications and instructions

Attachment F

Procedures for Removal of DBE's Eligibility

The TUCP maintains their Standard Operating Procedures, including DBE eligibility removal, on their website, <https://www.txdot.gov/inside-txdot/office/civil-rights/tucp.html>.

Attachment G

Regulations: 49 CFR part 26

A copy of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, can be viewed at <http://www.gpo.gov/fdsys/pkg/CFR-2010-title49-vol1/pdf/CFR-2010-title49-vol1-part26.pdf> or requested from the DBELO.

