

North Central Texas Council of Governments

Transportation Department

Disadvantaged Business Enterprise Program

For U.S. Department of Transportation Assisted Projects
(Pursuant to 49 CFR Part 26)

Approved: January 2015

Updated: October 2019



**North Central Texas
Council of Governments**

North Central Texas Council of Governments (NCTCOG)

Transportation Department

Disadvantaged Business Enterprise (DBE) Program

Introduction

The North Central Texas Council of Governments (NCTCOG) Transportation Department has an established Disadvantaged Business Enterprise (DBE) Program.

Section 26.1, 26.23 Objectives/Policy Statement

NCTCOG has established a DBE program in accordance with regulations of the U.S. Department of Transportation (U.S.DOT), 49 CFR Part 26. NCTCOG, as a condition to receiving Federal financial assistance from the U.S.DOT, has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of NCTCOG to ensure that all DBEs, as defined by the regulation, have an equal opportunity to receive and participate in U.S.DOT-assisted contracts. It is the policy of NCTCOG:

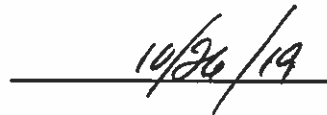
1. To ensure nondiscrimination in the award and administration of U.S.DOT-assisted contracts in the U.S.DOT's highway, transit and airport financial assistance programs.
2. To create a level playing field on which DBEs can compete fairly for U.S.DOT-assisted contracts.
3. To ensure that the U.S.DOT's DBE program is narrowly tailored in accordance with applicable laws.
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in the U.S.DOT-assisted contracts.
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

The designated NCTCOG Liaison Officer is responsible for implementing all aspects of the DBE program. The Liaison Officer will be assisted by other NCTCOG staff as needed with the DBE requirements and compliance. Implementation of the DBE program is accorded the same priority as the compliance with all other legal obligations incurred by NCTCOG in its financial assistance agreements with the U.S.DOT.

NCTCOG will disseminate this policy statement throughout the organization. NCTCOG will notify DBE and non-DBE business organizations that perform work on U.S.DOT-assisted contracts about NCTCOG's DBE policy by placing it on our website at <https://www.nctcog.org/trans/involve/disadvantaged-business-enterprise-dbe-program> and making it available at the NCTCOG office.



Executive Director



Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

NCTCOG is the recipient of funds from the Federal Highway Administration, Federal Transit Administration and Federal Aviation Administration.

Section 26.5 Definition of Terms

The terms used in the program have the same meanings as defined in 49 CFR Part 26.

Section 26.7 Nondiscrimination

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

Section 26.11 Record-keeping Requirements

Federal Aviation Administration – NCTCOG will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for the use by FAA recipients.

Federal Transit Administration – NCTCOG will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payment Form.

Federal Highway Administration – NCTCOG will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payment Form.

These reports will reflect the federal share of payments actually made to DBEs on U.S.DOT-assisted contracts for the respective modes.

Bidders List: 26.11(c)

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

The bidders list will be updated and maintained under the direction of the NCTCOG DBE Liaison Officer (DBELO). NCTCOG will create a web-based tool for contractors and subcontractors to update their information.

Section 26.13

Federal Financial Assistance Agreement

NCTCOG has signed the following assurances, applicable to all U.S.DOT-assisted contracts and their administration:

Assurance 26.13 (a)

The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 CFR Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 CFR Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 CFR Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

Contract Assurance: 26.13(b)

NCTCOG will ensure that the following clause, or a similarly derived clause, is placed in every U.S.DOT-assisted contract and subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21

DBE Program Updates

NCTCOG will continue to carry out this program until all funds from U.S.DOT-assisted financial assistance have been expended. NCTCOG will provide to U.S.DOT updates representing significant changes in the program. NCTCOG will submit an updated goal every three years on August 1.

Section 26.23

Policy Statement

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

Section 26.25**Liaison Officer**

NCTCOG has designated a DBE Liaison Officer (DBELO) for US-DOT assisted contracts:

Ken Kirkpatrick
Counsel for Transportation
North Central Texas Council of Governments
P.O. Box 5888
Arlington, Texas 76005-5888
817-695-9278
kkirkpatrick@nctcog.org

In that capacity, the NCTCOG DBELO is responsible for implementing all aspects of the DBE program and ensuring that NCTCOG complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Transportation and Executive Director of NCTCOG concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is in Attachment 1.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO will be assisted by other employees in the administration of the program. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by the U.S.DOT.
2. Reviews third-party contracts for compliance with this program.
3. Works with all relevant parties to set NCTCOG's overall DBE goals.
4. Ensures that proposal notices and requisitions for proposals/qualifications (RFP/RFQ) are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in the solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes NCTCOG's progress toward goal attainment and identifies ways to improve progress.
7. Advises the Executive Director/governing body on DBE matters and achievement.
8. Participates with NCTCOG's legal counsel and project managers to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in submitting proposals.
10. Oversees the maintenance of NCTCOG's DBE directory.
11. Participates in pre-bid meetings.
12. Plans and participates in DBE Training seminars.

Section 26.27**DBE Financial Institutions**

It is the policy of NCTCOG to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on U.S.DOT-assisted contracts to make use of these institutions. Attachment 5 contains a list of minority-owned financial institutions.

Section 26.29**Prompt Payment, Retainage, and Monitoring/Enforcement**

Prompt Payment: 26.29(a)

NCTCOG will include the following clause in each DOT-assisted prime contract:

"The Consultant agrees to pay each subcontractor under this Contract for satisfactory performance of its subcontract no later than 10 days from the receipt of each payment the Consultant receives from NCTCOG. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the NCTCOG. This clause applies to both DBE and non-DBE subcontracts. The Consultant shall provide a breakdown of the amounts paid to DBEs, as identified to participate in the Contract in Appendix D, concurrently with the submission of each invoice on a form provided by NCTCOG. The DBE Payment Reporting Form can be found online at: <https://www.nctcog.org/trans/involve/disadvantaged-business-enterprise-dbe-program>. If the Consultant fails to submit the DBE Payment Reporting Form and/or make prompt payments to its subcontractors, NCTCOG may withhold all or part of any payment otherwise due to the Consultant.

The Consultant's signature on the DBE Payment Reporting Form is a certification by the Consultant of the truth and accuracy of the matters contained in the Report. At execution of the Contract, the Consultant shall, by written notice, identify the person(s) with authority to sign the DBE Payment Reporting Form for the Consultant.

Retainage: 26.29(b)

NCTCOG will include the following clause in each DOT-assisted prime contract, if retainage is to be withheld:

"The Consultant agrees to return retainage payments to each subcontractor within 10 days after the subcontractors work is satisfactorily completed and NCTCOG has released that portion of retainage related to subcontractor's work to the Consultant. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the NCTCOG. This clause applies to both DBE and non-DBE subcontracts. The Consultant may request interim release of retainage to comply with the above provision."

Monitoring and Enforcement: 26.29(d)

NCTCOG has established a process to monitor and enforce that prompt payment and return of retainage is in fact occurring. NCTCOG will ensure that as part of the reimbursement process for prime contractors that subcontractors have been paid consistent with the prompt payment provisions of NCTCOG's contract. In addition, NCTCOG will ensure that any contract in which retainage is withheld that prime contractors can only receive its retainage payment contingent on certification that return of retainage to subcontractors has occurred or will occur in compliance with the contract provisions. NCTCOG reserves the right to conduct an audit or review of the prime contract and/or to confirm directly with subcontractors that the prompt payment and return of retainage to subcontractors has in fact occurred. NCTCOG will attempt to resolve non-compliance of these provisions through informal dispute resolution techniques. NCTCOG retains all remedies under law to enforce contractual provisions with prime contractors, including a breach of contract action, whether or not informal dispute resolution was initiated.

Section 26.31

Directory

NCTCOG maintains a directory identifying all firms eligible to participate as DBEs. The database lists the firm's name, address, phone number, date of the most recent certifications, and the type of work the firm has been certified to perform as a DBE. NCTCOG will revise the directory annually and upon request by a firm. This list is may be obtained by contacting the NCTCOG DBELO at kkirkpatrick@nctcog.org or 817-695-9278.

Section 26.33

Over-Concentration

When NCTCOG determines DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in the highway, transit, or aviation planning program, it will develop written procedures to address over-concentration. The procedures will be submitted to the appropriate U.S.DOT-operating administration (such as FHWA, FTA, or FAA) for review and approval prior to implementation. NCTCOG will re-evaluate for overconcentration as part of the DBE Goal Update Process every three years.

Section 26.35

Business Development or Mentor-Protégé Programs

NCTCOG has not established a business development program. NCTCOG will re-evaluate the need for such a program as part of the DBE Goal Update Process every three years.

Section 26.37

Program Monitoring

NCTCOG will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. NCTCOG will bring to the attention of the U.S.DOT any false, fraudulent, or dishonest conduct in connection with the program, so that U.S.DOT can take steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the U.S.DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. NCTCOG will consider similar action under its own legal authority, including determination for future contracts.
3. NCTCOG will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. NCTCOG will implement appropriate mechanisms to ensure compliance with the party's requirements by all program participants. The mechanisms NCTCOG may use include, but are not limited to:
 - NCTCOG will notify subcontractors (DBE and non-DBE) of the prime contractor's responsibility for prompt payment and encourage subcontractors to notify NCTCOG in writing with any possible violations to the prompt payment mechanism.
 - Withholding payment from prime contractors that do not comply with the prompt payment provision, noted above, where it has been determined by the NCTCOG DBELO that delay of payment to the subcontractor is not justified.
 - Stopping work on the contract unit until compliance issues are resolved.
 - Terminating the contract.

NCTCOG will verify that the work committed to DBE at contract award is actually performed by DBEs. This will be accomplished by:

- Requiring prime contractors to report DBE work performed in each monthly progress report along with an indication of number of hours worked, any costs incurred and the amounts paid to DBE(s).
- Ensuring that DBE participation is credited toward the overall goal or contract goals only when payments are actually made to DBE firms.

4. In NCTCOG reports of DBE participation to U.S.DOT, NCTCOG will show both commitments and attainments, as required by the U.S.DOT reporting form. NCTCOG will ensure that DBE participation is reported using only the federal share. Additionally, NCTCOG will complete required analysis prescribed in 26.47 by December 31st where a short fall has been identified by the Uniform Report, utilizing the general approach outlined below:
 - Analyze the reasons for the difference between the overall goal, awards and commitments in the fiscal year
 - Establish specific steps and milestones to correct problems identified in the analysis to enable achievement of goals in future fiscal years.

Section 26.39 Fostering Small Business Participation

NCTCOG's small business concern policies are race and general neutral and are intended to facilitate competition by small business concerns in U.S. DOT-assisted contracting opportunities consistent with 49 CFR 26.39. The policy is designed specifically to comply with federal regulations promulgated to ensure competition by small business concerns.

A "small business concern" means a small business seeking to participate as a DBE or small business entity in U.S. DOT-assisted contracts, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) whose average annual gross receipts for the previous three years do not exceed the SBA business size standard and the cap of \$22.41 million (as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b). All small businesses (DBE and non-DBE) are subject to the same size standards.

Small Business Certification

Any business seeking to participate in a NCTCOG contract as a small business concern shall be certified as a small business. A small business concern is considered to be an eligible small business if the business has been certified as such by the Small Business Administration or a certifying agency under the Texas Unified Certification Program. In order to ensure that a small business concern is in fact an eligible small business concern and to minimize fraud and abuse, self-certification or self-verification of eligibility as a small business concern is not permitted.

Responsibility for Implementation

The DBE Liaison Officer shall be responsible for implementation of the small business element of NCTCOG's DBE Program.

Small Business Measures

NCTCOG will undertake the following measures to foster small business participation in U.S DOT-assisted contracting opportunities procured through NCTCOG:

1. NCTCOG will take all reasonable steps to eliminate obstacles to participation by small business concerns, including the unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. For procurements where the contract award is anticipated to exceed \$1,000,000, NCTCOG will review the scope of the contracting opportunity to determine how best to structure the proposed scope to provide an adequate opportunity for small business participation. The review of the proposed scope could result in separating the proposed scope into more than one prime contract with subcontracting opportunities or one prime contract with subcontracting opportunities.

2. NCTCOG will review the use of performance bond and insurance requirements for any contracting opportunities to ensure that those elements do not unreasonably or unnecessarily preclude small business participation in contracting opportunities. If after review it is determined that a contract opportunity warrants a performance bond or insurance requirement, NCTCOG shall narrowly tailor such requirement to meet the public interest objective.
3. NCTCOG will review potential contracting opportunities and evaluate whether the approximate budget for the contracting opportunity should be published in the solicitation document in an effort to more clearly communicate the scale and scope of the proposed project. NCTCOG's experience is that it can be beneficial at times in relatively small contracting opportunities (e.g., \$250,000 or less) to publish the approximate budget in the solicitation document in order to assist potential proposers to better understand the scope and scale of the project and thereby assist NCTCOG in obtaining an adequate number of responsive proposals from which a qualified contractor can be selected. This fosters small business and DBE participation by permitting small businesses and DBEs to better evaluate whether they are better suited to compete as a prime contractor or should seek to team with other potential proposers for subcontracting opportunities.
4. NCTCOG will review each contracting opportunity to determine whether the scope and complexity of the effort is such that a pre-proposal conference is warranted in order to better communicate the specific goals and objectives, schedule, and requirements of the contracting opportunity. This will permit all potential proposers, including small businesses and DBEs, to have an opportunity to hear first-hand from NCTCOG staff regarding the nature and requirements of the project, meet other potential proposers for teaming opportunities, and participate in an in-person question and answer session with other potential proposers. The time and date of any pre-proposal conference will be posted in NCTCOG's written solicitation document.
5. NCTCOG's small business element includes outreach activities. These outreach efforts include active, effective steps to increase small business participation, such as soliciting bids/proposals from DBEs and small businesses, responding to requests for information from DBEs and small businesses, conducting pre-proposal meetings for large contracting opportunities, and participating at outreach and training events for DBEs and small businesses. NCTCOG will collaborate with regional partners on efforts to increase DBE and small business contracting opportunities.

Monitoring and Enforcement

NCTCOG will utilize the same methods for monitoring and enforcing the small business concern element as is used in its monitoring and enforcement general under its DBE Program.

Contract documents will be amended prior to the implementation date to include provisions necessary for the collection of information to be utilized in the monitoring and enforcement of the small business concern element.

NCTCOG will utilize the same methods for determining whether good faith efforts have been made to include small business concerns as are used generally in other aspects of its DBE Program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Quotas

NCTCOG does not use quotas in the administration of the DBE program.

Section 26.45 Calculating the Overall DBE Program Goal

NCTCOG will establish overall goals every three years in accordance with the 2-Step process as specified in 49 CFR Part 26.45 for U.S. DOT assisted contracts. The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations is found in Attachment 2 to this program.

In accordance with Section 26.45(f), NCTCOG will submit its overall goal to U.S.DOT every three years on August 1. In establishing the overall goal, NCTCOG will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the NCTCOG efforts to establish a level playing field for the participation of DBEs. NCTCOG will review the overall goal on an annual basis and submit any significant adjustments to the goal to the appropriate U.S. DOT operating administration (FHWA, FTA, FAA).

Following this consultation, NCTCOG will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the NCTCOG offices for 45 days following the date of the notice, and informing the public that NCTCOG and U.S.DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. Normally, NCTCOG will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

NCTCOG's overall goal submission to U.S.DOT will include a summary of information and comments received during this public participation process and our responses. NCTCOG will begin using the overall goal on October 1 of the submission year, unless U.S.DOT has issued other instructions. If NCTCOG establishes a goal on a project basis, NCTCOG will begin using the goal by the time of the first solicitation for a U.S.DOT-assisted contract for the project.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on NCTCOG's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, NCTCOG will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; and,
2. Establish specific steps and milestones to correct the problems identified in the analysis.

Section 26.49 Transit Vehicle Manufacturers Goals

NCTCOG 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.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 2 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

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

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

NCTCOG will express the contract goals as a percentage of the total amount of a U.S.DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

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. Examples of good faith efforts are found in Appendix A to Part 26.

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.

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

Information to be submitted (26.53(b))

NCTCOG treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness – all bidders submit DBE information at the time of bid.

Responsiveness - Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within (7) business days of being informed by NCTCOG that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to: DBE Reconsideration Official, Transportation Department, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas, 76005-5888. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts. NCTCOG will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

NCTCOG 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. NCTCOG will require the prime contractor to notify the DBE Liaison Officer and NCTCOG's Program Manager immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, NCTCOG will require the prime contractor to obtain NCTCOG's prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, NCTCOG may issue an order stopping all or part of payment/work until satisfactory action has been taken by the contractor. If the contractor still fails to comply, NCTCOG may terminate the contract.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of NCTCOG to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of XX%, as determined in the Attachment 2, has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm

participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

NCTCOG will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. NCTCOG will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D/F – CERTIFICATION STANDARDS/PROCEDURES

Section 26.61 – 26.73 Certification Process

NCTCOG participates in the Texas Unified Certification Program (TUCP) for DBE certifications. The TUCP follows 49 CFR Part 26 and is a "one stop" certification process for DBE's in Texas. Six agencies have agreed to perform the certification processing of DBE program applications within the State of Texas by specific TUCP regions. Pursuant to 49 CFR 26.81 (b), the Unified Certification Program (UCP) shall make all certifications on behalf of DOT recipients in the State. Further, once a UCP is formed, it must meet all certification requirements under 49 CFR Part 26 (see 49 CFR 26.83 (b)).

For information about the certification process, to apply for certification, or obtain a review of certification decisions, firms should contact:

1. North Central Texas Regional Certification Agency
624 Six Flags Drive, Suite 216
Arlington, TX 76011
Tel: (817) 640-0606
Fax: (817) 640-6315
Email: mail@nctra.org
2. Texas Department of Transportation (TXDOT)
Business Opportunity Programs Office (BOP)
125 E. 11th Street
Austin, TX 78212
Tel: 866-480-2518
Fax: 512-486-5539
Email: tucpdata@dot.state.tx.us

The Texas Unified Certification Program application forms and documentation requirements are found in Attachment 4 to this program.

Section 26.83-26.91 Procedures for Certification Decisions

Any firm or complainant may appeal a decision by a certifying entity under the Texas Unified Certification Program to the 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

NCTCOG will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracts.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

NCTCOG 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 NCTCOG or U.S.DOT. This reporting requirement also extends to any certified DBE subcontractor.

NCTCOG 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 schedule of DBE participation.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Overall Goal Calculations
Attachment 2.1	Stakeholder Consultation Items
Attachment 2.2	Public Meeting Items
Attachment 2.3	DBE Open House Items
Attachment 3	NCTCOG DBE Directory
Attachment 4	Texas Unified Certification Program
Attachment 4.1	Monitoring and Enforcement Mechanisms/Legal Remedies
Attachment 4.2	Forms for Demonstration of Good Faith Efforts
Attachment 5	List of Minority-owned Financial Institutions
Attachment 6	Regulations: 49 CFR Part 26
Attachment 7	DBE Payment Reporting Form