HARRIS COUNTY IMPROVEMENT DISTRICT #3 DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

Harris County Improvement District #3, also known as Upper Kirby Management District (herein referred to as "Upper Kirby"), has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR part 26. Upper Kirby has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Upper Kirby has signed an assurance that it will comply with 49 CFR part 26.

It is the policy of Upper Kirby to ensure that DBEs as defined in 49 CFR part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-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 CFR part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Travis Younkin, Deputy Director, has been delegated as the DBE Liaison Officer. In that capacity, the Deputy Director 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 Upper Kirby in its financial assistance agreements with the DOT.

Upper Kirby has disseminated this policy statement to Upper Kirby Management District Board of Directors and all of the components of our organization. Upper Kirby has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Upper Kirby will post this policy on the Upper Kirby website and office.

Jamie Brewster, Executive Director

January 5, 2017
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

Upper Kirby is the recipient of FTA funds authorized by Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and all extensions, Moving Ahead for Progress in the 21st Century Act (MAP-21) and all extensions, and the Fixing America’s Surface Transportation (FAST) Act and all extensions.

Section 26.5 Definitions

Upper Kirby will adopt the definitions contained in 49 CFR part 26 Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

Upper Kirby 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, Upper Kirby 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.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

Upper Kirby will report DBE participation to FTA on a biannual basis using the Uniform Report of DBE Awards or Commitments and Payments Form.

Bidders List: 26.11(c)

Upper Kirby will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE, Small Business Enterprise (SBE) or non-DBE status, age, and annual gross receipts of firms.

Upper Kirby will collect this information in the following ways by including a contract clause requiring prime bidders to report the namesAddresses, and possibly other information, of all firms who quote to them on subcontracts.

Upper Kirby 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 Upper Kirby, FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Upper Kirby may 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.
Section 26.13  Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

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

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

Upper Kirby will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, subcontractor or sub recipient shall not discriminate on the basis of race, color, sex, or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor, subcontractor or sub recipient 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

Since Upper Kirby has received a grant of $250,000 or more in FTA capital assistance in a federal fiscal year, Upper Kirby will continue to carry out this program until all funds from DOT financial assistance have been expended. Upper Kirby will provide to DOT updates representing significant changes in the program.

Section 26.23  Policy Statement

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

Section 26.25  DBE Liaison Officer (DBELO)

Upper Kirby has designated the following individual as our DBE Liaison Officer (DBELO):

Travis Younkin, Deputy Director
In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Upper Kirby complies with all provision of 49 CFR part 26. The DBELO has direct, independent access to Jamie Brewster, Executive Director of Upper Kirby, concerning DBE program matters. An organization chart displaying the DBELO’s position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one 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.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with staff to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Upper Kirby Management District Board of Directors on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Texas Uniform Certification Process.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains Upper Kirby’s updated directory on certified DBEs.
13. Analyzes shortfall if the overall goal is not reached. If required, Upper Kirby will develop a corrective action plan.

Section 26.27 DBE Financial Institutions

It is the policy of Upper Kirby 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 DOT-assisted contract to make use of these institutions.

Upper Kirby will use the list of DBE owned financial institutions located at http://www.federalreserve.gov/releases/mob.

Section 26.29 Prompt Payment Mechanisms

Upper Kirby will include the following clauses in each DOT-assisted prime contract:

Prompt Payment
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 Upper Kirby 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://fmx.cpa.state.tx.us/fm/pubs/purchase/prompt_pay/index.php?section=overview&page=rate.

Retainage

The Contractor shall return retainage payments to each subcontractor no later than 10 days after receipt of incremental retainage payments from Upper Kirby. Any delay or postponement of payment from this time frame may occur only for good cause following written approval of Upper Kirby. This clause applies to DBE, SBE and non-DBE subcontracts.

Reporting

The Contractor shall report DBE and SBE participation on a monthly basis on the Contractor Payment Report Form, Attachment 4.

Monitoring and Enforcement

See Attachment 3, Monitoring and Enforcement.

Section 26.31 Directory

Upper Kirby 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 City of Houston MWSBE/PDBE and DBE 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 included in Attachment 2.

Section 26.33 Overconcentration

There is an undue burden on non-DBEs if there is an overconcentration of in a certain type of work opportunity. If an overconcentration is present, Upper Kirby will develop the appropriate, FTA-approved measures to address the issue. Currently, Upper Kirby has not identified that overconcentration exists in the types of work that DBE subcontractors perform.

Section 26.35 Business Development Programs

Upper Kirby has not established a business development program. Upper Kirby will re-evaluate the need for a business development program every three years.

Section 26.37 Monitoring and Enforcement Mechanisms

See Attachment 3, Monitoring and Enforcement.
Section 26.39 Small Business Provision

Upper Kirby is dedicated to fostering small business enterprise (SBE) participation along with DBE participation. Small Business Provisions strategies, listed below, will be implemented in future procurements.

Upper Kirby uses the same standards certification and verification processes as the Texas Department of Transportation (TxDOT) and the City of Houston’s Office of Business Opportunity Small Business Enterprise Certification programs, which requires businesses to meet the US Small Business Administration (SBA) size standards as well as filling out an accompanying application. All SBEs listed on the TxDOT Small Business Enterprise Program Directory and the City of Houston’s Office of Business Opportunity Small Business Enterprise Certification program will be considered as a SBE. Upper Kirby will include both directories in all procurements and will be kept on file with Upper Kirby. A certified DBE with the Texas Uniform Certification Program (TUCP) is presumed eligible to participate in the small business participation program.

Upper Kirby has included the following non-discriminatory elements in its DBE program to facilitate competition on DOT-assisted public works projects by small business entities:

- Upper Kirby may strongly encourage the prime contractor to specify elements of a larger contract or specific subcontracts that are of a size that small business can reasonably perform. Upper Kirby may list all of the activities associated with a specific contract to notify prime contractors of the potential opportunities. An example of such an opportunity would be encouraging a prime contractor of a large construction contract to use a SBE subcontractor for elements such as poured concrete or electrical work.
- Upper Kirby may unbundle third-party procurements, when available. The reduced size of the procurement will make it easier for SBE participants to become the prime on contracts or obtain the bonds necessary to win the contracts, depending on the type of contract.
- Upper Kirby may require the prime contractor to provide subcontracting opportunities of a size that a SBE can reasonably perform, rather than self-performing all of the work. Upper Kirby may include this requirement in the procurement documents, as well as discuss the requirement at the pre-proposal or pre-bid conference. An example would be requiring an SBE to perform the landscape architecture for a streetscape design contract.
- Upper Kirby may implement other strategies in procurements such as inviting SBEs to pre-proposal or pre-bid conferences to meet prime contractors; simplifying or reducing bonding requirements to avoid excessive bonding; etc.

Upper Kirby will promote outreach to SBEs ahead of contracting opportunities. Outreach efforts include maintaining an up-to-date bidders list with SBEs identified, soliciting bids or proposals from SBEs, encouraging participation in pre-bid or pre-proposal meetings, including a SBE directory in all procurements, inviting SBEs to all public participation meetings, and providing informational material on becoming listed on either the TxDOT or City of Houston SBE directory, when requested. Upper Kirby will notify the Houston Minority Business Development Agency, as well as outreach to Small Business Development Centers in the area, about future contracting opportunities.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

Upper Kirby does not use set-asides and/or quotas in any way in the administration of this DBE program.
**Section 26.45  Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in the DBE Goal Setting Documentation. This documentation will be updated every three years.

In accordance with Section 26.45(f) Upper Kirby will submit its overall goal to FTA by August 1 at three year intervals based on a schedule specified by FTA. Upper Kirby may adjust the three-year overall goal during the three-year period to reflect changed circumstance, but FTA must review and approve the change.

Before establishing the overall goal every three years, Upper Kirby will consult with local agencies and organizations, trade groups, and local contractors to determine the availability of DBEs, SBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and Upper Kirby’s efforts to improve the participation of DBEs and SBEs.

Following the consultation, Upper Kirby will publish a notice of the proposed overall goal on the Upper Kirby’s website. The notice will inform the public about the proposed goal, the rationale for establishing the goal, a location where the proposed goal and rationale can be reviewed for a significant portion of time following the date of the notice and an address where comments can be sent. Upper Kirby will accept comments about the goal and rationale. Upper Kirby’s goal submission to FTA will include the comments received during the public comment process and Upper Kirby’s responses, if needed. Upper Kirby will begin using the overall goal on October 1 of the year adopted unless Upper Kirby receives other instructions from FTA.

**Section 26.49  Transit Vehicle Manufacturers Goals**

N/A – Upper Kirby does not provide transit services, does not procure or owns transit vehicles.

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

The breakout of estimated race-neutral participation can be found in the DBE Goal Setting Documentation. This documentation will be updated annually when the goal calculation is updated.

For Race-Neutral participation, Upper Kirby procurements will include the following documentation to respondents, bidders, or contractors.

*The respondent, bidder, or contractor shall not discriminate on the basis of race, color, sex, or national origin in the performance of this contract. The respondent, bidder, or contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the respondent, bidder, or 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 Upper Kirby deems appropriate. Each subcontract the respondent, bidder, or contractor signs with a subcontractor must include the assurance in this paragraph.*

*Award of this contract is conditioned on submission of the following information (included in Attachment 4):*

- 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; and
• Written and signed documentation of commitment to use a DBE subcontractor.

Written and signed confirmation from the DBE or SBE that it is participating in the contract as provided in the prime contractors commitment

**Section 26.51(d-g) Contract Goals**

Upper Kirby does not intend to use contract goals to meet any portion of the overall goal.

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.

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

**Section 26.53 Good Faith Efforts Procedures**

Since Upper Kirby does not intend to use contract goals for DBE participation, the following good faith efforts will only be used if contract goals are established.

**Demonstration of good faith efforts**

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

**Information to be Submitted**

For all FTA assisted contracts with a contract goal, Upper Kirby will require the respondent, bidder, or contractor 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 must be provided.

Administrative Reconsideration

Within 15 days of being informed by Upper Kirby that it is not responsive because it has not documented sufficient good faith efforts, a respondent, bidder, or contractor may request administrative reconsideration. Respondents, bidders, or contractors should make this request in writing to the following Reconsideration Official:

Jamie Brewster, Executive Director
Upper Kirby Management District
3120 Southwest Freeway, Suite 102
Houston, Texas 77098
Telephone: (713) 524-8000
E-mail: jamie@upperkirby.org

The Reconsideration Official will not have played any role in the original determination that the respondent, bidder, or contractor did not document sufficient good faith efforts.

As part of this reconsideration, the respondent, bidder, or contractor 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, bidder, or contractor will have the opportunity to meet in person with the Upper Kirby’s Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Upper Kirby will send the respondent, bidder, or contractor a written decision on reconsideration, explaining the basis for finding that the respondent, bidder, or contractor 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 or SBE is Terminated/Replaced on a Contract

Upper Kirby requires that prime contractors not terminate a DBE or SBE subcontractor listed on a response, bid, or contract with a DBE and/or SBE contract goal without the Upper Kirby’s prior written consent. Prior written consent will only be provided where there is “good cause” as established by Section 26.53(f)(3).

The prime contractor must give notice in writing to the DBE or SBE subcontractor of its intent to terminate before transmitting its request to terminate the DBE or SBE or substitute a DBE or SBE subcontractor to Upper Kirby. A copy of this notice must be provided to Upper Kirby prior to consideration of the request to terminate or substitute. The DBE or SBE 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 or SBE’s subcontract, Upper Kirby will require the prime contractor to make good faith efforts to replace a DBE or SBE subcontractor that is terminated or has otherwise failed to complete its work on a contract with another certified DBE or SBE subcontractor, to the extent needed to meet the contract goal. If the prime contractor is unable to find another DBE or SBE subcontractor to perform the work, the Upper Kirby will require the prime contractor to obtain Upper Kirby’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 Upper Kirby may take action against the prime contractor as defined in Attachment 3, Monitoring and Enforcement.
Sample Bid Specification:

The requirements of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, apply to this contract. It is the policy of Upper Kirby 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 responses/bids. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all respondents, bidders, or contractors, including those who qualify as a DBE. A DBE contract goal of <insert appropriate goal> has been established for this contract. The respondent, bidder, or contractor shall make good faith efforts, as defined in Appendix A, 49 CFR part 26, to meet the contract goal for DBE and/or SBE participation in the performance of this contract.

The respondent, bidder, or contractor 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 contractors commitment; and
- If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Upper Kirby is a member of the State of Texas’s Unified Certification Program (TUCP). The TUCP will meet all of the requirements of this section of the DBE Program. The TUCP follows Federal Regulation 49 CFR part 26. Under the TUCP, the Upper Kirby is a participant and not a certifying agency. Upper Kirby’s signed agreement was submitted to the Texas Department of Transportation on May 15, 2012.

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 and wanting to be certified is listed below:

Office of Business Opportunity
Carlecia D. Wright, Director
611 Walker, 7th Floor
Houston, TX 77002
SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109  Information, Confidentiality, Cooperation

Upper Kirby will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Pursuant to Texas Statutes, all information submitted by applicant firms with their applications for certifications and affidavits of continued eligibility, including their personal net worth statements, is confidential and exempt from the requirements of Texas public records laws. Notwithstanding any contrary provisions of state or local law, the Upper Kirby will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

Upper Kirby 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 Upper Kirby or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Upper Kirby 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  DBE Directory
Attachment 3  Monitoring and Enforcement Mechanisms
Attachment 4  Forms 1 and 2 for DBE Participation, Contractor Payment Report Form, and Guidance Concerning Good Faith Efforts
Attachment 5  Certification Application Forms
Attachment 6  Procedures for Removal of DBE’s Eligibility
Attachment 7  Regulations: 49 CFR part 26
Attachment 1
Organizational Chart

Board of Directors

Jamie Brewster, Director (DBE Reconsideration Official)

Travis Younkin, Deputy Director (DBELO)

Administrative Staff

Maintenance Staff
Attachment 2
DBE Directory

A copy of the Texas Unified Certification Program DBE Information Directory can be obtained at [https://txdot.txdotcms.com/Default.asp](https://txdot.txdotcms.com/Default.asp) or a copy can be requested from Upper Kirby’s DBE Liaison Officer.

A copy of the City of Houston MWSBE/PDBE and DBE Directory can be obtained on the website, [https://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp](https://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp), or a copy can be requested from Upper Kirby’s DBELO.
Attachment 3

Monitoring and Enforcement Mechanisms

Upper Kirby will monitor and provide written certification for every contract/project on which DBEs are participating, ensuring the DBEs are in fact performing the work. Upper Kirby will monitor and provide written certification for every contract/project on which DBEs are participating, ensuring the DBEs are in fact performing the work. Upper Kirby will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR part 26.

1. Upper Kirby will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. Upper Kirby will consider similar action under out own legal authorities, including responsibility determinations in future contracts.

3. Upper Kirby will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by conducting monthly field reviews, and DBE-contractor interviews.

4. Upper Kirby will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Upper Kirby 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; and/or

2. Work stoppage; and/or termination, suspension or cancellation of the contract in whole or in part; and/or

3. In the event that a bidder fails to achieve the DBE goals of this program, after contract completion, the bidder’s eligibility to receive any future Upper Kirby contract may be conditioned upon the 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.

4. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26

2. Enforcement action pursuant to 49 CFR part 31

3. Prosecution pursuant to 18 USC 1001.
Attachment 4

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, 7) Annual gross receipts of the firm, 8) % 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: __________________

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<tr>
<th>1) Name of Subcontractor</th>
<th>2) Address, Telephone # of DBE Firm (Including name of contact person)</th>
<th>3) Description of Work, Services Provided. Where applicable, specify &quot;supply&quot; or &quot;install&quot; or both.</th>
<th>4) DBE, SBE or non-DBE</th>
<th>5) Ethnic Code</th>
<th>6) Age of Firm</th>
<th>7) Annual Gross Receipts</th>
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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 UKMD. 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
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: _____________________________________________________________

RESPONDENT/BIDDER/DATE: ______________ 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

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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.

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<tr>
<td>14. Committed DBE %</td>
<td>15. Actual DBE Participation to date</td>
<td>16. Actual DBE % to Date</td>
<td>$ $ $ $</td>
<td>#VALUE!</td>
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<tr>
<td>Name of DBE Subcontractor</td>
<td>Description of Work</td>
<td>Amount of payments made during current invoice period</td>
<td>Date of payments made during current invoice period</td>
<td>Subcontract Dollars</td>
<td>Amount paid to date</td>
<td>Percent Paid to Date</td>
<td>Amount of this invoice allocated to DBE subcontractor</td>
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*(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.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date Signed</th>
<th>Name and Title of Individual Completing Report</th>
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18
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 efforts 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.

D. 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.

E. 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.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. 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 5**

**Certification Application Forms**


**Attachment 6**

**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](https://www.txdot.gov/inside-txdot/office/civil-rights/tucp.html).

**Attachment 7**

**Regulations: 49 CFR part 26**