

HART

HONOLULU AUTHORITY for RAPID TRANSPORTATION

**Honolulu Authority for Rapid Transportation
Disadvantage Business Program**

2012

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INTRODUCTION

The Honolulu Authority for Rapid Transportation (HART) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26). HART has received federal financial assistance from USDOT, and as a condition of receiving this assistance, HART has signed an assurance with the USDOT that it will comply with 49 CFR Part 26.



HONOLULU AUTHORITY for RAPID TRANSPORTATION

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
POLICY STATEMENT**

The Honolulu Authority for Rapid Transportation (HART) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26). HART has received federal financial assistance from USDOT, and as a condition of receiving this assistance, HART has signed an assurance with the USDOT that it will comply with 49 CFR Part 26.

It is the policy of HART to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate on USDOT-assisted contracts. It is also the policy of HART to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure that the DBE Program is narrowly-tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracting;
6. Assist in the development of firms that can compete successfully in the market place outside the DBE program.

The Executive Director of HART is responsible for implementation of this policy. The DBE Liaison Officer is designated with the authority and overall responsibility to implement HART's DBE program on a day-to-day basis. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by HART in its financial assistance agreements with USDOT.

This policy statement shall be included in all contract provisions for federal aid projects, disseminated throughout HART and to DBE and non-DBE business communities that perform work on USDOT-assisted contracts.

Andrew S. Robbins
Executive Director and CEO

FEB. 5, 2010

Date

DEFINITIONS

HART will adopt the definitions contained in 49 CFR Section 26.5 for this program.

ASSURANCES

HART shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. HART shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. HART's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to HART 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.).

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

Contract assurance

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

The contractor, sub-recipient, or sub-contractor 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 USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The previous clause is contained as an attachment on all HART awarded contracts. The HART DBELO shall contact the winning contractor to fully explain their responsibilities and HART's expectations regarding the DBE program. Emphasis will be put on the primes responsibilities for all sub-contractors. Periodic checks will be conducted to monitor and enforce compliance.

Contract provisions

HART's contract provisions relative to the DBE program are contained in Attachment C of this program document.

PROGRAM ADMINISTRATION

Applicability 49 CFR Section 26.3

The DBE Program shall apply to contracts awarded subject to US Department of Transportation DBE regulations 49 CFR Part 26.

Non-discrimination 49 CFR Section 26.7

HART 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, HART 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.

Record keeping requirements 49 CFR Section 26.11

HART will report DBE participation to USDOT as follows:

HART will report DBE participation on an annual basis directly to the Civil Rights Officer for Region IX. These reports will reflect payments actually made to DBEs on USDOT-assisted contracts, an analysis of the years DBE participation and a projected DBE participation for the remainder of the project.

Bidders list 49 CFR Section 26.11(c)

HART shall create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach in calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and range of annual gross receipts of firms.

HART will collect this information in the following ways:

A bidder's registration requirement will be included in bid documents. All bidders are responsible for submitting the Bidder Registration Form to HART's, DBE program, via U.S. mail, facsimile, e-mail or in person. The Bidder Registration Form is Attachment B of this program document.

All submitted proposals will be thoroughly reviewed and all primes and subcontractors relative information will be added to the bidders list.

Contract assurance 49 CFR Section 26.13b

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

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

Contract provisions

HART's contract provisions relative to the DBE program are contained in Attachment C of this program document.

DBE program updates 49 CFR Section 26.21

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

Responsibilities of staff and sub-recipients 49 CFR Section 26.25

DBE Liaison Officer:

The Executive Director has overall responsibility for the Honolulu Authority for Rapid Transportation, and has delegated the responsibility of DBE Liaison Officer to the Civil Rights Officer.

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that HART complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters.

The duties and responsibilities of the DBELO include, but are not limited to the following:

1. Gathers, reviews, and reports statistical data and other information as required by USDOT;
2. Reviews, approves, and submits HART's overall goals to the respective USDOT Operating Administrations;
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
4. Analyzes HART's and its sub-recipients' progress toward attaining DBE goals by maintaining a running tally of payments to DBE and non-DBE subcontractors;
5. Advises the Executive Director of HART on DBE matters and achievement;
6. Co-chairs with HDOT's DBELO, meetings of the DBE Advisory Committee;
7. Plans and participates in DBE training seminars;
8. Coordinates and conducts training for field personnel, project managers, consultants acting on behalf of HART, subrecipients, and other staff with DBE responsibilities on DBE requirements such as but not limited to, monitoring commercially-useful function, goal-setting, good faith efforts, and prompt payment provisions;
9. Coordinates and conducts training in cooperation with the divisions, for contractors, consultants, DBEs, and other stakeholders on topics such as, but not limited to, DBE regulatory requirements for bidders, project goals, good faith efforts, commercially useful function, and prompt payment provisions;
10. Provides outreach to DBEs and minority and women business organizations to assist small businesses with contracting opportunities and to help foster relationships with larger prime bidders/contractors. Such outreach activities may include, but shall not be limited to, networking workshops, small business fairs, business development training sessions, and mentor-protégé programs;

11. Conducts audits of prime contractors to ensure prompt payment requirements are met;
12. Monitors compliance of subrecipients; and
13. Maintains the HART's bidders list and DBE directory.

The DBELO contact information is provided below.

Charles L. Bayne
Honolulu Authority for Rapid Transportation
1099 Alakea Street, 17th Floor
Honolulu, HI 96816-4511

Phone: 808-768-6223
Fax: 808-768-1360
Email: cbayne@honolulu.gov

Sub-recipients of HART:

A sub-recipient is defined for the purposes of this program plan as an entity, public or private, that receives USDOT financial assistance through HART.

Sub-recipients shall develop a DBE program where required by law, or adopt and abide by HART's DBE Program Plan. HART will make an effort to ensure that sub-recipients comply with all requirements. A sub-recipient agreement shall be executed to ensure that sub-recipients include the appropriate DBE clauses in all of its federal-aid contracts and subcontracts.

A signed contract with HART serves as written confirmation that the sub-recipient has elected to adopt the HART DBE Program.

HART shall conduct an annual review of all sub-recipients having adopted HART's program document. HART shall submit an annual update to the USDOT Operating Administrators which includes a status statement regarding performance and compliance with HART's DBE program document.

HART shall provide all sub-recipients written notice of all document amendments. Sub-recipients shall provide written confirmation of adoption and incorporation of these amendments.

DBE financial institutions 49 CFR Section 26.27

It is the policy of HART 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 USDOT assisted contracts to make use of these institutions.

Research has showed the following six financial institutions are "minority owned" and operating in Hawaii; Bank of the Orient, Hawaii National Bank, Finance Factors Ltd., Territorial Savings Bank, Pacific Rim Bank and Ohana Pacific Bank. None of these financial institutions are certified DBEs. Research will be conducted semi-annually with the next review in August 2013. A list of qualified institutions will be made available at pre-bid meetings and disseminated to all interested parties. All contractors involved with the project will be encouraged to utilize these institutions whenever possible.

Prompt payment mechanisms 49 CFR Section 26.29

HART will include the following clauses in each USDOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from the receipt of each payment the prime contract receives from HART. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented, as required by HART. Full and prompt payment by the prime contractor to all subcontractors shall include retainage if applicable. Any delay or postponement of payment from the above referenced time frame may be considered a breach of contract and occur only for good cause following written approval of HART. This clause applies to both DBE and non-DBE subcontracts, and all tiers of subcontracts.

All prime contractors shall submit the DBE Participation Report (Attachment D) with each request for payment. Included in Attachment D is a section where the contractor and subcontractor must sign testifying they have paid, including retainage if applicable, all DBEs and other subcontractors within the 10 day period. Payments to the prime contractor will not be processed if the DBE Participation Report is not properly completed and attached.

Agency retainage will be paid promptly and in regular increment acceptances as defined in the contract. The prime contractor has an obligation to return retention to subcontractors within 10 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the contract work by the agency.

DBE Directory 49 CFR Section 26.31

HDOT maintains an electronic directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, and type of work the firm has been certified to perform as a DBE. HDOT updates the Directory on a weekly basis. HART will utilize the electronic copy of the HDOT directory and make it available for public inspection on a monthly basis. HART will make the directory available as follows: Honolulu Authority for Rapid Transportation, 1099 Alakea Street, 17th Floor, Honolulu, HI 96813-4511 and it is posted on the HDOT/DBE webpage.

Overconcentration 49 CFR Section 26.33

HART has not identified that overconcentration exists in the types of work that DBEs perform. If, however, the issue of overconcentration arises, the DBE Liaison Officer after securing approval of the USDOT may initiate some of the following actions:

1. Work with prime contractors to find and use DBEs in other industry areas.
2. Discontinue assigning a goal on a contract that offers work in the concentrated field.
3. Establish a business development program such as a mentor-protégé program, to assist DBEs in performing work outside of the specified field that HART has determined to have an overconcentration of DBE participation.

The HART DBELO, Charles Bayne, reviews the HART DBE Participation Reports as they are submitted by the prime contractor with their request for payment. Part of the review process is to determine if an overconcentration or the potential for an overconcentration situation exists as required by 49 CFR Part 26, Section 26.33.

The HART DEBLO considers both whether the DBE's work performing a unique element of work exceeds their proportional share based on their availability and if DBEs share of the work for that element exceeds 50% of the work available.

The HART DEBLO has recently reviewed the DBE participation for FFY 2010, 2011, and 2012. He compared the number of ready, willing and able DBE firms to the total number of ready, willing and able establishments registered with the State of Hawaii. DBE participation averaged approximately 8.5% of the total number of establishments registered in the State of Hawaii in 2010. There was no evidence that indicated DBE firms were so concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work. HART has not identified that overconcentration exists in the types of work that DBEs perform.

The HART DEBLO will continue to review and monitor DBE participation. Should the issue of overconcentration arise, the DEBLO, after securing approval of USDOT, may initiate corrective actions as stated previously in the DBE Program.

Monitoring and enforcement mechanisms 49 CFR Section 26.37

HART will implement the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Section 26.37.

1. HART will monitor its DBE program to insure DBEs are getting the opportunity to perform the work committed to them. HART will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. HART will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. HART will adopt a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. This will be accomplished by requiring pre-construction meetings with the prime contractor and subcontractors to discuss scope of work and performance expectations on contracts and subcontracts. HART will conduct field inspections and written certification on every contract on which DBEs are participating to ensure that DBEs are in fact performing a commercially useful function. HART will be monitoring all payments to subcontractors.
4. HART shall require its contractors and subcontractors to submit the "DBE Participation Report" and the "Final Report of DBE Participation" (Attachments D & E of this program document) to verify that work committed to DBEs is actually being performed by DBEs with its own forces and reflecting payments made to DBE subcontractors.
5. On an annual basis, HART shall review the DBE policies and practices of its subrecipients to ensure that they are in compliance with 49 CFR, Part 26.
6. HART will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
7. HART 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 HART or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Fostering small business participation 49 CFR Section 26.39

HART's mission is to breakdown as many barriers as possible. We will do what we can to act as a liaison between the primes, subcontractors, DBEs and small business to develop mutually beneficial business relationships. HART shall strive towards unbundling large contracts to allow small businesses, including DBEs to compete for smaller, more manageable contracts. For

those contracts HART is unable to unbundle HART shall require prime contractors to identify elements of a contract, or a specific subcontract that are of a size that small businesses, including DBEs can reasonably perform. HART will also require the prime contractor to take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement.

HART believes that disseminating contract information is critical in the effort to level the playing field and to provide DBEs and small businesses the opportunity to competitively participate in the procurement process. HART will be compiling an ongoing comprehensive list of DBEs and small businesses ready, willing and able to bid on our contracts. This will be a "living list" and there will be a constant proactive effort to add DBEs and small businesses. We will search out small businesses in the minority community, encourage and assist them in the DBE certification process to ensure as many as possible eligible DBEs are participating. As contracting opportunities become available on a contract and sub-contracting level, HART will inform DBEs and small businesses and offer whatever assistance is needed.

HART will conduct an extensive outreach program directed to the minority small business community through their leaders and organizations. We will be conducting periodic pre-bid conferences, seminars, workshops and business fairs to inform and encourage participation. We will be readily available to address and satisfy whatever special assistance needs that arise.

Due to the extraordinarily large size, specialized technology, and project delivery methods being utilized, i.e. a multi-billion dollar elevated passenger rail system utilizing a mix of Design-Build and Design-Bid-Build delivery methods, few if any of the major prime contracts are likely to be awarded to entities falling within the definition of a small and disadvantaged business enterprise as defined by the U.S. Department of Transportation regulations. Notwithstanding, past experience with comparable transit projects elsewhere in the United States as well as highway and aviation infrastructure projects in the state of Hawaii demonstrate that there will be many significant small business sub-contracting opportunities available for competition and award to such businesses.

The winning bidders were told through a mailing on 11/15/12 and in person through a meeting on 1/24/13 the following. In order for HART to fulfill our DBE obligations to FTA we need an affirmative and full commitment to the HART DBE Program and goal from the prime contractor and its subcontractors. We are asking the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved. We are also asking the prime contractor and its subcontractors to follow section 1.6(c)(1) of the Federal Clauses and take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR 26.51(b) as practicable to afford opportunities to DBEs to participate in this agreement.

All the items contained in 49 CFR 26.51(b) were discussed in detail. It was also discussed that the prime contractors should develop a mentor-protégé relationship if possible.

Opportunity was given for questions and appropriate clarifications were discussed. It was made very clear that HART's expectations were the prime contractor was to unbundle where ever possible and utilize small business, including DBEs, where ever possible.

The next step in the plan is to disseminate the prime contractor contact information to the certified DBEs and other points of contact for small businesses to inform them of opportunity and assist in the contact process.

HART intends, over the next few months, to arrange outreach functions such as pre-bid conferences, seminars, workshops and business fairs to allow the DBE and small businesses to physically meet the prime contractors and discuss any opportunities the small businesses may fulfill with the contractors.

Participation will be closely monitored as the reporting of DBE participation forms come in with each request for payment. We will be looking for new DBE and small business entries as well as an increase in usage of existing DBEs. The progress will be continuously evaluated to determine the success of the efforts and to identify areas that need to be intensified. Mediocre results will trigger an increase in pressure on the prime contractors to unbundle and utilize DBEs and small businesses. Minimal results will also trigger an increase in out reach efforts to facilitate opportunities for DBEs and small businesses to meet face to face with the prime contractor representatives.

We have an overall project goal of 13%. The project runs from 10/16/09 to sometime in 2026 and is currently experiencing delays and a lull in activity. Over 3 billion in contracts were awarded prior to our having any control of the DBE program. We are in the process of clearing up any prior misconceptions and emphasizing commitment to a successful DBE effort. We are constantly monitoring results as they come in and comparing the individual results to the overall goal. We are readily available to address and satisfy whatever special needs that arise. A utilization of 13% DBE participation will indicate a successful effort.

GOAL, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or quotas 49 CFR Section 26.43

HART shall not impose quotas or set-asides for use of DBEs in its federally assisted contracting.

Overall Project Goal 49 CFR Section 26.45

HART will utilize a single Overall Project Goal applicable to all USDOT assisted contracts awarded under the Honolulu High Capacity Transportation Corridor Project (HHCTCP).

The overall DBE goal shall be based on the relative availability of ready, willing, and able DBE(s) to participate in contracting opportunities under the HHCTCP. The goal will reflect the level of DBE participation expected absent the effects of discrimination in HART contracting activities, and will be reviewed and adjusted, as necessary over the life of the Project.

Goal methodology

HART shall attempt to meet its overall goal through race-neutral means. Contract goals or other race or gender conscious means may be considered if, through constant monitoring, it becomes apparent that the overall project goal cannot be met race neutrally. Race-neutral DBE participation includes award under the race neutral small business element of this Program; any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there

is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

Public participation & goal submittal process 49 CFR Section 26.45(f)

HART will publish a notice of the proposed Project Goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the DBE program office for 30 days following the date of the notice. It will also be posted on HART's website during this period. The notice shall include an address where comments may be submitted. HART will inform the public that HART will accept comments on the goal for 45 days from the date of the notice.

HART's Overall Project Goal submission to USDOT will include a summary of information and comments received during this public participation process and HART's responses.

HART will begin using its Overall Project Goal on July 11, 2012 and will monitor DBE participation during implementation of the HHCTCP to determine if adjustments need to be made to the goal

HART shall submit for approval to USDOT any significant adjustments made to the goal due to changed circumstances.

Transit vehicle manufacturer's goals 49 CFR Section 26.49

HART 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. HART will check that the TVM is listed as currently eligible on the FTA website and will require a written statement of compliance from the TVM. Alternatively, HART may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Breakout of estimated race-neutral & race-conscious participation 49 CFR Section 26.51(a-c)

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

1. DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
2. DBE participation through a subcontract under a prime contract that does not have a DBE goal; and
3. DBE participation through a subcontract under a prime contract that exceeds a contract goal.

HART shall meet the maximum feasible portion of its overall goals through race-neutral means and shall require the prime contractors to use the following methods to increase DBE participation:

1. Arranging solicitation times for presentation of bids, quantity specifications, and delivery schedules that will facilitate the participation of DBEs and other small businesses. This may include unbundling

large contracts, and encouraging prime contractors to subcontract portions of their work that they may otherwise perform with their own forces.

2. Providing information and technical assistance to DBEs and other small businesses.
3. Distributing the DBE Directory through print and electronic means.

Contract goals 49 CFR Section 26.51(d-g)

As previously mentioned, HART shall attempt to meet its overall goal through race-neutral means. Contract goals or other race or gender conscious means may be considered if, through constant monitoring, it becomes apparent that the overall project goal cannot be met race neutrally. HART shall establish contract goals to the extent that contract goals will cumulatively meet any portion of the overall goal that HART projects it will not meet through race-neutral means. Contract goals will be expressed as a percentage of the total amount of a USDOT-assisted contract, less allowances and mobilization.

Contract goals will only be established on those USDOT contracts that have subcontracting possibilities.

Contract goals shall not be established on every contract. The amount of the goal shall be contingent upon the circumstances of the contract. Some of the following factors may be considered in determining whether a contract goal shall be established, and what the percentage of the goal shall be:

- The projected portion of the goal that will be met by establishing contract goals;
- The progress towards achieving the overall three-year goal;
- The types and breakdown of activities in the proposed contract;
- The availability of DBEs that are capable of performing the work called for in the contract;
- The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project; and
- The effect that the contract specific goal may have on the project's completion time.

Good faith efforts procedures 49 CFR Section 26.53

Demonstration of good faith efforts 49 CFR 26.53(a) & (c)

As previously mentioned, HART shall attempt to meet its overall goal through race-neutral means. Contract goals or other race or gender conscious means may be considered if, through constant monitoring, it becomes apparent that the overall project goal cannot be met race neutrally. When a contract goal is not met, the respective organization's DBELO shall conduct the initial review of good faith efforts submitted by the contractor. The DBELO shall determine whether the contractor has performed the quality, quantity, and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the contract goal in accordance with 49 CFR Part 26, Appendix A.

The contractor bears the responsibility of demonstrating that it met the contract goal, or if the contract goal was not met, by documenting the good faith efforts it made in an attempt to meet the goal.

The contractor shall be required to document all actions taken to meet the contract goal. Good faith efforts by the bidder/offeror to meet the contract goal, may include, but are not limited to, the following actions:

1. Whether the contractor solicited through all reasonable and available means (e.g. attendance at meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform part or all of the work to be included under the contract. HART will also consider whether the bidder/offeror solicited the participation of potential DBEs in sufficient time to allow the DBEs to properly inquire about the project and respond to the solicitation, and will also review whether the bidder/offeror took appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in this project;
2. Whether the contractor identified and broke up portions of work that can be performed by DBEs in order to increase the likelihood that DBEs would be able to participate, and the DBE goal could be achieved (e.g. breaking out contract items into economically feasible units to facilitate DBE participation, even when the bidder/offeror might otherwise prefer to perform these work items with its own forces);
3. Whether the contractor made available or provided interested DBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner, and assisted them in responding to the bidder's/offeror's solicitation;
4. Whether the contractor negotiated in good faith with interested DBEs. Evidence of such negotiations includes documenting: a) the names, addresses, and telephone numbers of DBEs that were contacted by the bidder/offeror; b) a description of the information that was provided to DBEs regarding the plans and specifications; and c) detailed explanations for not utilizing individual DBEs in the project. The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for a bidder's/offeror's refusal to utilize a DBE, or the failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire of a bidder/offeror to perform a portion of the work with its own forces, that could have been undertaken by an available DBE, does not relieve the bidder/offeror of the responsibility to make good faith efforts to meet the DBE goal, and to make available and solicit DBE participation in other areas of the project to meet the DBE goal;
5. Whether the contractor rejected DBEs as being unqualified without sound reasons, or based on a thorough investigation of their capabilities. The DBE's standing within the industry, membership in specific groups, organizations, or associations, and political or social affiliation, are not legitimate bases for the rejection or non-solicitation of bids from particular DBEs;
6. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance;
7. Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
8. Whether the contractor effectively used the services of available minority/women community organizations, minority/women business groups, contractors' groups, local, state, and federal minority/women business assistance offices, or other organizations to provide assistance in recruitment and placement of DBEs.

It is the sole responsibility of the contractor to submit any and all documents, logs, correspondence, and any other records or information to HART that will demonstrate that the

contractor made good faith efforts to meet the DBE goal. Additionally, for each DBE that was contacted but not utilized by the contractor for a contract, the contractor shall submit a detailed written explanation for each DBE detailing the reasons for the contractor's failure or inability to utilize, or to allow the DBE to participate in the contract. In its good faith effort evaluation, HART may, but shall not be required to perform the following as part of its evaluation:

1. Request additional information and documents from the contractor;
2. Compare the contractor's bid against the bids of other contractors on the same project, and comparing the DBEs and DBE work areas utilized by the contractor with the DBEs listed in other bids submitted for this contract;
3. Verify contacts by contractors with DBEs; and
4. Compare the DBE and the categories of DBE work targeted by the contractor for participation in the contract, with the total available pool of DBEs available for each particular subcontract targeted by the bidder.

Information to be submitted 49 CFR Section 26.53(b)

HART treats contractor's compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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 contractor's commitment; and if the contract goal is not met, evidence of good faith efforts;
6. The dollar amount of each DBE and non-DBE subcontractor participating in the project; and
7. A written and signed confirmation by the participating DBE to verify its active status, as provided in the prime contractor's commitment.

Administrative reconsideration 49 CFR Section 26.53(d)

Within five (5) working days of being informed by the HART Executive Director that the contractor is not responsive because it has not documented sufficient good faith efforts, a contractor may request administrative reconsideration. Contractors should make this request in writing to the following official:

Executive Director
Honolulu Authority for Rapid Transportation
1099 Alakea Street, 17th Floor
Honolulu, Hawaii 96813
Attn: DBE

The Executive Director of HART or his designee shall not have played any role in the original determination that the contractor did not document sufficient good faith efforts.

As part of this reconsideration, the 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 contractor will have the opportunity to meet in person with the reconsideration official, or his/her designee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

In an administrative reconsideration, HART may consider whether other contractors are able to attain the contract goal, as HART will review all previously submitted documents, oral, and written arguments, and other evidence presented in the reconsideration, in making its decision.

The Executive Director will inform the contractor in writing of HART's reconsideration decision within 45 days of the proceeding. The decision will state HART's findings with respect to whether or not the contractor met the contract goal, or whether the contractor exhibited good faith efforts to achieve the contract goal.

The reconsideration decision is not administratively appealable to the USDOT but is appealable under HRS 103D-709.

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 the Honolulu Authority for Rapid Transportation 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 X.XX% percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, 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 (5) if the contract goal is not met, evidence of good faith efforts.

Counting DBE participation 49 CFR Section 26.55

HART will count DBE participation toward contract goals as provided in 49 CFR §26.55, as follows:

1. The entire amount of work actually performed by DBEs on all tiers on a contract;
2. One hundred percent of the cost of materials that are obtained from DBE manufacturers;
3. The cost of materials and supplies obtained or equipment leased by DBEs (except from the prime contractor or its affiliate);
4. Sixty percent of the cost of materials that are purchased from DBE regular dealers;
5. The commissions or fees for transactions with DBE suppliers who are not regular dealers;
6. The total value of the transportation services of a certified DBE trucker if the DBE trucker uses trucks it owns, insures, and operates using drivers it employs.
7. The total value of the transportation services if a DBE trucker leases trucks from another DBE firm.
8. The value of the fees, commission or mark up from a lease arrangement if a DBE trucker leases trucks from a non-DBE firm and credit is not allowed for the lease amount.
9. The total value of the transportation services provided by a non-DBE lessee, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, credit will be awarded only for the fee or commission the DBE firm receives as a result of the lease arrangement.

EXAMPLE: DBE firm X uses two of its own trucks on a contract, leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

Counting DBE Participation of Decertified DBEs:

1. If a DBE firm becomes decertified after the contract award but before the notice to proceed has been issued by HART, HART shall require the prime contractor to meet the DBE goal by continuing to subcontract with the decertified DBE, and by expending good faith efforts to find work not already subcontracted out to DBEs, in an amount sufficient to meet the DBE goal. The work performed, or supplies provided by an ineligible (i.e. decertified) DBE, shall not be counted towards the DBE contract goal or HART's overall goal.
2. If a prime contractor has executed a subcontract with the firm before the notice of ineligibility, the prime contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE contract goal for the firm's work. When HART has let a prime to the DBE that was later ruled ineligible, the portion of the ineligible

firm's performance of the contract remaining after the issuance of the notice shall not count toward the overall goal, but may count toward the contract goal.

3. If a DBE firm becomes ineligible solely because it has exceeded the business size standard during performance of the contract, HART shall continue to count its participation on that contract towards HART's overall goal, as well as the contract goal.

Commercially useful function 49 CFR Section 26.55(c)(1)

To determine whether a DBE is performing a commercially useful function, HART shall evaluate the amount of work subcontracted to the DBE, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. The DBE must perform at least 30 percent of the work with its own forces.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. HART shall make the determination whether a DBE firm is performing a commercially useful function given the type of work involved and normal industry practices.

HART's decision on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

Monitoring Commercially Useful Function Performance:

It shall be the prime contractor's responsibility to ensure that all certified DBEs selected to perform work on the contract and for which the prime contractor shall receive DBE credit, perform a commercially useful function.

HART shall conduct inspections at each project site at the start of the project and whenever DBEs begin work to ensure that certified DBEs are performing a commercially useful function. Field inspectors shall utilize the Commercially Useful Function Project Site Review CUF Form (Attachment F).

Commercially Useful Function of Trucking Firms:

The following factors are used in determining whether a DBE trucking company is performing a commercially useful function:

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the project. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate operating administration.

Example: DBE firm X uses two of its own trucks on a contract, leases two trucks from DBE firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by firm X and firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks firm X receives as a result of the lease with firm Z.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Use of Joint Checks under the DBE Program

HART will not object to the use of joint checks when the following conditions are met:

1. The second party (typically the prime contractor) acts solely as a guarantor,
2. The DBE must release the check to the supplier,
3. The use of joint checks is a commonly recognized business practice,
4. HART will approve the practice before it is used. As a part of this approval process, HART will analyze industry practice to confirm the practice is commonly employed outside of the DBE program for non-DBE subcontractors on both federal and City funded contracts. Using joint checks shall not be approved if it conflicts with other aspects of the DBE regulations regarding commercially useful function (CUF).
5. HART shall monitor this use closely to avoid abuse.

The following shall be present to support joint checks:

1. Standard Industry practice applies to all contractors (federal and city contracts).
2. Use of joint checks must be available to all subcontractors.
3. Material industry sets the standard industry practice, not prime contractors.
4. Short term not to exceed reasonable time (i.e., one year, two years) to establish/increase a credit line with the material supplier.
5. No exclusive arrangement between one prime and one DBE in the use of joint checks that may compromise the independence of the DBE.
6. Non-proportionate ratio of DBE's normal capacity to size of contract and quantity of material to be provided under the contract.
7. DBE is normally responsible to install and furnish the work item.
8. DBE must be more than an extra participant in releasing the check to the

material supplier.

General conditions for allowance by HART:

1. DBE submits request to HART for action.
2. HART will provide prior approval of the request.
3. There is a formalized agreement between all parties that specify the conditions under which the arrangement shall be permitted.
4. There is a full and prompt disclosure of the expected use of joint checks.
5. DBE remains responsible for all other elements of 49 CFR 26.55(c)(1).
6. The agreement states clearly that the DBE's independence is not threatened because it retains final decision making responsibilities.
7. HART will determine that the request is not an attempt to artificially inflate DBE participation.
8. Standard industry practice is only one factor and other factors shall be considered by HART prior to authorizing the use of joint checks.
9. HART will monitor and maintain oversight of the arrangement by reviewing cancelled checks and/or certification statement of payment.
10. HART will verify there is no requirement by prime contractor that DBE is to use a specific supplier nor the prime "contractors" negotiated unit price.

Replacement of a DBE on a contract 49 Section 26.53(f)

HART 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. HART will require the prime contractor to promptly provide written notice to the project manager or resident engineer of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The written notice by the contractor must include the following:

1. The date the contractor determined that the certified DBE to be unwilling, unable or ineligible to perform work on the contract;
2. The projected date that the contractor shall require a substitution or replacement DBE to commence work if consent is granted by HART;
3. Documentation of facts that cite specific actions or inactions on the part of the affected DBE that led to the contractor's conclusion that the DBE is unwilling, unable, or ineligible to perform work on the contract;
4. A brief statement of the affected DBE's capacity and ability or inability to perform the work as determined by the contractor;
5. Documentation of contractor's good faith efforts to enable the affected DBE to perform the work;
6. The current percentage of work completed on each bid item by the affected DBE;
7. The total dollar amount currently paid per bid item for work performed by the affected DBE;
8. The total dollar amount per bid item remaining to be paid to the DBE for work completed but for which the DBE has not received payment, and with which the contractor has no dispute; and

9. The total dollar amount per bid item remaining to be paid to the DBE for work completed for which the DBE has not received payment, and with which the contractor and DBE have a dispute.

The prime contractor shall send a copy of the written notice to replace a certified DBE on a contract to the affected DBE. The affected DBE may submit a written response within five (5) calendar days to HART to explain its position on its performance on the committed work. HART shall consider both the prime contractor's request and DBE's stated position before approving the termination or substitution request, or determining if the contractor should reconsider its decision to replace a DBE and terminate its subcontract.

No substitution or termination of a DBE subcontractor shall be made at any time without the prior written consent of HART. Written consent shall be provided only if the prime contractor has demonstrated good cause, as determined by HART, to terminate the DBE. Good cause may include, but is not limited to the following circumstances:

1. The DBE subcontractor fails or refuses to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law;
6. HART has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to HART written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.

Proposed Substitution of a Certified DBE; Section 26.53

Upon termination of the certified DBE, the prime contractor shall make good faith efforts to replace the terminated DBE. The termination of the DBE does not relieve the prime contractor of meeting the DBE contract goal, and the unpaid portion of the terminated DBE's contract shall not be credited towards the DBE contract goal.

When a DBE substitution is necessary, the prime contractor shall submit in writing the name of another certified DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The prime contractor shall furnish information such as the contract I.D. number, bid item, item description, bid unit and bid quantity, unit price, and total price.

If the prime contractor is unable to commit the remaining required dollar value to the substitute DBE, the prime contractor shall provide written evidence of good faith efforts made by the prime contractor in accordance with HART's Good Faith Efforts Procedures on pages 13 and 14 of this document.

If the contractor fails or refuses to comply in the time specified, HART's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for a default proceeding.

CERTIFICATION

The State of Hawaii Department of Transportation is the sole certifying agency for the United States Department of Transportation DBE Program in the State of Hawaii. All applicants that are seeking DBE certification or re-certification will be directed to HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.

HDOT compiles, maintains and distributes a DBE Directory consisting of all eligible DBEs. A DBE Directory is printed and distributed annually. The electronic version is posted on the internet at www.state.hi.us/dot/administration/dbe/index.htm. The electronic DBE Directory is revised weekly and provides information on the previously certified DBEs and those DBEs that were certified or recertified in the previous week.

For the purpose of the Honolulu Authority for Rapid Transportation DBE program, HART will rely solely on the information supplied by HDOT.

Information, confidentiality, cooperation; Section 26.109

HART shall safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. This includes disclosure of confidential business or personal information prohibited by Section 92F-13 of the Hawaii Revised Statutes.

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

(rev. 8/16/18)

HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

1099 Alakea Street, 17th Floor
Honolulu, HI 96813-4511
Telephone: (808) 768-6223
Fax: (808) 768-1360

Bidder Registration Form

Pursuant to 49 CFR 26.11(c), the Honolulu Authority for Rapid Transportation (HART) is required to create and maintain a bidders list consisting of all firms that bid on prime contracts or quoting subcontracts on federal assisted projects. All interested parties (Consultants, Vendors, Contractors, Suppliers, Manufacturers, Truckers, etc.) are required to register with HART.

1. Bidder Information:

Name of Firm (dba if applicable)		
Address	City / State	Zip Code
Mailing Address	City / State	Zip Code
Name of Contact Person	Telephone Number	
Email Address		

2. Check all that apply to the bidder:

<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Subcontractor
<input type="checkbox"/> Consultant	<input type="checkbox"/> Material Supplier
<input type="checkbox"/> Manufacturer	<input type="checkbox"/> Other

3. NAICS Code: _____ 4. Type of Work: _____

5. Currently Certified as a DBE? Yes No

6. Year that firm was established: _____ 7. License No.: _____

8. Check which best indicates the bidder's annual gross receipts:

<input type="checkbox"/> Less than \$500,000	<input type="checkbox"/> \$500,000 to \$999,999
<input type="checkbox"/> \$1,000,000 to \$4,999,999	<input type="checkbox"/> \$5,000,000 to \$9,999,999
<input type="checkbox"/> \$10,000,000 to \$16,999,999	<input type="checkbox"/> More than \$17,000,000

The completed Bidder Registration Form may be faxed to (808) 768-1360, emailed to cbayne@honolulu.gov or mailed to the address at the top of this form attn: Charles Bayne.

Rev. 8/8/12

Attachment B

HART Disadvantaged Business Enterprises (DBE) Contract Provisions

1) DBE Assurances: The contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART 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.

The above paragraph shall be included in each subcontract the contractor signs with a subcontractor.

2) Prompt Payment: The contractor shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by HART. Full and prompt payment by the contractor to all subcontractors shall include retainage, if applicable.

3) Project DBE Goal: HART has established a race neutral overall DBE goal of 13% for the duration of the project. Although HART has not established a DBE contract goal for this Project, DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The contractor shall adhere to the following requirements:

- a) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. 26.51(b) as practical to afford opportunities to DBEs to participate in the agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.
- b) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and
- c) A DBE firm must be certified by the Hawaii State Department of Transportation before its participation is reportable under paragraph (d) below;

4) Reports to HART: The contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The contractor shall submit the "DBE Participation Report" reflecting payments made by the contractor to DBE subcontractors. Payments to the contractor will not be processed if the DBE Participation Report is not properly completed and attached. The DBE Participation Report shall be prepared in the format set forth in Attachment E to this program.

5) Records: On request, the contractor shall make available for inspection, and assure that its subcontractors make available for inspection:

- a) Records of prompt payments made in accordance with Section 1.6(b), above;
- b) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;
- c) The dollar amount and nature of work of each DBE subcontractor;
- d) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority women, or Other; and
- e) Other related materials and information.

6) The contractor shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The contractor shall also promptly notify HART of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

HART DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT					
Project Name:					
Contract No.:		Contractor Name:			
Federal ID No.:		Contract Amount		\$	
Current					
Period Covered by this Report		(Invoice #)		Total to Date	
Total Invoice Amount		(A) \$		(B) \$	
Payment Requested:		DBE? (Yes/NO) DBE Code (if "Yes")	Prior Amount	Current Amount	Total Amount to Date
Prime Contractor			\$	\$	\$
Subcontractors (attach additional sheets as needed):					
Name: Type of Work:			\$	\$	\$
Name: Type of Work:			\$	\$	\$
Name: Type of Work:			\$	\$	\$
Name: Type of Work:			\$	\$	\$
Totals			\$	\$	(C) \$
DBE Participation to Date (C/B)		%			

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

Printed Name and Title

Signature

Date

Attachment D

HART FINAL REPORT OF DBE PARTICIPATION

This report must be submitted by the contractor with the final invoice or request for payment under this contract.

Project Title: _____
 Contractor Name: _____
 Project No.: _____ Contract No.: _____
 Period Covered by this report: _____
 Contract Amount (including amendments): \$ _____
 Final payment amount: \$ _____ Invoice No.: _____
 Total payment to DBE: \$ _____

All subcontractors (DBD and non-DBE) & DBE suppliers or manufacturers	Type of service or materials	Subcontract amount
Name Address Phone		

Add additional sheets as necessary.

 Print Name and Title

 Signature

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

- 1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.
- 2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

 Printed Name and Title

 Signature

 Date

INSTRUCTIONS FOR COMPLETING THE FINAL REPORT OF DBE PARTICIPATION

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period covered by this report:	Same period as invoice period.
Contractor Name:	Self Explanatory
Contractor No:	Self Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items. Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No:	Self Explanatory
Final Payment Amount:	Self Explanatory
Total Payment to DBE:	Total \$ amount paid to DBE.
Prompt payment declaration:	Read, sign and date

**HART
DBE COMMERCIALLY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW REPORT**

Project No:		Reviewer:		Review Date:	
		Certifying Signature:			
Project Name:					
Prime Contractor:					
DBE Subcontractor:					
DBE Foreman/Supt:		DBE Start Date:		DBE Completion Date:	
Work Item: (continue on back of form)		Work Item Description		Approximate % Complete as of this date	
				Subcontracted Dollar Amount	
REGARDING DBE'S FOREMAN/SUPT.					
Exclusively employed by DBE?		Yes	No	Shown on the DBE payroll?	
				Yes	No
Shown on any other firm's payroll?		Yes	No	If yes, whose?	
Directly reports to:					
REGARDING DBE'S EMPLOYEES					
Are DBE's employees shown on any other contractor's payrolls?				Yes	No
If yes, whose?					
Do the DBE's employees receive work assignments from DBE foreman?				Yes	No
REGARDING DBE'S EQUIPMENT					
Does the equipment have the DBE's name or logo?				Yes	No
If another firm's name or logo is shown, identify:					
Does the equipment belong to the DBE?				Yes	No
If leased or rented, is there a copy of the agreement in project file?				Yes	No
REGARDING DBE'S WORK PERFORMANCE					
Has any other contractor performed work that was to be performed by the DBE?				Yes	No
If yes, identify the contractor who performed the work:					
What work items did the identified contractor perform? (if more than two, write on back of form)					
1)					

—					
2)					
Were these items on the DBE's subcontract?				Yes	No
Has the DBE owner been on the job site?				Yes	No
Does the DBE appear to have control over their work and employees?				Yes	No
Comments: (any comments pertaining to the performance or conduct of the DBE company)					
Has HART Civil Rights been notified of any problem(s) identified in this report?				Yes	No
If no, explain why:					

(Rev. 2/3/15)

HART DBE Commercially Useful Function (CUF) Project Site Review Report Instructions:

Please note the reviewer must sign in the upper right box to certify the accuracy of the report.

The HART CUF Form must be completed at least once for each DBE working on a HART FTA Construction Contract, during the life of the contract. Please refer to the following information for guidance in completing the CUF.

COMMERCIALLY USEFUL FUNCTION (CUF) – FTA 49CFR26.55(c)(1)

DBE CONTRACTOR MUST PERFORM A CUF TO SATISFY THE CONTRACT GOAL

MANAGE:

- **Manage the work themselves.**
 - Schedule work operations, order equipment and materials, hire and fire employees, including supervisory employees.

SUPERVISE:

- **Supervise daily operations**
 - Can use a skilled Superintendent employed by the DBE.

PERFORM:

- **Perform the work stated in the contract with their own equipment.**

Regular Equipment is owned or leased and operated on a long term agreement and not on an *ad hoc* or contract by contract agreement.

- a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.
- b. The equipment would be owned by the DBE firm. Or
The equipment would be leased/rented from traditional equipment lease/rental sources.
- c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.
- d. The equipment cannot belong to:
 - (1.) Prime Contractor
 - (2.) Another subcontractor on the present project.
 - (3.) Supplier of materials being installed by the DBE firm.
- e. The equipment cannot come from another contractor fully operated.

- **Perform the work with their own employees.**

Regular Employee is a person who:

- a. Would be working for the DBE firm on any other subcontract with any other contractor.
- b. Is a permanent employee of the DBE firm, Or
Has been recruited through the traditional recruitment and/or employment centers.

- c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
 - d. Is not a member of a construction crew, which regularly works for a non-DBE.
 - e. Is not a licensed contractor who is at the time “unemployed” or “between jobs.”
- **Subcontracting part of the work of the contract.**
 - When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal **only if the DBE subcontractor is itself a DBE**. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
 - **Trucks/Equipment must display name of DBE firm**
 - Printed name or logo
 - Leased or rented equipment: A copy of the lease/rental must be submitted to the project office and put in the project file.
 - **Supplier - Regular Dealer**

A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. 60% of the cost of materials, supplies and delivery counts toward the DBE goal.
 - **Supplier – Service Provider**
 - Only the fees or commissions charged by the DBE Service Provider count toward DBE goals. The Cost of the materials or supplies are not counted toward the DBE goal.

TRUCKING CLARIFICATION (S)

HART shall use the following factors (as stated in the Special Provisions) in determining whether a DBE trucking company is performing a commercially useful function:

- a. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- b. The DBE must be responsible for the management and supervision of the entire trucking arrangement for the purpose of meeting DBE goals.
- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. *See below for payroll reporting.
- e. The DBE who leases trucks from a non-DBE is **entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract**. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value

of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.