

North Texas Tollway Authority

Business Diversity Contracting and Compliance Manual

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Business Diversity Department Contracting and Compliance Manual

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Introduction and Purpose

A. Introduction

The North Texas Tollway Authority (NTTA) is committed to ensuring the participation of disadvantaged, minority, women-owned and small business enterprises in NTTA's procurement process and contracting. This Business Diversity Department Business Diversity Contracting and Compliance Manual (CCM), administered by the Business Diversity Department (Business Diversity), outlines the procedures, provisions and compliance requirements to support and comply with NTTA's Disadvantaged, Minority, Women-Owned and Small Business Enterprises Policy, adopted January 20, 2010 (the "Diversity Policy") (see Appendix A).

As recommended by the 2008 Availability and Disparity Study (A & D Study), NTTA has developed three separate programs to support the Diversity Policy:

1. Disadvantaged Business Enterprise (DBE) Program created to ensure compliance on projects funded in whole or in part with federal financial assistance funds;
2. Minority and Women-Owned Business Enterprise (M/WBE) Program developed to encourage participation of minorities and women in procurement opportunities and awarding of contracts, regardless of federal financial assistance funding; and
3. Small Business Enterprise (SBE) Program created to foster the growth of small, emerging businesses and their continued participation in contracting opportunities with NTTA.

The Executive Director is responsible for the implementation and distribution of the Diversity Policy and shall ensure compliance with the disadvantaged, minority, women-owned and small business enterprise (D/M/W/SBE) programs by all internal departments and external contractors, consultants and vendors.

This CCM takes effect immediately and replaces the Business Opportunity Program and Policy adopted by the Board of Directors on August 21, 2002.

B. Scope and Objectives

This CCM sets forth the procedures and related guidelines for all NTTA procurements, contracts and projects, even those without established goals. For those contracts where a good faith effort is required, including those where a specific project goal has been established by NTTA for D/M/WBEs, contractors will be required to meet the requirements of the CCM. The CCM requires all contractors to comply in good faith with all applicable requirements set forth in the CCM. Failure by contractors to carry out these requirements may constitute a breach of contract, which may result in contract termination, bidder disqualification or such other available remedy as NTTA deems appropriate.

NTTA will ensure that only businesses certified as disadvantaged, minority, and women-owned that meet the definitions set forth in the Diversity Policy are counted toward the goals established under the Diversity Policy.

The objectives of the DBE, M/WBE and SBE Programs include:

- Ensuring nondiscrimination in the award and administration of all NTTA contracts;
- Creating a level playing field on which qualified DBEs, M/WBEs and SBEs can compete fairly for all NTTA procurements and contracts;
- Ensuring that the DBE, M/WBE and SBE Programs are narrowly tailored in accordance with applicable law;
- Ensuring that only firms that fully meet the applicable eligibility standards are permitted to participate as DBEs, M/WBEs and SBEs; and
- Helping remove barriers to the participation of DBEs, M/WBEs and SBEs in all NTTA procurement opportunities and contracts.

C. Business Diversity Department Overview

The mission of Business Diversity is to encourage and foster the inclusion and growth of D/M/W/SBE participation in procurement of and contracting for goods and services with NTTA. Business Diversity is responsible for the implementation and coordination of all related program activities, including outreach, monitoring, tracking and reporting, for the disadvantaged, minority, women-owned and small business enterprise programs.

In addition, Business Diversity shall coordinate all compliance activities with internal and external stakeholders to ensure that the purpose and intent of the Diversity Policy are fully implemented.

Roles and Responsibilities

The Executive Director has designated the Assistant Executive Director of Finance (CFO) as the Diversity Liaison Officer. The diversity programs are housed in Business Diversity, under the direction and supervision of the Business Diversity Director, and with direct reporting to Senior Director of Procurement Services and Business Diversity.

The Director shall have the necessary staff to assist with the daily operational activities of Business Diversity. Business Diversity is responsible for outreach, monitoring, tracking and reporting of all D/M/W/SBE activities associated with the inclusion of disadvantaged, minority, women-owned and small businesses in the procurement and contracting processes.

A. Duties and Responsibilities of the Diversity Liaison Officer

- Implement NTTA DBE Program in accordance with Memorandum of Understanding Regarding the Adoption by the North Texas Tollway Authority of the Texas Department of Transportation Federally-Approved Disadvantaged Business Enterprise Program (MOU).
- Provide oversight of the disadvantaged, minority, women-owned and small business enterprise programs.
- Should NTTA receive federal funds directly, Diversity Liaison Officer will”
 - Implement the DBE Program in accordance with 49 C.F.R. Part 26
 - Develop and submit the methodology utilized to establish triennial DBE goals.
 - Report annual DBE participation to the Texas Department of Transportation TxDOT upon request.

B. Duties and Responsibilities of the Business Diversity Department Director and Staff

- Implement and update this CCM as needed to address modifications to procedures.
- Develop and maintain systematic procedures to ensure D/M/WBE participation in all NTTA procurement and contracting opportunities.
- Acknowledge and support the TxDOT’s SBE Program
- Evaluate and recommend Commercially Useful Function determinations for D/M/WBEs participating in NTTA procurement and contracting opportunities.
- Report to the Board periodically regarding the status of the D/M/WBE Programs, and the annual achievements of the D/M/WBE Programs, respectively, relating to prime and subcontractor participation.

- Develop and recommend to the Executive Director NTTA's Business Diversity Overall Annual Goal, and M/WBE annual industry-specific goals on applicable business opportunities, including contract modifications as defined herein when requested.
- Review and develop procedures consistent with current laws, judicial determinations and regulations that support the legality of the business diversity process.
- Review solicitations and responses to ensure that D/M/WBEs have and continue to have an equal and fair opportunity to participate in contracts, including, but not limited to, review of the scope of work, bonding requirements, insurance requirements and the conditions in which retainage is held, and other procurement/contract-related considerations as it relates to business diversity components.
- Monitor and report to NTTA's executive management the progress of D/M/WBE participation in procurement and contracting opportunities.
- Evaluate and make NTTA's Good Faith Effort determination for contractors achieving D/M/WBE participation in procurement and contracting opportunities.
- Develop listings of disadvantaged, minority, women-owned and small business enterprises available for prime and subcontracting opportunities which listings include supplies and services NTTA and/or its respective contractors are likely to utilize.
- Review and verify the certification status of disadvantaged, minority, women-owned and small businesses.
- Monitor and ensure Diversity Policy compliance in procurement and contracting opportunities in the contract close-out process.
- Promote and conduct outreach activities for the benefit of D/M/WBEs, in cooperation with community and business organizations.
- Attend pre-bid/proposal and pre-construction/design conferences to explain and promote the D/M/W/SBE business diversity process and requirements, as well as respond to related inquiries.
- Encourage and promote partnering and teaming arrangements between and among non-minority, minority and women-owned firms and between two (2) or more minority and women-owned firms to enhance innovative approaches to increase D/M/WBE participation.
- Participate in pre-solicitation discussions, including any design review meetings, to assist in the consideration of such factors as (but not limited to) D/M/WBE availability, bonding limits, and type of work capabilities available from D/M/WBEs in development of project specifications.
- Promote the D/M/WBE business diversity process and accomplishment through innovative initiatives such as annual reports, newsletters, website, business publications, recognition programs and awards.

C. Duties and Responsibilities of All Other NTTA Departments

Each NTTA department shares responsibility for promoting, supporting and assisting Business Diversity in carrying out the D/M/WBE business diversity process. All departments shall collaborate to implement and support specific functions to advance the D/M/WBE business diversity process, as well as any other function(s) deemed necessary by executive management to implement the goals and objectives of the Diversity Policy.

In an effort to meet and promote NTTA's disadvantaged, minority, women-owned and small business enterprise programs, all departments requesting bids, responses, proposals, specifications or any other procurement or contracting solicitation on behalf of NTTA shall:

- Assist, when necessary, in the compilation of contract data for D/M/WBE availability/utilization determinations.
- Notify and provide Business Diversity, upon anticipation of any procurement or contracting solicitation, information regarding the scope of work, budget, schedule, and procurement specifications, as well as any other relevant information concerning the solicitation, in a timely manner prior to the announcement of the procurement or contract.
- Notify Business Diversity at a time reasonably prior to advertisement of procurement or contracting solicitation and forward a copy of the advertisement to <http://www.ntta.org/procurement/busdiv/complianceandresources>.
 - Ensure that all applicable provisions and specifications pertaining to the D/M/WBE business diversity process are included in procurement specifications and contracts.
 - Provide Business Diversity, through the Procurement Services Department, with quarterly forecast schedules of upcoming procurement and contracting opportunities.
 - Notify Business Diversity regarding potential compliance concerns which may affect attainment of established business diversity goals.
 - Assist Business Diversity by reviewing and approving monthly subcontractor reports from prime contractors to ensure all D/M/WBE Program-related activities are in compliance with the executed contracts and promptly report any discrepancies.
 - Provide Business Diversity with a copy of, or independent electronic access to, the necessary information for each contract, including, but not limited to, the contract value, any contract modifications, the business diversity goal and the contracting parties' signatures confirming an executed agreement with NTTA. This information can be provided to Business Diversity through a copy of the Letter of Transmittal, executed contract, Notice of Award, Notice to Proceed, or Change Orders, as well as any other relevant documentation. Timely

receipt of supplemental post-award documentation will assist Business Diversity in monitoring the compliance of NTTA's prime contractors in the achievement of committed business diversity goals.

Disadvantaged Business Enterprise (DBE) Program Overview

NTTA will establish DBE participation goals based on guidance set forth in MOU in contracts relating to highway construction, design and engineering that are paid in whole or in part with federal financial assistance funds that NTTA receives, either directly or through TxDOT, from the DOT. Using race and gender-neutral measures, NTTA will not use quotas in any way in the administration of this DBE Program.

On September 9, 2002, the Texas Department of Transportation (TxDOT) and NTTA entered into a Memorandum of Understanding (MOU) which allows NTTA to operate its DBE Program under TxDOT's approved DBE Program.

A. DBE Goal-Setting and Methodology

NTTA will be responsible for developing the methodology utilized to establish DBE goals and submit its rationale to the TxDOT for final approval. The MOU allows NTTA to establish goals that may be higher or lower than TxDOT's overall goal.

Based on guidance provided in MOU, NTTA will utilize the following method to calculate the DBE goals.

1. Establish a base figure for the relative availability of DBEs by using data from DBE directories, the A & D Study, and NTTA's Bidders List.
2. Examine all available evidence in the relevant market area to determine what, if any, adjustments to the base figure are needed. Evidence considered includes:
 - i. Current capacity of DBEs to perform work on NTTA's contracts, as measured by the volume of work DBEs have performed in recent years;
 - ii. Evidence and recommendations from the A & D Study not accounted for in NTTA's base figure;
 - iii. NTTA's proposed highway construction budget for the forthcoming three (3) fiscal years, including types and location of work; and
 - iv. Participation of DBEs on NTTA's projects in previous years.
3. Based on the foregoing adjustments, NTTA will establish its DBE goals for the forthcoming fiscal year (s) as a percentage of the federal financial assistance funds that NTTA will expend in contracts for highway construction, design and engineering during the respective fiscal year. The goals represent the level of DBE participation that NTTA would expect during the respective fiscal year in question.

In addition to various outreach efforts, NTTA shall conduct a public meeting to receive input from contractors, organizations and citizens regarding the proposed triennial DBE goals. The Diversity Liaison Officer will recommend the proposed DBE goals to the Executive Director. The Executive Director will review the recommended proposed DBE goals with the Board prior to submission to the TxDOT for approval. by such date as may be revised to match any modification to TxDOT's submission dates by the DOT. NTTA's proposed DBE goals submission to the TxDOT shall include a summary of information and comments received during the public participation process and <https://www.ntta.org/procurement/busdiv/complianceandresources> NTTA's responses, as well as a statement of the method used to calculate the goal.

Following TxDOT approval of the DBE goals, NTTA will publish a notice of the approved DBE goals, informing the public that the rationale for the approved DBE goals are available for inspection during normal business hours at NTTA's main office, 5900 W. Plano Parkway, Suite 100, Plano, Texas 75093, for thirty (30) days following the date of the notice, and informing the public that comments on the goal will be accepted for forty-five (45) days from the date of the notice. The notice will include addresses to which comments may be sent, and will be published in general circulation media, available minority-focused media and trade association publications.

The effective date for the approved DBE goals shall be October 1 of each three-year interval, unless NTTA has received related contrary instructions from the TxDOT, if the goals are established on a project basis, by the time of the first solicitation for a contract for the project.

B. Monitoring and Enforcement Mechanisms

NTTA will use the following monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. Part 26:

Every Turnpike Project receiving federal financial assistance funds during the fiscal year will be monitored to ensure that DBE subcontractors are utilized, that they are performing the work as approved, and that payments are made to DBEs consistent with previously approved work plans. The following specific procedures are established to monitor compliance after contract award:

- Implement a monitoring and enforcement process to ensure that work committed to DBEs at the time of contract award is actually performed by DBEs. The prime contractor shall submit a Monthly Subcontractor Progress Report by the 15th of each month. This process will provide a continuous total of actual DBE attainment (payments actually made to DBE firms) and enable a means of comparing these attainments to commitments. The prime contractor will be required to electronically submit the monthly subcontractor progress information into the business diversity contract compliance tracking system.
- Report to the TxDOT any false, fraudulent, or dishonest conduct in connection with the DBE Program and consider appropriate independent legal action by NTTA.
- Release a contractor's retainage only after all DBE subcontractors' participation information is submitted and verified by the BDD.
- Require construction contractors to prepare and provide a project work schedule with a list of all subcontractors for the scheduled work. This will enable the BDD to schedule on-site inspections to ensure that subcontractors listed are actually utilized.

C. DBE DIRECTORY

NTTA will make available to interested persons an online Unified Certification Program (UCP) DBE directory identifying all firms eligible to participate as DBEs in NTTA's DBE Program. The listing for each firm will include each eligible firm's name, address, phone number, fax number, e-mail, contact person, date of certification expiration and the types of work the firm has been certified to perform as a DBE. The DBE directory can be obtained by contacting the BDD.

Minority/Women-Owned Business Enterprise (M/WBE) Program Overview

It is the policy of NTTA to promote increased participation of minority and women-owned businesses (M/WBE) in contracts, procurement of goods, materials, supplies and services, regardless of federal financial assistance funding. NTTA's M/WBE Program is narrowly tailored and implementation will focus on addressing disparity in use and underutilization of ready, willing and able minority and women-owned businesses, as identified in the A & D Study, in various categories of procurement and contracting opportunities available with NTTA. NTTA will not utilize quotas. For purposes of the M/WBE Program, an M/WBE is a "minority and/or women-owned business" entity so certified by a certifying agency recognized by NTTA.

A. M/WBE Goal-Setting and Methodology

NTTA may establish annually an M/WBE industry-specific subcontracting goal for each of the following categories that will be based on the availability of ready, willing and able M/WBEs:

- Construction and maintenance
- Professional services
- Goods and services
- Consulting services

Before establishing the annual M/WBE industry-specific goals each year, NTTA shall conduct a public meeting to receive input from contractors, organizations and citizens regarding the proposed M/WBE annual industry-specific goals. The Business Diversity Director will recommend the proposed annual M/WBE industry-specific goals to the Executive Director. The Executive Director will review the recommended proposed annual M/WBE industry-specific goals with the Board for approval by October 1 of each year.

Following Board approval, NTTA shall publish a notice of the approved M/WBE annual goal on NTTA's website.

The effective date of the new M/WBE annual industry-specific goals shall be January 1 of each year, unless instructed otherwise by the Executive Director or the Board; or, if a goal is established on a contract-specific basis, the utilization of the goal will commence by the time of the first solicitation for a contract regarding an appropriate project.

The following is a summary of the method that NTTA will use to calculate the goal:

1. Establish a base figure for the relative availability of M/WBEs by using data from M/WBE directories, the A & D Study, and NTTA's Bidders List.
2. Examine all available evidence in the relevant market area to determine what, if any, adjustments to the base figure are needed. Evidence considered includes:

- i. Current capacity of M/WBEs to perform work on NTTA's contracts, as measured by the volume of work M/WBEs have performed in recent years;
 - ii. Evidence and recommendations from the A & D Study not accounted for in NTTA's base figure;
 - iii. NTTA's forecast for all formal procurements for the next fiscal year, including types and location of work; and
 - iv. Participation of M/WBEs on NTTA's projects in previous years.
3. Based on the foregoing adjustments, NTTA will establish annual M/WBE industry-specific goals for each fiscal year as a percentage of the amount it anticipates expending in the four (4) industry-specific categories listed above, regardless of federal financial assistance funding. This goal represents the level of M/WBE participation that NTTA would expect during the fiscal year in question.

B. Contract-Specific Goals

NTTA will employ a contract-specific goal process to establish goals on a contract-by-contract basis for the four (4) industry-specific categories listed above. Contract-specific goals are established to allow Business Diversity flexibility to give greater consideration to the actual scope and specifications of the work; which, in turn, creates the ability to narrowly tailor NTTA's implementation of the business diversity process.

C. Monitoring and Enforcement Mechanisms

NTTA will use the following monitoring and enforcement mechanisms:

- Business Diversity will schedule on-site inspections and random audits in coordination with department stakeholders to ensure subcontractors are performing the work as approved. The BDD will monitor the payments to subcontractors to verify consistency with previously approved work plans. The following specific procedures are established to monitor compliance after contract award.
- Business Diversity will implement a monitoring and enforcement process to ensure that work committed to M/WBEs at the time of contract award is actually performed by the M/WBEs. The prime contractor shall report participation on a Monthly Subcontractor Progress Report via PRISM. This process will provide a continuous total of actual M/WBE attainment (payments actually made to M/WBE subcontractors), enabling the BDD to compare attainments to commitments.
- Business Diversity will notify department stakeholders, executive management and legal counsel of any noncompliance, including any false, fraudulent, or dishonest conduct, in connection with the M/WBE Program.

- Business Diversity will delay approval of the Subcontractor Final Report Form 4908 until all subcontractors' participation information has been received and verified by Business Diversity.
- Business Diversity will require preparation and provision by prime contractors of project work schedules with a list of all subcontractors for the scheduled work to Business Diversity prior to the notice to proceed.

D. M/WBE DIRECTORY

NTTA will make available to interested persons a list of certified M/WBE firms eligible to participate as M/WBEs in NTTA's program. The listing for each firm will include each eligible firm's name, address, phone number, fax number, e-mail, contact person, date of certification expiration and the types of work the firm has been certified to perform as an M/WBE. The M/WBE directory can be obtained by contacting Business Diversity.

Business Diversity Overall Annual Goal

A. Goal Setting and Methodology

Business Diversity Overall Annual Goal may be determined annually by NTTA and shall be weighted with the M/WBE industry-specific subcontracting goals. As noted in the previous sections, NTTA's M/WBE annual goals shall be based on the availability of ready, willing and able M/WBEs, regardless of federal financial assistance funding.

Counting - D/M/WBE Participation

The Board is committed to ensuring that D/M/WBE participation is measured at both the prime contracting and subcontracting levels. **The established goals on NTTA procurements are subcontracting goals that apply to prime contractors.** In the solicitation of subcontractors, Business Diversity discourages exclusive teaming arrangements or agreements, and Business Diversity will review such arrangements and agreements to ensure that a commercially useful function is served, as detailed in provision C of this section of the CCM. Such exclusive restrictions directly contradict NTTA's mission to proactively facilitate and maximize business opportunities, as well as capacity-building opportunities, for disadvantaged, minority and women-owned businesses.

A. Counting D/M/WBE Prime Contractors

When a D/M/WBE receives a prime contract, the D/M/WBE prime contractor remains responsible for meeting the D/M/WBE subcontracting goal requirement or for making a good faith effort to do so. The D/M/WBE prime contractor must submit the necessary documentation to Business Diversity to demonstrate its commitment to achieving the D/M/WBE subcontracting participation goal or its good faith effort to do so. To promote the utilization of D/M/WBEs as prime contractors, a portion of the work performed by a D/M/WBE prime contractor's own workforce will count, to the extent determined by Business Diversity, toward meeting the annual business diversity goal; however, such participation will not count towards the established contract-specific goal. Any such D/M/WBE prime contractors shall not be exempted from contract-specific business diversity goals.

B. Counting D/M/WBE Subcontractors

When a D/M/WBE participates as a subcontractor, the prime contractor shall count only the value of the work actually performed by the D/M/WBE toward goal attainment.

- The prime contractor shall count the entire amount of that portion of a contract that is performed by the D/M/WBE's own workforce. The prime contractor may count the cost of supplies and materials obtained by the D/M/WBE for the work of the contract, including supplies purchased or equipment leased by the subcontractor.
- The prime contractor shall count toward the goal the entire amount of fees or commissions charged by a D/M/WBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of an NTTA contract.
- When a D/M/WBE subcontracts part of the work to another D/M/WBE firm, the value of the subcontracted work may be counted toward the goal only if the subcontractor is a D/M/WBE. Subcontractor work performed by a non-D/M/WBE firm does not count toward the goal.

C. Commercially Useful Function

The prime contractor will only count expenditures to a D/M/WBE subcontractor if the subcontractor is performing a commercially useful function on that contract. The following criteria must be met in order to confirm a commercially useful function:

- A D/M/WBE performs a commercially useful function when it is responsible for materials, supplies used, negotiating price and execution of the subcontract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- The prime contractor must evaluate the amount of the work, industry practices and whether the value of the work of the firm to be paid is commensurate with the work actually performed.
- A D/M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.
- If a D/M/WBE does not perform or exercise responsibility for at least thirty percent (30%) of the total work subcontracted with its own workforces, then the prime contractor must presume that it is not performing a commercially useful function. Business Diversity will make the final decision as to whether the D/M/WBE is performing a commercially useful function and, based on the nature of the contract and other factors, may establish a minimum threshold greater than 30%.

The prime contractor shall use the following factors in determining whether a D/M/WBE trucking company is performing a commercially useful function:

- The D/M/WBE must be responsible for the management and supervision of the entire trucking operation for which it has been retained and there cannot be a contrived arrangement for the purpose of appearing to meet the goal.
- The D/M/WBE must own and operate at least one fully licensed, insured and operational truck used on the contract.
- The D/M/WBE shall receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates, and using drivers it employs.
- The D/M/WBE may lease trucks from another D/M/WBE firm, including an owner-operator who is so certified, and shall receive credit for the total value of the transportation services the lessee D/M/WBE provides on the contract.

The D/M/WBE may also lease trucks from a non-D/M/WBE firm, including from an owner-operator. The D/M/WBE who leases trucks from a non-D/M/WBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement.

The D/M/WBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a D/M/WBE.

- For purposes of this section, a lease must indicate that the D/M/WBE has exclusive use 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 D/M/WBE, so long as the lease gives the D/M/WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the D/M/WBE.

The prime contractor shall count expenditures for materials or supplies toward the goal as provided in the following:

1. (a) If the materials or supplies are obtained from a D/M/WBE manufacturer, NTTA will count one hundred percent (100%) of the cost of the materials or supplies toward the goal.

(b) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.
2. (a) If the materials or supplies are purchased from a D/M/WBE third-party vendor, NTTA will count sixty percent (60%) of the cost of the materials or supplies toward the goal.

(b) For purposes of this section, a third-party vendor is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which 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.

(c) To be a third-party vendor, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(d) A person may be a third-party vendor in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this section if the person both owns and operates distribution equipment for the products. Any supplementing of third-party vendors' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(e) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not third-party vendors within the meaning of this section.
3. With respect to materials or supplies purchased from a D/M/WBE which is neither a manufacturer nor a third-party vendor, NTTA will count the entire amount of fees or commission charges for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward the goal, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. However, the prime contractor shall not count any portion of the cost of the materials and supplies themselves toward D/M/WBE goals.

4. If a D/M/WBE subcontractor is not certified by an NTTA-approved certification agency at the time of the execution of the contract, supplemental agreement or subcontract, the prime contractor shall not count the firm's participation toward the goal unless and until the firm is certified; upon such certification, any participation by that now-certified firm prior to its certification will be counted. The prime contractor shall not count toward the contract goal the dollar value of work performed under a contract with a firm after it has ceased to be certified as defined in the Certification section of this CCM.

D. Counting D/M/WBE Partnerships and Other Teaming Arrangements

The Board encourages partnerships and teaming in any bona fide, legally recognized form. When Business Diversity determines that the level and value of participation of the D/M/WBE partner in a partnership or other teaming arrangement is appropriate and not inconsistent with the Diversity Policy, Business Diversity will allow the D/M/WBE's participation (i) to count toward the prime contractor participation, as referenced in the Roles and Responsibilities section, above, and (ii) to count toward the contract-specific goal, if applicable, using the following criteria:

- If the D/M/WBE partner holds and maintains a bona fide interest in the profits and losses resulting from, and exercises bona fide control regarding, the required work, and self-performs a significant portion of the required work, Business Diversity will count utilization of the D/M/WBE partner toward prime contractor participation and such D/M/WBE partner utilization may be counted toward the contract-specific goal, in an amount to be determined by Business Diversity, based on a reasonable consideration of the totality of the circumstances presented. In the event the D/M/WBE partner subcontracts any portion of the required work, Business Diversity will count only the work self-performed by the D/M/WBE partner toward the contract-specific goal, and the remaining work required to meet the goal, if any, may be performed by other D/M/WBEs.

Business Diversity shall review all contractual agreements or other pertinent documents including:

- Initial capital investment of each partner;
- Proportional allocation of profits and losses to each partner or participation percentage to each team member;
- Sharing of the right to control the ownership and management of the partnership or other teaming arrangement;
- Actual participation of the partners in the performance of the contract;
- Method of responsibility for accounting; and
- Methods by which disputes are resolved.

Business Diversity shall have such access to and right to review all records pertaining to the partnership or teaming arrangement before and after the award of a contract as reasonably necessary

to assess compliance with this section, including, but not limited to, certification and financial records prior to contract approval. The partners shall submit a final partnership or other agreement documenting and reflecting the parties' agreement on the material terms of the parties' legal relationship. The NTTA shall not execute a written lease, contract or issue a notice to proceed, including a limited notice to proceed, until a fully executed copy of the partnership or other agreement has been submitted to the Procurement Services Department and Business Diversity.

Failure of the parties to reach an agreement on the terms of the partnership or other teaming arrangement, as well as failure to submit a fully executed agreement, may result in rejection of the bid, response or proposal.

E. Counting Local vs. Non-Local Participation

Treatment under the Diversity Program of D/M/WBEs without a place of business in NTTA's relevant market area will not differ from treatment of D/M/WBEs maintaining a place of business within that relevant market area. However, in order to promote better responsiveness and availability to NTTA, D/M/WBEs are encouraged to establish a place of business within NTTA's relevant market area.

Weighting Business Diversity Criteria

The Executive Director, in conjunction with the Legal Department, shall review the business diversity scoring criteria and relative weighting of those criteria proposed by Business Diversity for general use in the scoring and evaluation of proposals and responses in NTTA procurements. The resulting recommendation, and any variance from the recommendation, shall be approved by the Executive Director and brought to the attention of the Board prior to implementation.

Good Faith Efforts

If a prime contractor does not meet the designated goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to NTTA that it has made a good faith effort to meet the goal. The good faith effort documentation should be submitted when the initial response to NTTA's solicitation is due or as specified in the solicitation. Also, after receiving the award, if the prime contractor strives to meet the goal and falls short of achieving the goal, it shall nevertheless not be in breach of the contract if it can demonstrate to the BDD that it has made a good faith effort to meet the goal. The good faith effort documentation should be submitted within five (5) business days when requested by Business Diversity.

The issue as to whether the prime contractor has met or exceeded the established goal and/or has demonstrated good faith efforts is the prime contractor's responsibility to address. NTTA will only award contracts to prime contractors NTTA determines to be responsive and responsible. The Director of Business Diversity shall be responsible for determining if a contractor's demonstrated good faith effort is sufficient to meet the contract goal.

In evaluating a prime contractor's good faith effort submission, NTTA will only consider those documented efforts that occurred prior to the good faith effort submission. Under no circumstance shall Business Diversity recommend execution of a contract by NTTA for which the prime contractor has not met the designated goal without the final good faith efforts determination by the Director of Business Diversity.

In making a determination that the prime contractor has made a good faith effort to meet the goal, Business Diversity shall consider specific documentation concerning the steps taken to achieve the goal, in consideration of, by way of illustration and not limitation, the following factors:

1. Whether the prime contractor attended any pre-bid or pre-proposal meetings scheduled by NTTA to discuss subcontracting and supplier opportunities for D/M/WBE participation and whether the prime contractor obtained a current list of certified subcontractors and/or suppliers from the Business Diversity office;
2. Whether the prime contractor timely advertised in general circulation, trade association, and/or D/M/WBE-focused media concerning subcontracting and supplier opportunities;
3. Whether the prime contractor provided timely written notice to a minimum of five (5) D/M/WBEs via mail or facsimile for subcontracting opportunities;
4. Whether the prime contractor solicited to D/M/WBEs a reasonable time prior to bid/proposal submission, exclusive of the day the bids/proposals are opened, to allow subcontractors to participate effectively. Also, whether the prime contractor followed up, at a time at least seven (7) days prior to the applicable bid/proposal opening, initial solicitations of interest by contacting D/M/WBEs to determine with certainty whether the D/M/WBEs were interested;

5. Whether the prime contractor selected portions of the work to be performed by D/M/WBEs in order to increase the likelihood of meeting the goal (including, where appropriate, breaking down the contract into economically feasible subcontracted portions to facilitate participation);
6. Whether the prime contractor adequately provided interested D/M/WBEs with the plans, specifications, scope of work and requirements of the contract;
7. Whether the prime contractor negotiated in good faith with interested D/M/WBEs, not rejecting D/M/WBEs as unqualified without sound reasons, based on a thorough investigation of applicable capabilities;
8. Whether the prime contractor negotiated in good faith with interested D/M/WBEs, using good business judgment, taking into consideration each subcontractor's price quote and not rejecting reasonable quotes from interested firms;
9. Whether the prime contractor made efforts to assist interested D/M/WBEs in obtaining bonding, lines of credit, insurance, and/or other NTTA basic contracting requirements;
10. Whether the prime contractor made efforts to assist interested D/M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
11. Whether the prime contractor effectively used the services of available minority, women and small business community organizations; contractor groups; local, state, and federal business assistance offices; and other organizations that provide assistance in identifying D/M/WBEs;
12. Whether the prime contractor, if applicable, obtained written documentation from a bona fide surety company indicating that bonding was denied prior to the prime contractor's rejection of a D/M/WBE as a potential subcontractor for failing to obtain required bonding; documentation furnished by a surety company will be subject to verification by Business Diversity ;
13. Whether other prime contractors have attained a sufficient level of D/M/WBE participation or have met the contract goal in question will also be taken into consideration when determining whether the prime contractor in question has made a good faith effort; and
14. Whether the prime contractor specifically negotiated with D/M/WBE subcontractors to assume part of the responsibility to meet the contract goals.

If a prime contractor fails to submit the completed good faith effort documentation by the deadline for submission, Business Diversity will deem the prime contractor to be non-responsive Business Diversity will review not only the various efforts made by the prime contractor, but also the quantity and quality of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goals (even if they are sincerely motivated). Business Diversity shall consider if, given all relevant circumstances, the prime contractor's efforts could not reasonably be expected to produce a level of D/M/WBE participation sufficient to meet the goal.

Small Business Enterprise (SBE) Program

Overview

NTTA acknowledge and supports TXDOT's Small Business Enterprise Program when SBE requirements are applicable. Per TXDOT guidelines, the Small Business Enterprise (SBE) Program operates in a race and gender-neutral manner. The program is open to all TXDOT certified SBEs, whether they participate as prime contractors or subcontractors and regardless of whether the project receives federal financial assistance funding. NTTA actively encourages the participation of SBEs in its procurement and contracting process. It is the policy of NTTA to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age or disability.

To participate in the SBE Program, small businesses must be certified by TxDOT and certification will be based on a firm's gross revenues or number of employees as defined by the Small Business Act (SBA), Section 3, and 13 C.F.R. § 121.201.

Prime contractors who receive contracts that contain the TXDOT SBE requirements from NTTA will be required to use good faith efforts to utilize certified SBEs. The use of TXDOT certified SBEs, whether as prime contractors or subcontractors, for projects involving federal financial assistance funding will not count towards DBE Program participation and NTTA will track certified small business participation in the TXDOT SBE Program separately from the NTTA M/WBE Program. In accordance with provisions included in the SBA guidelines, NTTA will count small business participation for any certified SBE until the firm no longer qualifies as an SBE under SBA guidelines.

A. Small Contracts Program

NTTA will initiate a Small Contracts Program. This Program will be designed to enhance contracting opportunities for qualified SBEs regarding construction and maintenance projects anticipated to cost \$300,000 or less. Selection of contractors under this Small Contracts Program shall be made in accordance with NTTA's Procurement Policy, related procedures and applicable law. Participants in the Small Contracts Program must be prequalified by the TxDOT to perform the aforementioned services. Information regarding the TxDOT prequalification criteria is located at <http://www.txdot.gov/business/prequalifyinfo.htm>.

When a contract letting is warranted for construction and maintenance work, the following process will apply:

- The BDD will utilize the SBE listing located at: <http://www.txdot.gov/business/prequalifyinfo.htm>
- Except as provided below, Business Diversity will solicit a minimum of three (3) written bids from the SBE listing for each solicitation.
- Business Diversity will be responsible for contacting and soliciting a quote from the previous provider of the needed construction or maintenance work for each solicitation, if applicable, in addition to two (2) additional firms from the pre-qualified SBE pool.

- NTTA will select contractors based on the lowest responsible bidder for the applicable construction and maintenance work.
- The foregoing shall be accomplished in addition to, and not in lieu of, any advertising or other notice of contract letting for the applicable construction or maintenance work required under the Procurement Policy, related procedures and applicable law.

Participation in the Small Contracts Program will not prohibit any SBE firm from bidding on other procurements under \$300,000 or procurements greater than \$300,000. Similarly, non-SBE firms will not be prohibited from bidding on the procurements awarded under the Small Contracts Program. SBEs may receive notification from the BDD regarding procurement opportunities outside the Small Contracts Program. The participants in the Program will not be limited to a dollar value of cumulative awards or number of projects.

B. SBE Directory

NTTA will make available to interested persons an online TX DOT SBE directory, identifying all firms eligible to participate as SBEs in the recognized SBE Program. The listing for each firm will include each firm's name, address, phone number, fax number, contact person, date of certification expiration and the types of work the firm has been certified to perform as a SBE. TXDOT SBE directory is updated monthly and can be viewed online at-<http://www.dot.state.tx.us/business/sbeinfo.htm>.

Informal Procurements of Certain Goods and Services

NTTA's Procurement Policy authorizes it to procure "general goods and services" costing fifty thousand dollars (\$50,000) or less by such methods and on such terms as the Executive Director determines to be in NTTA's best interest. "General goods and services" costing more than fifty thousand dollars (\$50,000) must be procured by competitive bidding, competitive sealed proposals or a proprietary purchase, as provided by the Procurement Policy.

To increase M/WBE participation in informal procurements for goods and services costing \$50,000 or less, Business Diversity will make available a complete listing of M/WBEs to NTTA's departments. NTTA will solicit participation in informal procurements from M/WBEs in accordance with provisions outlined in the Procurement Policy.

Departments will be required to comply with the following general guidelines for any procurement of general goods and services costing \$50,000 or less, except for proprietary purchases:

- Departments will solicit a minimum of three (3) written bids or offers from the M/WBE listing for each solicitation;
- Departments will be responsible for contacting and soliciting bids or offers from the previous provider of the needed goods or services for each solicitation, if applicable, in addition to two (2) additional firms from the M/WBE listing; and
- NTTA will select providers based on the applicable criteria in the Procurement Policy.

Information on informal procurements for SBEs may be found in the Small Contracts Program as defined in the Small Business Enterprise (SBE) Program Overview section of this CCM.

A. Proprietary Purchases

All procurements of general goods and services designated as proprietary purchases shall be reviewed by the BDD prior to award to determine any potential D/M/W/SBE participation opportunities, and the BDD shall make recommendations to the Executive Director based on that review. In order to facilitate this review and recommendation, the Procurement Services Department will provide the BDD the following information:

- A description of the good or service to be procured;
- The estimated dollar amount of the contract; and
- The justification and documentation for a proprietary purchase.

Certification

Business Diversity reserves the right to review, accept or reject D/M/WBE certifications on all NTTA projects and procurements. In order to credit participation on NTTA procurements towards the M/WBE industry-specific annual goal or contract-specific goal, NTTA will require disadvantaged, minority and women-owned businesses to be certified by an accepted certification agency. Without limiting the provisions of the first sentence of this section, the certification agencies accepted by NTTA are as follows:

- Dallas/Fort Worth Minority Supplier Development Council (DFWMSDC);
- North Central Texas Regional Certification Agency (NCTRCA);
- Small Business Administration (SBA) (for 8(a) certification only);
- Texas Department of Transportation (TxDOT) DBE Program (only);
- Approved entities of the Texas Unified Certification Program (TUCP) DBE Program; and
- Women's Business Council – Southwest (WBCS).

A. Certification Upon Eligibility

In circumstances where a D/M/W/SBE has submitted its application for certification with one or more of the aforementioned certification agencies, in order to verify application submission, Business Diversity will request the applicable prime contractor and/or subcontractor to provide an application affidavit number. If a contracting or subcontracting firm is not certified by an approved certification agency at the time the contract is executed, Business Diversity will not allow the firm's participation to count towards the goal. Upon verification by Business Diversity of a contractor's or subcontractor's subsequent certification documentation, the contractor's or subcontractor's participation can be counted towards the goal, including participation prior to such certification. Business Diversity must be notified of any change in the prime contractor's or any identified subcontractor's company ownership or control which could affect its certification eligibility or achievement of the commitment to participate in the project; and such notification shall be submitted in writing within ten (10) business days of the associated change or, if applicable, the prime contractor's knowledge of a change in ownership or control. If NTTA departmental personnel are aware of any potential change that would affect certification, eligibility or achievement of the commitment, departmental personnel are required to notify Business Diversity in writing within ten (10) business days of receipt of such information.

B. Counting D/M/WBE Participation Ineligibility

If the certification status of a D/M/WBE subcontractor becomes ineligible in the course of a contract due to circumstances beyond the control of the subcontractor, Business Diversity may grant a thirty (30) day grace period to cure and during that period the participation of the ineligible subcontractor can count towards the goal.

Any payments made to the non-certified firm after Business Diversity has established the validity of its ineligibility will not be counted towards the committed goal, unless the firm becomes recertified prior to completion of the contract term, in which case subsequent payments will be counted.

Further, the prime contractor shall make good faith efforts to find a substitute D/M/WBE to replace the non-eligible firm with a certified firm in the event that there is additional work added to the project or there is work on the project that can be committed to a D/M/WBE subcontractor.

If the certification status of a D/M/WBE subcontractor becomes ineligible in the course of a contract due to circumstances that demonstrate fraudulent certification and/or eligibility, the prime contractor can only count the participation of the subcontractor up to the date that Business Diversity declares the firm ineligible. Furthermore, any other or future participation of a firm with demonstrated fraudulent certification and/or eligibility on any NTTA procurement or contract will not count towards any project goal. NTTA will count towards the goal only the sums actually paid to an ineligible D/M/WBE (i) for a period not to exceed thirty (30) days following an ineligibility determination or (ii) up to last day of the D/M/WBE's payment cycle current at the time of the ineligibility determination, which ever first occurs.

Pre-Award Compliance Plan

When developing specifications for D/M/WBE participation, NTTA will ensure that, where applicable, any low-bid contract award requirement is met, and there is no restriction on competitive bidding.

Business Diversity will seek to enhance and further participation of D/M/WBEs in all NTTA procurements through coordination and outreach activities with all NTTA departments.

D/M/WBE participation in NTTA contracts should be confirmed by appropriate contracting support documentation, including without limitation a Commitment Agreement Form (4906) (See Appendix C; forms also available online at <http://www.ntta.org/procurement/busdiv/complianceandresources> executed by prime contractors.

Procurements without appropriate documentation will not proceed for processing without the approval of Business Diversity.

All prime contractors will submit the Commitment Agreement Form (4906) and related documents for all bids, responses and proposals submitted to NTTA.

“SPECIAL INSTRUCTIONS FOR BIDDERS”

A. Compliance to Bid Specifications – Commitment Agreement Form 4906

Contractors bidding on NTTA contracts must comply with the intent of this CCM by meeting either of the following requirements:

1. **Meet or exceed the stated D/M/WBE goal on the Commitment Agreement Form 4906** (an executed form for **each** D/M/WBE firm). In order to be considered complete and bid specification compliant, Commitment Agreement Form 4906 must document the following:
 - Signature of the prime contractor and the subcontractor, including the committed dollar amount or percentage of the goal;
 - List the work to be performed by the subcontractor; and
 - List each subcontracting and/or supplier opportunity for completion of the project, regardless of whether the specified work to be provided by a D/M/WBE or non-D/M/WBE. On combined projects, list each subcontracting and/or supplier opportunity to be provided through second (2nd) tier subcontractors.

Prime contractors must obtain a current list (obtained not more than thirty (30) days after the initial response to NTTA’s solicitation due date) of D/M/WBE subcontractors and/or suppliers from Business Diversity.

2. Submit the Good Faith Effort Form (with the supporting documentation)

B. Submittal of Required Documentation

The applicable documents must be received by Business Diversity within the time allocated in the solicitation in order for the entire bid/proposal to be considered responsive to the specifications. The vendor shall deliver the original Commitment Agreement Form 4906 documentation to the appropriate party of NTTA as stated in the specifications. *A faxed copy will not be accepted.*

For each contracting opportunity with NTTA initiated by (i) RFB (Request for Bid) (Goods and Services valued at more than \$50,000) (Award based on lowest price); (ii) RFP (Request for Proposal) (Award based on total value); (iii) RFQ (Request for Qualifications) (Initial factor in selection is qualification-based; can be used to qualify a “pool” of firms); and (iv) RFI (Request for Information), the following requirements apply:

1. Commitment Agreement Form 4906 shall be signed, executed and submitted listing each D/M/WBE and non- D/M/WBE subcontractor the vendor intends to utilize. The form must be submitted in accordance with NTTA’s procedures.
2. Good Faith Effort documentation and supporting information must be submitted in accordance to NTTA’s procedures if the vendor fails to meet or exceed the designated goal.
3. NTTA will not award a contract to any vendor who has not supplied this documentation.

Submission of the Commitment Agreement Form 4906 (Form 4906) for a subcontractor shall constitute a representation to NTTA by the prime contractor that it believes the subcontractors to be ready, willing and able to perform the work as designated. It shall also represent a commitment by the prime contractor that if it is awarded the contract, it will enter into a subcontract agreement with such subcontractor for the work described at the approximate price and percentage set forth in the bid/proposal. The intentional and/or knowing misrepresentation of facts regarding Form 4906 is grounds for consideration of disqualification and will result in the bid/proposal being considered non-responsive.

Failure to complete Form 4906 in its entirety will result in a non-responsive bid/proposal unless otherwise stated in the solicitation. Bids/proposals are submitted with the understanding that acceptance of the proposal by NTTA in writing shall constitute an obligation by the contractor to negotiate in good faith to reach agreement on all terms.

The bid/proposal must address all of the specifications in the solicitation following the format provided and with provision of the content requested. NTTA is not required to seek clarification of proposals if the contractor’s response is ambiguous or fails to respond to a specific requirement satisfactorily.

The prime contractor further agrees to provide, directly to NTTA upon request, complete and accurate information regarding actual work performed by all subcontractors.

Prime contractors must identify all subcontractors/suppliers to be used on any NTTA project. Prime contractors must identify all subcontractors by tier level.

“Tier”: means the level of subcontracting below the prime contractor, i.e., a direct payment from the prime contractor to a subcontractor is considered first tier; a payment by a subcontractor to its supplier

is considered second tier. The prime contractor is responsible for providing proof of payment of all tiered subcontractors identified as D/M/WBEs and counting dollars paid to all tier levels towards meeting the contract goal.

NTTA shall accept the application affidavit numbers as verification that the prime contractor and/or subcontractor have submitted their application for certification. ALL D/M/WBE FIRMS MUST BE CERTIFIED BEFORE CONTRACT AWARD in order to count participation.

When applicable, NTTA's evaluation criteria will include weighted points based on the prime contractor's commitment to meet or exceed the applicable goal and/or its participation in an eligible partnership or other teaming arrangement. The BDD will also review the business diversity component established by the selection criteria and make recommendations to the applicable procurement's Evaluation Committee; as appropriate, the BDD will participate as a scoring member in phase one of the Evaluation Committee; and the BDD will review submitted good faith documentation and the due diligence utilized by the Evaluation Committee to promote D/M/WBE participation in phase two of the selection process.

C. Evidence of Good Faith Effort

If the prime contractor has failed to secure D/M/WBE participation and has subcontracting and/or supplier opportunities, or if D/M/WBE participation is less than NTTA's goal, the prime contractor must complete the Good Faith Effort Form (See Appendix D). The good faith effort documentation should be submitted when the initial response to NTTA's solicitation is due.

If the prime contractor's method of compliance with the established goal is based upon demonstration of a "good faith effort", the prime contractor will have the burden of correctly and accurately preparing and submitting the documentation required by NTTA.

Upon verification by Business Diversity, compliance with items 1 through 3 on the Good Faith Effort Form shall satisfy the good faith effort requirement. The Good Faith Effort Form should be completed in accordance with the following considerations:

1. Please list each and every subcontracting and/or supplier opportunity for the completion of this project, regardless of whether it is to be provided by a D/M/WBE or non-D/M/W/SBE (DO NOT LIST NAMES OF FIRMS). List opportunities only. On combined projects, list each subcontracting and/or supplier opportunity through the second (2nd) tier.
2. Submit documentation of solicitation to D/M/WBE firms, within the subcontracting and/or supplier areas previously listed, and attach the D/M/WBE listing including a dated copy of the letter mailed, facsimile or email correspondence showing proof of solicitation to D/M/WBE firms. If you did not fulfill, please write the following statement: "I did not comply".
3. Submit documentation of solicitation to D/M/WBE firms within the subcontracting and/or supplier areas previously listed by telephone, and attach the contact list to include D/M/WBE firm, person contacted, telephone number, date and time of contact. If you did not fulfill, please write the following statement: "I did not comply".

NOTE: A copy of the transmitted facsimile may be used to comply with item 2, above and a completed copy of the Good Faith Effort Form may be submitted in response to item 3. If a facsimile is used,

attach the fax confirmation, which is to provide D/M/WBE name, date, time, fax number and documentation faxed.

NOTE: If the list of D/M/WBE firms for a particular subcontracting/supplier opportunity is ten (10) or less, the contractor must contact the entire list to be in compliance with item 3. If the list of D/M/WBE firms for a particular subcontracting/supplier opportunity is ten (10) or more, the contractor must contact at least two-thirds (2/3) of the list within such area of opportunity, but not less than ten (10) to be in compliance with items 2 and 3.

Failure to complete the Good Faith Effort Form, in its entirety with supporting documentation, and/or failure to submit the form to Business Diversity, will result in the proposal to be deemed non-responsive.

Post-Award Compliance Plan

To ensure that the prime contractor meets all its obligations under contract, Business Diversity will review the contractor's D/M/WBE involvement throughout the term of the contract, including any term extensions from the original contract period.

A. Monthly Subcontractor Progress Report and Activity

If a contract includes a D/M/WBE subcontracting commitment, it is mandatory that the prime contractor submit a Monthly Subcontractor Progress Report via PRISM <https://ntta.prismcompliance.com>. The prime contractor will be required to electronically submit the monthly subcontractor progress and activity information into the business diversity contract compliance tracking system, PRISM. The Monthly Subcontractor Progress Activity Report reflects actual payments made for the specific month indicated. Information provided is utilized to monitor and track the percentage of work performed by all subcontractors and to confirm whether the contract-specific goal established is fulfilled. If the prime contractor is in danger of not meeting the goal, Business Diversity will contact the project manager, construction management or department to inquire regarding goal shortfalls and possible resolution. All prime contractors must submit monthly subcontractor progress reporting activity on a monthly basis, without regard to whether a good faith effort was made toward the commitment or whether there has been any activity under the contract during the applicable month.

Monthly subcontractor progress reporting is required until all subcontracting or material supply activity is complete. Monthly subcontractor progress reporting must be submitted via PRISM each month with the prime contractor's monthly invoices. The prime contractor agrees to submit monthly reports of payments and subcontractor and/or supplier awards to D/M/WBEs and non-D/M/WBE firms in such form and manner and at such times as Business Diversity shall prescribe, and failure to include a required monthly subcontractor progress reporting and activity with the invoice may result in the invoice being returned to the prime contractor.

In the event that the business diversity contract compliance system becomes inoperable or unavailable to the prime contractor, the prime contractor shall notify Business Diversity of system issues for direction to submit required documentation manually until the system is operational. Once the system is operational, the prime contractor shall upload the required documentation.

B. Monthly Reports

Monthly reports are utilized to monitor the progress of all subcontractor participation. Business Diversity will maintain a tracking system to:

1. Review overall subcontractor utilization on all NTTA contracts with a goal established;
2. Identify and monitor prime contractors and subcontractors utilization for overall project and task performed; and
3. Identify, list and report participation for certified D/M/WBEs.

C. Modifications or Substitutions; Nonpayment

Prime contractors are **required** to obtain from Business Diversity approval **before** any modifications or substitutions are made to the initial subcontractor commitment plan. If a prime contractor is replacing a D/M/WBE subcontractor, the prime contractor must submit written notification (on company letterhead) advising of the effective date and justification for the substitution (such as the original firm is unable or unwilling to perform the terms of the contract). Prime contractor will be required to make good faith efforts to find a substitute D/M/WBE subcontractor for the original D/M/WBE committed goal.

The good faith effort shall be directed at finding another D/M/WBE to perform or provide at least the same amount of work, material or service under the contract as the original D/M/WBE subcontractor. The prime contractor may also find additional D/M/WBE firms and/or adjust the current/projected D/M/WBE participation to meet the designated goal. This section and its requirements are applicable to all prime contractors. The prime contractor must notify the BDD regarding any additions, modifications or deductions that would affect the contract's D/M/WBE participation. Any D/M/W/BE participation performed by a firm that replaced a D/M/WBE firm through a substitution, modification or addition of a new firm without prior approval by Business Diversity, at Business Diversities' discretion, may not be credited towards the contract's goal.

NTTA may withhold progress payments until the prime contractor demonstrates timely payment of sums due to subcontractors. NTTA also reserves the right to exercise breach of contract remedies in the event of nonpayment to subcontractors.

D. Subcontractor Final Report Form 4908

NTTA's Subcontractor Final Report Form 4908 (Form 4908) should be notarized, submitted at the end of project and list all suppliers and/or subcontractors that performed work throughout the duration of the project. The Final Report is utilized to document that subcontractors utilized to fulfill a D/M/WBE goal were paid, and how successful the prime contractor was in meeting the goal established. If the goal is not fulfilled, the prime contractor must submit with the final report documentation supporting the reason why the goal was not met. Form 4908 must be submitted to the BDD prior to the release of any final retainage payment.

E. Prompt and Expedited Payments

Each contract NTTA signs with a prime contractor will also contain provisions with regard to the timely payment of subcontractors. The following language is an example of the type of language regarding payment to be included in contracts with NTTA (such language may be subject to modification and approval by NTTA):

"The prime contractor agrees to pay its subcontractors in accordance with the terms for payment in their executed contracts. The prime contractor shall also promptly remit any retainage payments to all subcontractors after the applicable subcontractor's work is satisfactorily completed in accordance with the contract between the prime contractor and that subcontractor. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause and following written notice to NTTA. This clause applies to payments to all subcontractors. A finding of nonpayment in violation of this paragraph may constitute a material breach of the respective contract with NTTA".

Noncompliance Enforcement

All participants in the D/M/WBE business process must comply with NTTA's requirements set forth in the Diversity Policy and applicable federal and state laws. Business Diversity reserves the right to apply legal and contract remedies available under federal, state and local law, including, but not limited to, responsibility determinations in future contracts, suspension and debarment procedures and forfeiture of profits as provided for elsewhere.

The D/M/WBE participation percentage commitment made by the prime contractor at the time of the contract award is deemed to be contractual in nature. Therefore, failure of the prime contractor to meet the D/M/WBE participation percentage commitment on any NTTA contract may constitute a material breach of the contract, if the prime contractor does not provide documentation showing its good faith efforts in accordance with this CCM. Business Diversity may recommend additional, available sanctions against prime contractors that are found to be in noncompliance with D/M/WBE business process requirements of D/M/WBE contract provisions at any time during the term of an NTTA contract.

Business Diversity may report any suspected false, fraudulent or dishonest conduct in the commitment and attainment of any D/M/WBE goal on any NTTA procurement to NTTA's Administration Department or any applicable enforcement agency, including the State Attorney General's Office.

Outreach

An integral component of NTTA's Business Diversity processes, procedures and efforts is to identify and solicit D/M/W/SBE participation in NTTA procurement and contracting opportunities. Further, Business Diversity is to seek and maximize to the fullest extent possible D/M/W/SBE procurement and contracting participation through NTTA's commitment to establishing an effective outreach program. Outreach efforts are designed to document initiatives and establish procedures which best inform, present, and achieve results for maximum consideration and participation by D/M/WBEs. Key to NTTA's outreach efforts are internal and external communication and interaction by Business Diversity and other NTTA departments with the D/M/WBE business community.

A. Internal Communication

All NTTA departments that have or share the responsibility for the awarding of NTTA contracts have a responsibility to support and assist in promoting and carrying out the D/M/W/SBE business process. Business Diversity has established, in conjunction with appropriate NTTA departments, procedures to enhance qualifications, competitiveness, and opportunities for D/M/WBEs. Processes have been jointly established to capture, disseminate, analyze, and communicate NTTA business opportunities to D/M/W/SBEs, and to eliminate barriers to effective D/M/WBE procurement and contracting participation.

B. External Communication

Communication and support of NTTA's business diversity process initiatives by entities that represent or promote D/M/WBE interests are crucial elements to a viable and effective D/M/WBE business process effort. Correspondingly, Business Diversity has formalized efforts to ensure communication and participation by external D/M/WBE-related entities in order to maximize NTTA's D/M/WBE identification and solicitation efforts. Efforts with these entities are geared towards establishing a fluid communication process that informs, facilitates networking, and assists in the overall development and management of NTTA's business diversity process. Business Diversity will participate in D/M/WBE-sponsored activities, and look to these entities as the principal organizations to generate support and participation by the disadvantaged, minority, women-owned and small business community. Through the following outreach activities, Business Diversity is committed to encouraging diverse vendor participation:

- Vendor Outreach Symposium (VOS)
- Business Chat Sessions
- Business Diversity Advisory Council (BDAC)
- Partnership / Trade / Business Expos

Relationships and Opportunities Advancing Diversity (ROAD) Program

NTTA is committed to increasing the participation of disadvantaged, minority and women-owned business enterprises in procurement contracts through the implementation of the Relationships and Opportunities Advancing Diversity (ROAD) Program. The ROAD Program is designed to encourage prime contractor firms to provide professional guidance and support to a participating D/M/WBE firm that provides similar services in order to build or enhance the D/M/WBE's growth and development.

Business Diversity's mission is: "To strengthen the Authority by the inclusion of D/M/WBE business enterprises in the procurement of goods and services." The ROAD program strengthens NTTA's image in the private and public business sectors, positioning NTTA as a model organization for building diverse business community partnerships.

The ROAD Program provides opportunities for new and emerging D/M/WBE firms to have expanded access to resources, a broader scope of services, deeper technical knowledge and improved business management and operations processes by partnering or teaming with larger, more established firms offering similar services. The program is designed to result in increased diversity participation in NTTA contracts by elevating the size and scope of projects in which D/M/WBE firms can compete and perform profitably. An additional objective of the program is to expose these successful partnerships to sister governmental agencies seeking increased D/M/WBE participation.

Developing viable relationships through the ROAD Program facilitates NTTA's commitment to increasing diversity in procurement opportunities in order to create an equitable business environment for D/M/WBEs.

NTTA identifies the prime contractor as the "prime," who serves in the mentor role, and defines the new and emerging D/M/WBE firm as the "consultant".

A. Program Objectives

As NTTA drives toward its goal for meeting the regional demands for transportation, the development of the ROAD Program better positions smaller and emerging North Texas firms to assist in meeting those needs.

The ROAD Program goals are to:

- Increase and diversify participation in NTTA contracts by enabling consultants to build capacity and compete for larger contracts;
- Provide guidance to deepen industry and technical knowledge through best practices; and
- Equip consultants to develop their services to become prime contractors.

B. Eligibility Requirements

All parties wishing to participate in the ROAD Program shall complete the appropriate application. The completed application shall be accompanied by all supporting documentation required with the application form. :

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C. Reporting

Business Diversity shall require the parties to submit quarterly and annual reports indicating the status of their progress toward each of the development plan's stated goals. The prime/consultant shall each submit an annual report regarding the program and accomplishments for year. Both the prime/consultant shall indicate in their reports the status of each goal outlined in the ROAD Program development plan, accomplishments and how the prime specifically assisted the consultant in reaching the stated goal/accomplishment.

Business Diversity shall monitor the progress of the participants to ensure they align with the development plan. Business Diversity shall report participant progress to the BDAC and the Oversight Committee. Additional information regarding the ROAD program including the operating procedures and guidelines can be found online at <https://www.ntta.org/procurement/Pages/Road-Program.aspx>

Glossary of Definitions

A & D Study –NTTA’s current Availability and Disparity Study.

Business Diversity – The Business Diversity Department of NTTA.

Bid or Quote – The response to a request for the pricing of products, goods, or services, including construction and maintenance services (but other than consulting services or professional services) that NTTA proposes to procure.

Bid Documents – Forms promulgated by NTTA which the bidder completes and submits to NTTA to document the bidder’s bid on a contract to be let by NTTA. Bid documents include forms furnished to and completed by NTTA to procure goods and services.

Bidder – An individual, entity, or combination of individuals or entities submitting a bid or offer to provide any goods or services, including construction or maintenance services, to NTTA.

Bidder’s List – The list of potential bidders for a procurement, developed by the Procurement Services Department.

Board - The Board of Directors of NTTA.

Business Diversity Overall Goal – A goal as determined triennially by NTTA which shall be weighted with the M/WBE industry-specific goals.

Business Diversity Process – Any undertaking to enhance the participation of Disadvantaged, Minority, Women-Owned and Small Businesses by NTTA in contracts/procurements including reimbursement and revenue-generating contracts.

CCM – NTTA’s Business Diversity Contracting and Compliance Manual.

Certification – The process by which a business enterprise is determined to be a bona-fide disadvantaged, minority, woman-owned or small business enterprise.

Commercially Useful Function - A D/M/WBE performs a commercially useful function when it is responsible for materials, supplies used, negotiating price and execution of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work.

Competitive Bidding - A procurement process under which a contract is awarded to the lowest responsible bidder that complies with NTTA’s criteria for such contract.

Construction or Maintenance Contract – A contract for the construction, reconstruction, maintenance or repair of a turnpike project or any portion thereof.

Consulting Service – The service of advising or preparing studies or analyses for NTTA under a contract that does not involve the traditional relationship of employer and employee. Consulting services do not include professional services as defined in this policy.

Contract – A written or oral agreement by which NTTA procures goods and services or disposes of property, including, without limitation, a purchase order.

Contract-specific Goal – A goal based on actual scope of work and specifications.

DFWMSDC – Dallas Fort Worth Minority Supplier Development Council.

Disadvantaged Business Enterprise (DBE) – A for-profit business enterprise which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals. Also, the firm’s management and daily business operations are controlled by one or more of the socially and economically disadvantaged owners.

Diversity Policy – NTTA’s Disadvantaged, Minority, Women-Owned and Small Business Enterprises Policy adopted September 26, 2011.

Executive Director – The Executive Director of NTTA.

Gender-conscious – References a situation in which gender is considered in the evaluation of bids/proposals/responses/qualifications for the contract. The considerations may include a preference bonus or discount, a set-aside, or the requirement of a good faith effort at including D/M/W/SBEs as subcontractors. Federal law directs states or local jurisdictions to use a race- and gender-conscious contracting process when race- and gender-neutral strategies have led to disparities in utilization of certain groups in certain industries.

Gender-neutral – References a situation in which gender is not considered in the evaluation of bids/proposals/responses/qualifications for the contract. Targeted vendor outreach, financing, and business services to D/M/W/SBEs are generally considered gender-neutral activities. Certification of and tracking procurement to D/M/W/SBEs are also considered gender-neutral activities.

Good Faith Effort or GFE – Steps taken to achieve a D/M/WBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the business procurement requirement.

Goods and Services or General Goods and Services – Goods, services, equipment, personal property and any other items procured by NTTA that are not procured under a construction or maintenance contract and that are neither consulting services nor professional services; the Procurement Policy uses the term “general goods and services” for these deliverables.

Industry-specific Goal – A goal established based on the availability of disadvantaged, minority and women-owned businesses within a specific discipline.

Lowest Responsible Bidder – A bidder who submits a bid or offer to provide the requested goods and services at a cost that is lower than all other bids or offers received from responsible bidders and which meets other requirements of NTTA. In determining the lowest responsible bidder, NTTA may consider:

- a. The purchase price;
- b. The reputation of the bidder and of the bidder’s goods or services;
- c. The quality of the bidder’s goods or services;
- d. The extent to which the goods or services meet NTTA’s needs;
- e. The bidder’s past relationship with NTTA;

- f. The bidder's compliance with the BDD and with other goals and policies of, or binding on, NTTA, if any, regarding the participation by Disadvantaged Business Enterprises;
- g. The long-term cost to NTTA to acquire the bidder's goods or services; and
- h. Any relevant criteria specifically listed in the bid documents.

M/WBE Annual Industry-specific Goal – A goal as determined annually by NTTA to which prime contractors are required to make good faith efforts to achieve. M/WBE annual industry-specific goals will be based on staff evaluation and determination of the identifiable potential contract opportunities and the availability of minority/women-owned businesses in the relevant market area.

Minority Business Enterprise (MBE) – A for-profit business concern: (a) which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities, and (b) whose management and daily business operations are controlled by one or more of the minority individuals who own it.

NCTRCA – North Central Texas Regional Certification Agency.

NTTA – The North Texas Tollway Authority.

Notice to Proceed – Written authorization from NTTA allowing a contracted party to commence with contracted work.

Partnership – A business entity based upon a voluntary formal agreement entered between parties to perform contractual obligations with NTTA and providing for a proportional sharing of the (a) ownership, and (b) profits and losses of the entity, and where one or more of the parties is a DBE, MBE or WBE responsible for a distinct, clearly defined portion of the work.

Prime Contractor – Any person, firm, partnership, corporation, association, joint venture or other entity as herein provided which has executed a contract with NTTA.

Procurement Policy – The “Policy Regarding Procurement of Goods and Services and Disposition of Property by the North Texas Tollway Authority,” as the same may be amended from time to time.

Professional Services – Services that political subdivisions of this State must procure pursuant to the Professional Services Procurement Act.

Professional Services Procurement Act – Subchapter A of Chapter 2254 of the Texas Government Code, as amended from time to time.

Proposal – An offeror's response to an RFP.

Proprietary Purchase – A procurement by NTTA of a general good or service that is proprietary to one vendor and does not permit an equivalent product or service to be supplied.

Race-conscious – References a situation in which race is considered in the evaluation of bids/proposals/qualifications for the contract. The considerations may include a preference bonus or discount, a set-aside, or the requirement of a good faith effort at including D/M/W/SBEs as subcontractors. Federal law directs states or local jurisdictions to use a race- and gender-conscious

contracting process when race- and gender-neutral strategies have led to disparities in utilization of certain groups in certain industries.

Race-neutral – References a situation in which race is not considered in the evaluation of bids/proposals/responses/qualifications for the contract. Targeted vendor outreach, financing, and business services to D/M/W/SBEs are generally considered race-neutral activities. Certification of and tracking procurement to D/M/W/SBEs are also considered race-neutral activities.

Relevant Market Area – The counties composing NTTA, being currently Collin, Dallas, Denton and Tarrant Counties, together with any additional counties later admitted to NTTA.

Response – A respondent's response to an RFQ.

Respondent – An individual, entity, or combination of individuals or entities submitting a response to an RFQ to provide professional or consulting services.

RFB – A request for bids.

RFP – A request for proposals issued for the provision of general goods and services by competitive sealed proposals.

RFQ – A request for qualifications issued for the provision of professional or consulting services.

ROAD Program – The Relationships and Opportunities Advancing Diversity Program is a program designed to pair disadvantaged, minority and women-owned business enterprises (D/M/WBEs) with prime contractor firms that offer similar services and work to NTTA as that performed by the participating D/M/WBEs.

Section 8(a) Firm Certified – A firm owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the Small Business Administration's 8(a) Business Development Program.

Small Business Enterprise (SBE) – A for-profit business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business enterprise shall not include any business or group of businesses which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. 121 for a consecutive three-year period.

Subcontractor – Any named person, firm, partnership, corporation, association, joint venture or other entity identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing under a contract to a prime contractor on an NTTA contract.

Teaming – An arrangement by which the parties, in the absence of a shared legal entity, enter an agreement to jointly perform contractual obligations with NTTA, utilizing shared capital investment, proportional allocation of profits and losses to each team member, shared right to control, ownership and management of the team, and actual participation in and performance of the required work, and with an established agreed upon method for accounting and resolution of disputes of team members.

Texas Unified Certification Program (TUCP) – The Texas Unified Certification Program is a certification process for the DBE Programs in Texas. A business' DBE certification is valid at any Texas entity that receives DOT funds and has a DBE Program.

Turnpike Project – A highway of any number of lanes, with or without grade separations, owned or operated by NTTA, and any improvement, extension, or expansion of that highway, including those improvements discussed in the Texas Transportation Code, Section 366.003(11) as may be amended from time to time.

TxDOT – Texas Department of Transportation.

VOS – The Vendor Outreach Symposium of NTTA.

WBCS – Women’s Business Council Southwest.

Women-Owned Business Enterprise (WBE) – A for-profit business concern: (a) which is at least 51 percent owned and controlled by one or more women or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (b) whose management and daily business operations are controlled by one or more of the women who own it.