



Business Diversity Contracting and Compliance Manual

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**North Texas Tollway Authority
Business Diversity Department Contracting and Compliance Manual**

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1 Section: INTRODUCTION AND PURPOSE

A. Introduction

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

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 is a race- and gender-neutral program designed to encourage small businesses to participate. The SBE Program applies to projects in which NTTA's receipt of federal funds for a project requires SBE participation.

BDD, under the direction of NTTA's executive leadership, is responsible for the implementation administration of the Diversity Policy and shall ensure compliance with D/M/WBE and SBE programs by internal departments and external contractors, consultants, and vendors.

This CCM takes effect immediately and replaces any and all previous versions of this manual.

B. Scope and Objectives

This CCM sets forth the procedures and related guidelines for NTTA procurements, contracts, and projects, including those without established goals, contractors will be required to meet the requirements of the CCM. For contracts where a good faith effort is required or where NTTA has established a specific D/M/WBE project goal, Contractors shall comply in good faith with 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, bid/ proposal disqualification, or such other available remedy as NTTA deems appropriate.

NTTA shall ensure only D/M/WBE businesses certified by any of NTTA's recognized agencies are counted toward the attainment of the goals established under the Diversity Policy.

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

- Ensuring nondiscrimination in the award and administration of NTTA contracts;
- Creating a level playing field for qualified D/ M/WBEs and SBEs to compete fairly for NTTA procurements and contracts;
- Ensuring D/M/WBE and SBE Programs are narrowly-tailored in accordance with applicable laws;
- Ensuring only firms that fully meet the applicable eligibility standards are permitted to participate as D/M/WBEs and SBEs; and
- Aiding the removal of barriers to the participation of D/M/WBEs and SBEs in NTTA procurement opportunities and contracts.

C. Business Diversity Department Overview

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

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

2 Section: ROLES AND RESPONSIBILITIES

The diversity program is managed under the direction and supervision of the Business Diversity Director, who reports directly to the Senior Director of Procurement Services and Business Diversity.

The Diversity Director shall have the necessary staff to assist with the daily operational activities of BDD. BDD is responsible for activities associated with the inclusion of D/M/WBEs and SBEs in the procurement and contracting processes, including without limitation:

- Outreach
- Advocacy
- Supplier development
- Diversity compliance
- Reporting
- Oversight

A. Duties and Responsibilities of BDD

- Implement NTTA DBE Program in accordance with Memorandum of Understanding (MOU) regarding the adoption by the North Texas Tollway Authority of the Texas Department of Transportation Federally-Approved Disadvantaged Business Enterprise Program.
- Provide oversight of the disadvantaged, minority-owned, women-owned and small business enterprise programs.
- For federally funded projects,:
 - 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

- Promote and conduct outreach activities for D/M/WBEs, in partnership with industry and advocacy groups.
- 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.
- Participate in pre-solicitation discussions, including design and scope reviews, bonding limits, and type of work capabilities available from D/M/WBEs in development of project specifications.

- Acknowledge and support TxDOT's SBE Program.
- Provide assistance and access to certified D/M/WBE vendor databases for prime and subcontracting opportunities.
- Review and verify the certification status of D/M/WBEs.
- Encourage and promote partnering and teaming arrangements between non- minority and D/M/WBE firms to enhance innovative approaches to increase participation.
- Evaluate, recommend, and verify the Commercially Useful Function of D/M/WBEs participating in NTTA procurement and contracting opportunities.
- Promote equal and fair opportunities for D/M/WBEs to participate in contracts, including, but not limited to, scope of work review, bonding, insurance and retainage requirements, and other procurement/contract-related considerations relating to business diversity.
- Monitor and track the progress of D/M/WBE participation in procurement and contracting opportunities.
- Evaluate and ensure the criteria for Good Faith Effort determination is met by contractors.
- Validate and communicate contract close-out determination to close-out stakeholders.
- Participate in pre-bid/proposal and pre-construction/design conferences to communicate the D/M/W/BE business diversity process and requirements.
- Report periodically to NTTA's Board of Directors (the Board) and executive management various information and status updates on the D/M/WBE program.
- Implement and update this CCM as needed to address modifications to procedures.
- Develop and maintain policies and procedures to ensure D/M/WBE participation in NTTA procurement and contracting opportunities.
- Develop and recommend contract-specific goals on applicable procurement opportunities, including contract modifications as defined herein when requested.
- Review and develop policies and procedures consistent with current laws, judicial determinations, and regulations that ensure the business diversity process is fair and reasonable.
- Review solicitations to ensure that D/M/WBEs have and continue to have an equal and fair opportunity to participate in procurements.

- Review and evaluate solicitation responses to ensure that the commitment plan meets the business diversity components which includes, but is not limited to, D/M/WBE contract-specific goals.

C. Duties and Responsibilities of Other NTTA Departments

Each NTTA department shares responsibility for promoting, supporting, and assisting BDD in carrying out the D/M/WBE business diversity process. 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 Diversity Policy, departments requesting any procurement or contracting solicitation on behalf of NTTA shall:

- Notify and provide to BDD, upon anticipation of any procurement, information regarding the scope of work, budget estimate, schedule, and procurement specifications, as well as any other relevant information to determine the D/M/WBE opportunities in solicitations.
- Provide complete and accurate information in a timely manner prior to the announcement of the procurement.
- Ensure applicable business diversity requirements are included in solicitation documents and contracts.
- Provide BDD, through the Procurement Services Department, with forecast schedules of upcoming procurement and contracting opportunities.
- Notify BDD regarding potential compliance concerns which may affect attainment of established business diversity goals.
- Assist BDD in ensuring prime contractors comply with the business-diversity requirements of their contracts.
- Provide BDD, through the Procurement Services Department, access to each executed contract and modifications in a timely manner to assist in monitoring compliance with business-diversity requirements.

3 Section: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY-FUNDED PROJECTS OVERVIEW

NTTA established its DBE Program to ensure compliance with the Transportation Equity Act for the 21st Century (TEA-21), enacted by Congress in 1998. Along with the related regulations codified at 49 C.F.R. Part 26, TEA-21 requires NTTA to use DBE contracting goals on certain highway construction contracts and related contracts funded in whole or in part by the Federal Highway Administration (FHWA). NTTA's DBE Program also applies to projects in which NTTA receives federal funds through TxDOT. NTTA's DBE Directory is made available online in conjunction with the Texas Unified Certification Program (TUCP). The DBE directory includes contact and other essential information for firms eligible to participate in NTTA's DBE Program.

A. DBE Goal Setting and Methodology for Federally-Funded Projects

Like other DBE programs around the country, NTTA shall establish DBE goals pursuant to 49 C.F.R. Part 26. As to TxDOT-funded turnpike projects, the requirement to establish DBE goals is also memorialized in a Memorandum of Understanding (MOU) between NTTA and TxDOT. The MOU allows NTTA to establish goals that may differ from TxDOT's overall DBE goal, so long as NTTA provides its rationale to TxDOT for final approval. Pursuant to the BDD Compliance Manual, NTTA utilizes the following steps to calculate DBE goals:

1. Establish a base figure for the relative availability of DBEs using data from DBE directories, the previous A&D Study, and NTTA's Bidders List.
2. Examine available evidence in the relevant market area to determine what, if any, adjustments to the base figure are needed, including:
 - Current capacity of DBEs to perform work on NTTA's contracts, as measured by the volume of work DBEs have performed in recent years;
 - Evidence and recommendations from the A&D Study not accounted for in NTTA's base figure;
 - NTTA's proposed highway construction budget for the forthcoming three (3) fiscal years, including types and location of work; and
 - Participation of DBEs on NTTA's projects in previous years.
3. Based the adjusted availability figure, NTTA's DBE goal for the forthcoming fiscal year(s) is established as a percentage of the federal financial assistance funds that NTTA projects spending on contracts for highway construction, design, and engineering during the upcoming fiscal year.

Prior to issuing its proposed DBE goals to TxDOT, NTTA shall conduct a public meeting to receive comments and feedback from contractors, organizations, and citizens.

B. Monitoring and Enforcement Mechanism for Federally-Funded Projects

BDD is tasked with monitoring and enforcing the DBE Program and has a comprehensive array of compliance resources and tools designed to ensure that DBE subcontractors are utilized, performing the work as approved, and that payments are made to DBEs according to approved work plans. Based on the BDD Compliance Manual and staff interviews, the following procedures are utilized to monitor compliance after contract award:

- Prime contractors shall submit a Monthly Subcontractor Progress Report by the 15th of each month, which shows the payments made to DBE firms. Reports are submitted electronically into the business diversity contract compliance tracking system. This tracking system is a web-based contract compliance reporting software tool that is used by other D/M/WBE programs as well. The system allows programs to collect and report data at each compliance stage. This data can be used for multiple purposes, such as to assess the effectiveness and impact of the program's operations.
- In the event BDD discovers false, fraudulent, or dishonest conduct by prime contractors with respect to their dealings with DBEs, BDD will report such conduct to TxDOT and may consider independent legal action. BDD 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 Procurement Department or any applicable enforcement agency, including the Texas Attorney General's Office.
- Retainages are released only after the DBE subcontractors' participation information is submitted and verified by BDD.
- Prime contractors shall provide a project work schedule listing subcontractors for the scheduled work. BDD will follow-up and conduct on-site inspections to ensure that the subcontractors listed are actually utilized.

C. DBE Directory for Federally Funded Projects

NTTA will make available to interested persons an online Texas Unified Certification Program (TUCP) DBE directory identifying 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 or going online to NTTA's website. The information provided in the directory is owned and maintained by the third parties. NTTA is not responsible for the information in the certified firms' databases.

4 Section: DISADVANTAGED, MINORITY-OWNED, WOMEN-OWNED BUSINESS ENTERPRISES (D/M/WBE) PROGRAM OVERVIEW

NTTA counts disadvantaged firms' attainment on non-federal projects, along with minority-owned and women-owned business entities. The D/M/WBE Program is a narrowly tailored, race- and gender-specific program designed to encourage and promote participation of D/M/WBEs in the procurement of NTTA goods, materials, supplies, and services. It is intended to address the disparity and underutilization identified in the latest A&D Study.

A. D/M/WBE Goal-Setting and Methodology

Goals are established on a contract-by-contract basis for construction and maintenance, professional services, goods and services, and consulting services. The 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.

B. Monitoring and Enforcement Mechanisms

As with the DBE program, monitoring and enforcement is important to the integrity and effectiveness of the D/M/WBE program and necessary to ensure compliance with policies. Monitoring and enforcement activities conducted by BDD include the following:

- Requiring prime contractors to provide project work schedules with a list of subcontractors for the scheduled work to BDD prior to the notice to proceed.
- Scheduling and conducting on-site inspections and random audits.
- Monitoring payments to subcontractors.
- Monitoring D/M/WBE utilization based on the Monthly Subcontractor Progress Reports.
- Reporting and notifying department stakeholders, executive management, and legal counsel of any noncompliance, including any false, fraudulent, or dishonest conduct, in connection with the D/M/WBE Program.
- Delaying approval of the Subcontractor Final Report Form 4908 until subcontractors' participation information has been received and verified by BDD.

C. D/M/WBE Directory

NTTA will make available to interested persons an online D/M/WBE directory on the NTTA.org website, along with the Texas Unified Certification Program (TUCP) DBE directory identifying firms eligible to be counted in the D/M/WBE attainment for NTTA. 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. The DBE directory can be obtained by contacting the BDD or going online to NTTA website. The information provided in the directory is owned and maintained by the third parties. NTTA is not responsible for the information in the certified firms' database.

5 Section: COUNTING - D/M/WBE PARTICIPATION

NTTA 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 BDD will review such arrangements and agreements to ensure that a commercially-useful function is served.

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 making a good faith effort to do so. The D/M/WBE prime contractor shall submit the necessary documentation to BDD to demonstrate its commitment to achieving the D/M/WBE subcontracting participation goal. 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 shall 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, and 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 shall 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 shall presume that it is not performing a commercially-useful function. If ever in question, BDD 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 shall 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 shall 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 shall 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 shall 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:

- 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.
 - 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.
- 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.
 - 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.
 - To be a third-party vendor, the firm shall 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.
 - 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.
 - Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not third-party vendors within the meaning of this section.
 - 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.

- 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 to its certification will be counted. The prime contractor shall not count dollars toward the contract goal when a subcontracting firm is not eligible for certification.

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

NTTA encourages partnerships and teaming in any bona fide, legally-recognized form. When BDD 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, BDD 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:

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, BDD 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 BDD, 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, BDD 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.

BDD shall review 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 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. 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. NTTA shall not execute a written lease or 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 BDD.

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

Counting attainment 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 and/or be registered with an approved certification agency.

6 Section: GOOD FAITH EFFORT (GFE)

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 GFE 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 team that it has made a good faith effort to meet the goal. The GFE documentation should be submitted within five (5) business days when requested by BDD.

The prime contractor is responsible for meeting or exceeding the established goal and/or demonstrate a good faith effort. NTTA will award contracts to prime contractors who are responsive and responsible. The BDD leadership team 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 consider those documented efforts that occurred prior to the good faith effort submission. BDD will not recommend execution of a contract by NTTA for which the prime contractor has not met the designated goal without the final good faith efforts approved.

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

- 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 BDD office or on NTTA.org;
- Whether the prime contractor timely advertised in general circulation, trade association, and/or D/M/WBE-focused media concerning subcontracting and supplier opportunities;
- Whether the prime contractor provided timely written notice to D/M/WBEs via mail/email or facsimile for subcontracting opportunities;
- 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;
- 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);

- Whether the prime contractor adequately provided interested D/M/WBEs with the plans, specifications, scope of work, and requirements of the contract;
- 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;
- 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;
- 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;
- Whether the prime contractor made efforts to assist interested D/M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- 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;
- 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 ;
- 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
- Whether the prime contractor can provide documentation of efforts to obtain D/M/WBEs certified firms to meet the goal.

If a prime contractor fails to submit the completed good faith effort documentation by the deadline for submission. BDD will deem the prime contractor to be non-responsive. BDD will review the various efforts made by the prime contractor, and the quantity and quality of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goals.

7 Section: INFORMAL PROCUREMENTS OF CERTAIN GOODS AND SERVICES

The following informal procurement methods and thresholds shall be utilized for general goods and services under fifty thousand dollars (\$50,000). At NTTA's option, they may be used for consulting services anticipated to cost less than fifty thousand dollars (\$50,000).

Procurements costing, or anticipated to cost ten thousand (\$10,000) or more, but less than fifty thousand dollars (\$50,000) are required to obtain at least three (3) competitive quotes, of which two (2) quotes are required to be from DBEs, MBEs or WBEs businesses. Supporting documentation where quotes could not be obtained from DBE, MBE or WBE businesses shall be submitted to the Senior Director of Procurement Services, or Designee, for approval.

Procurements costing, or anticipated to cost, less than ten thousand dollars (\$10,000) do not require competitive quotes. However, DBEs, MBEs and WBEs are strongly suggested to be utilized for these procurements where possible.

Proprietary Purchases

Purchases made through the following procurement methods may be exempted from the BDD goal process:

- **Sole Source Procurements**
Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies.
- **Single Source Procurements**
Single-source procurements are services that are available from one prospective consultant because the consultant possesses the demonstrated competence, knowledge and qualifications to provide the services required by NTTA at a reasonable fee and within the time limitations required by NTTA. The Executive Director may determine that a single-source can be utilized for the purchase of goods or services entered into after soliciting and negotiating only with one source, usually because of the technology required or uniqueness of the service provided.
- **Cooperative Purchasing**
Cooperative purchasing occurs when two or more governmental entities coordinate purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through inter-local agreements, state contracts, cooperative purchasing programs, and purchases made under a program that by statute meets state procurement requirements. NTTA will undertake cooperative purchasing when it is in NTTA's best interest and to the extent allowed by law.

Emergency Purchases

NTTA may make emergency purchases without using a competitive procurement process when:

- there exists a threat to public health or public safety, or
- when immediate expenditure is necessary for repairs to NTTA's property in order to protect against further loss of or damage to NTTA's property, or
- to prevent or minimize serious disruption in critical NTTA's services that affect health, safety, or collection of substantial toll revenues, or
- to ensure the integrity of NTTA records.

Other types of work which may qualify for emergency contracts include, but are not limited to, the restoration of NTTA's technology-based systems, and removal of interference with NTTA's operations as a result of emergency conditions affecting a third party's operations in accordance with NTTA's contractual obligations to that party.

Discretionary Exemptions

Per NTTA's Procurement Policy Section 6.5, contracts for the purchase of the following items are exempt from the formal procurement processes of upon a determination by the Executive Director that the purchase falls within one of the following:

- Personal or professional services, excluding professional services covered by the PSPA.
- Items for which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies.
- Films, manuscripts or books.
- Electric power, gas, water, and other utility services.
- Captive replacement parts or components for equipment.
- Personal property sold
 - At an auction by a state licensed auctioneer,
 - A going out of business sale held in compliance with Subchapter F, Chapter 17, Texas Business and Commerce Code,
 - By a potential subdivision of this state, a state agency of this state or an entity of the federal government.
- Other services such as travel, entertainment, postage, dues, memberships and subscriptions, advertising, and media-related buys.

8 Section: CERTIFICATION

BDD reserves the right to review, accept, or reject D/M/WBE certifications on NTTA projects and procurements. In order to credit participation on NTTA procurements towards the D/M/WBE contract-specific goal, NTTA will require D/M/WBE's 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) and affiliates with reciprocity
- North Central Texas Regional Certification Agency (NCTRCA);
- Small Business Administration (SBA) (for 8(a) certification only);
- Texas Department of Transportation (TxDOT) DBE Program (only);
- Texas Unified Certification Program (TUCP) DBE Program; and
- Women's Business Council – Southwest (WBCS) and affiliates with reciprocity

A. Certification Upon Eligibility

In circumstances where a D/M/WBE has submitted its application for certification with one or more of the aforementioned certification agencies, in order to verify application submission, BDD will request the applicable prime contractor and/or subcontractor to provide an application affidavit number or letter from the agency(s). If a contracting or subcontracting firm is not certified by an approved certification agency at the time the contract is executed, the prime contractor may not count the D/M/WBE firm's participation until the firm is certified. Upon verification of a contractor or subcontractor's certification documentation, the contractor's or subcontractor's participation can be counted towards the goal. BDD shall 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 BDD in writing within ten (10) business days of receipt of such information.

B. Counting D/M/WBE Participation Ineligibility

If a D/M/WBE subcontractor becomes ineligible for certification in the course of a contract due to circumstances beyond the control of the subcontractor, BDD may grant a 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 BDD 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 BDD 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.

9 Section: PRE-AWARD COMPLIANCE PLAN

D/M/WBE participation in NTTA contracts should be confirmed by appropriate contracting-support documentation, including without limitation a Commitment Agreement Form (4906) and valid certification.

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

All prime contractors will submit the Commitment Agreement Form (4906) and related documents for 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 shall 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 shall document the following:
 - Signature of the prime contractor and the subcontractor, including the committed dollar amount or percentage of the goal;
 - Subcontractor's federal ID number;
 - 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 shall 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 BDD.

2. When required, submit the Good Faith Effort Form with the supporting documentation. (See Section C below **“Evidence of Good Faith Effort”**)

B. Submittal of Required Documentation

The applicable documents shall be received by BDD within the time allocated in the solicitation in order for the entire bid/proposal to be considered responsive. The vendor shall deliver the Commitment Agreement Form 4906 documentation to the appropriate party at NTTA as stated in the respective solicitation.

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); and (iii) RFQ (Request for Qualifications) (Initial factor in selection is qualification- based; can be used to qualify a “pool” of firms), 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 shall be submitted in accordance with NTTA’s procedures.
2. Good Faith Effort documentation and supporting information shall be submitted in accordance to NTTA’s procedures if the vendor fails to meet the designated goal.
3. Submission of the Commitment Agreement Form 4906 (Form 4906) for a subcontractor shall constitute 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.

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 terms.

The bid/proposal shall address 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 subcontractors.

Prime contractors shall identify subcontractors/suppliers to be used on any NTTA project. Prime contractors shall identify 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 tiered subcontractors identified as D/M/WBEs and counting dollars paid to tier levels towards meeting the contract goal.

The BDD team will 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 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 shall complete the Good Faith Effort Form. The good faith effort documentation should be submitted when the initial response to NTTA's solicitation is due or when applicable.

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 BDD, compliance with items 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. 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.
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 and the date and time of contact.

10 Section: POST-AWARD COMPLIANCE PLAN

To ensure that the prime contractor meets its obligations under contract, BDD will review the contractor's D/M/WBE involvement throughout the term of the contract. The goal will remain the same as set forth in the original contract regardless of a modification to the contract.

A. Monthly Subcontractor Progress Report and Activity (Form 4907)

The prime contractor is required to submit a Monthly Subcontractor Progress Report via NTTA's Diversity Management System online on the NTTA.org website.

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 subcontractors and to confirm whether the contract-specific goal established is fulfilled. If the prime contractor is in danger of not meeting the goal, BDD will contact the project manager, construction management or department to inquire regarding goal shortfalls and possible resolution. Prime contractors shall submit monthly subcontractor progress reporting activities monthly, regardless 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 subcontracting or material supply activity is complete. The prime contractor shall submit monthly reports of payments to every subcontractor in NTTA's diversity management system.

In the event that the business diversity contract compliance system becomes inoperable or unavailable to the prime contractor, the prime contractor shall notify BDD of system issues immediately. Additionally, the prime is responsible for updating internal users, obtaining system training to ensure monthly reporting occurs. Failure to do so will render the prime delinquent and deem the prime noncompliant.

B. Monthly Reports

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

1. Review overall subcontractor utilization on 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. Subcontractor Modifications or Substitutions (Form 4906B)

Prime contractors are required to obtain approval from BDD 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 shall submit (1), 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) and (2), a completed subcontractor modification or substitution Form 4906B. 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 prime contractors. The prime contractor shall 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 BDD, at BDD's discretion, may not be credited towards the contract's goal.

D. Subcontractor Final Report (Form 4908)

NTTA's Subcontractor Final Report (Form 4908) should be notarized, list suppliers and/or subcontractors that performed work throughout the duration of the project, and submitted at the end 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 shall submit with the final report documentation supporting the reason why the goal was not met and proof of a good faith effort must be submitted. Form 4908 shall 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 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 subcontractors. A finding of non-payment in violation of this paragraph may constitute a material breach of the respective contract with NTTA."

11 Section: NON-COMPLIANCE ENFORCEMENT

Participants in the D/M/WBE business process shall comply with NTTA's requirements set forth in the Diversity Policy and applicable federal and state laws. BDD 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.

BDD may recommend additional sanctions against prime contractors that are found to be in noncompliance with D/M/WBE contract provisions at any time during the term of an NTTA contract.

BDD 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 Texas Attorney General's Office.

12 Section: OUTREACH

An integral component of NTTA's BDD processes, procedures, and efforts is to identify and solicit D/M/WBE participation in NTTA procurement and contracting opportunities. Further, BDD seeks to maximize D/M/WBE procurement and contracting participation by establishing an effective outreach program. Outreach efforts are designed to support 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 BDD and other NTTA departments with the D/M/WBE business community. Through these efforts, NTTA has numerous opportunities to promote D/M/WBE firms through:

- Monthly Business Chats,
- Quarterly Vendor Outreach Symposiums (VOS),
- Mentor/protégé program called "Relationships and Opportunities Advancing Diversity" (ROAD),
- Cooperative Inclusion Plan (CIP), and
- External outreach involving certification agencies, Chambers of Commerce, and trade/professional associations.

For additional information on the aforementioned outreach efforts, please visit www.ntta.org

13 Section: GLOSSARY OF DEFINITIONS

A & D Study – “Availability and Disparity Study” Availability and disparity studies are commissioned by an agency to determine if there is disparity between the availability of firms owned by minorities and women in a market area and the utilization of those firms by an agency.

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.

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.

CIP – Cooperative Inclusion Plan is a comprehensive approach to addressing the lack of D/M/W/SBEs in highway contracting.

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.

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

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.

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.

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.

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

Proposal – A plan or suggestion, especially a formal or written one, put forward for consideration or discussion by others.

Proprietary Purchase – A purchase in which the specifications or requirements describe a product or service that is only available from one manufacturer or vendor, and which does not permit an equivalent product to be supplied

Race-neutral – Not based on people's race or giving a special advantage to people of any race.

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

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.

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.

14 Section: COMPLIANCE FORMS

4906 Form - A commitment form is submitted to identify all subcontractors/sub-consultants & material suppliers that will be used throughout the duration of a project.

4906B Form - This form should be completed and submitted to NTTA Business Diversity Department for each subcontractor or supplier being added, deleted or changed. The same criteria used for establishing good faith efforts in maximizing the participation of D/M/WBEs prior to awarding this contract will also apply to the substitution of D/M/WBE subcontractors or suppliers during the performance of the contract.

4907 Form - Monthly reports are submitted with invoices to monitor the use of all subcontractors. For projects with assigned D/M/W/SBE goals, submission of this report for periods of negative D/M/W/SBE activity is required. This report is required until all subcontracting or material supply activity is complete.

4908 Form - A final report is submitted at the end of a project and reports the total final amounts paid to subcontractors/sub-consultants and material suppliers.

GFE Form - If the prime contractor has failed to secure D/M/W/SBE participation and has subcontracting and/or supplier opportunities, or if D/M/W/SBE participation is less than NTTA's goal, the prime contractor must complete the Good Faith Effort Form. Good Faith Effort documentation and supporting information must be submitted in accordance with NTTA's procedures if the vendor fails to meet or exceed the designated goal. NTTA will not award a contract to any vendor who has not supplied this documentation.

GFE Affidavit – This form is used to attest that no subcontracting opportunities were identified with a contract and no opportunities were expected during the life of the contract.