



Business Development and Opportunities

Department Contracting and Compliance Manual

North Texas Tollway Authority
Business Development and Opportunities Department
Contracting and Compliance Manual

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SECTION 1. INTRODUCTION AND PURPOSE

A. Introduction

The North Texas Tollway Authority (NTTA) is committed to ensuring the participation of small businesses in NTTA's procurement process and contracting. This Business Development Contracting and Compliance Manual (CCM) is administered by the Business Development and Opportunities Department (BDOD) to implement NTTA's Small Business Program Policy pursuant to NTTA's statutory mandate under Texas Government Code, Section 366.184, and applicable federal law and regulations, including 49 C.F.R. Part 26.

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

This CCM is available for public review on NTTA's website at www.ntta.org under the [BDOD page](#).

B. Scope and Objectives

This CCM sets forth procedures and guidelines for subcontractor participation by small businesses (SBs) in NTTA procurements, contracts, and projects, both those that specify aspirational goals for participation by SBs and those without specified goals. SB goals on NTTA procurements are aspirational subcontracting goals.

All references to "goals" in this CCM means aspirational goals for SBs participation in an NTTA contract; in no event should a goal be interpreted as a mandatory quota.

Only businesses certified as small business enterprises by any of NTTA's recognized certification agencies are counted toward the attainment of SB participation goals.

The objectives of this CCM include establishing procedures to:

- Ensure that the Small Business Program operates in a nondiscriminatory manner and without regard to race, ethnicity, national origin, sex, religion, sexual orientation, and other protected classes, while maximizing efficiency of service
- Encourage small business participation in procurements
- Promote competition by expanding the base of potential contractors and subcontractors for NTTA procurements
- Help remove barriers to contract participation by SBs
- Assist SBs to develop their business capacity

C. Business Development and Opportunities Department Overview

The mission of the Business Development and Opportunities Department (BDOD) is to encourage and foster SB participation in NTTA's procurements. BDOD is responsible for the implementation and coordination of the Small Business Program's activities, including SB-related outreach, monitoring, tracking, and reporting.

In addition, at the close-out of a contract, BDOD shall coordinate a contract-compliance review and validation with NTTA's business departments and Prime Contractors to ensure that the purpose and intent of NTTA's Small Business Program Policy are achieved.

SECTION 2. ROLES AND RESPONSIBILITIES

A. Overview

The Small Business Program is managed and supervised by the Business Development and Opportunities Director, who reports directly to the Chief Financial Officer.

The Business Development and Opportunities Director shall have the necessary staff to assist with the daily operational activities of BDOD. BDOD is responsible for activities associated with the inclusion of SBs in NTTA's procurement and contracting processes, including without limitation:

- Outreach
- Advocacy
- Vendor Relations/Management
- Business-Capacity Building
- Spend Reporting
- Oversight
- Goal Setting

A. Duties and Responsibilities of BDOD

The BDOD, its Department Director, and staff have the duty and responsibility to:

- Develop and maintain procedures to ensure SB participation in NTTA procurement and contracting opportunities.
- Provide oversight of the Small Business Program.
- Promote and conduct outreach activities for SBs, in partnership with industry and advocacy groups.
- Directly and indirectly promote SBs' participation in NTTA procurements through initiatives such as annual reports, newsletters, website, business publications, and recognition programs.
- Participate in pre-solicitation discussions to identify subcontracting opportunities.
- Provide Prime Contractors with access to certified SB vendor databases to help identify subcontracting opportunities.
- Review and verify the certification status of SBs.
- Encourage and promote partnering and teaming arrangements between (1) SBs and (2) non-SB firms to enhance innovative approaches to increase SB participation.
- Evaluate, recommend, and verify the Commercially Useful Function of SBs participating in NTTA procurement and contracting opportunities.

- Advise other NTTA departments regarding procurement and contract requirements to provide meaningful opportunities for SB participation.
- Monitor and track the progress of SB participation in procurement and contracting opportunities.
- Evaluate and ensure the criteria for Good Faith Effort determination is met by Prime Contractors.
- Validate and communicate contract close-out determination to relevant NTTA business departments and Prime Contractors.
- Participate in pre-construction/design conferences to communicate the SB business development process and requirements.
- Report periodically to NTTA's Board of Directors (the Board) and executive management information and updates on the Small Business Program.
- Implement and update this CCM as needed to address modifications to procedures.
- Develop and recommend aspirational contract-specific SB goals on applicable procurement opportunities, including contract modifications when requested.
- In consultation with NTTA's Legal Department, review and develop procedures and advise the Board concerning policies that comply with current laws, judicial determinations, and regulations.
- Review procurement solicitations to ensure that SBs have meaningful opportunities to participate in procurements.
- Review and evaluate solicitation responses to ensure that the SB participation plan described in the Subcontractor Plan Form meets the business development components which include, but are not limited to, SB contract-specific goals.
- For federally funded projects, NTTA will follow the guidelines from the applicable funding source.

B. Duties and Responsibilities of Other NTTA Departments

Each NTTA department shares responsibility for promoting, supporting, and assisting BDOD in carrying out the Small Business Program. Departments shall collaborate to implement and support specific functions, as well as any other function(s) deemed necessary by executive management, to implement NTTA's Small Business Program Policy.

Departments requesting any procurement or contracting solicitation on behalf of NTTA shall, either directly or through NTTA's Procurement Services Department:

- Notify and provide to BDOD, 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 SB opportunities in solicitations.
- Provide complete and accurate information in a timely manner prior to the announcement of the procurement.
- Assist BDOD concerning Prime Contractors' compliance with the SB attainment requirements of their contracts.

NTTA's Procurement Services Department shall:

- Ensure applicable SB requirements are included in solicitation documents and contracts.
- Provide BDOD with forecast schedules of upcoming procurement and contracting opportunities.
- Notify BDOD regarding potential compliance concerns which may affect attainment of established SB participation goals.
- Assist BDOD concerning Prime Contractors' compliance with the SB requirements of their contracts.
- Provide BDOD access to each executed contract and contract modification in a timely manner to assist in monitoring compliance with SB requirements.

SECTION 3. SMALL BUSINESS PROGRAM OVERVIEW

A. Overview

Under its Small Business Program, NTTA counts SB's attainment on non-federal projects. The Small Business Program is designed to encourage and promote participation of SBs in the procurement of NTTA goods, materials, supplies, and services.

B. SB Goal-Setting and Methodology

NTTA establishes aspirational goals 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 BDOD flexibility to consider the actual scope, specifications of the work, and availability of SBs in the Relevant Market Area to perform identified divisible work.

C. Monitoring and Enforcement Mechanisms

Monitoring and enforcement are important to the integrity and effectiveness of the Small Business Program and necessary to ensure compliance with policies. Monitoring and enforcement activities conducted by BDOD include the following:

- Upon receipt of Contractor's executed contract, training the Contractor on NTTA's vendor compliance and management system.
- Participating in project site visits and meetings.
- Monitoring payments to subcontractors.
- Monitoring SB 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 Small Business Program.
- Reconcile and approve the Subcontractor Final Audit Summary Report for the close-out of the Contract.

D. SB Directories

NTTA will make available to interested persons an online SB directory on NTTA's vendor compliance and management system, which can be found on NTTA's website under the [BDOD page](#) or via the following link: <https://ntta.gob2g.com/>. 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.

SECTION 4. COUNTING SB PARTICIPATION

NTTA is committed to ensuring that SB participation is measured at both the prime contracting and subcontracting levels. In the solicitation of subcontractors, BDOD discourages exclusive teaming arrangements or agreements, and BDOD will review such arrangements and agreements to ensure that a Commercially Useful Function is served.

A. Counting SB Prime Contractors

When a SB receives a prime contract, the SB Prime Contractor remains responsible for meeting the SB subcontracting goal requirement or making a good faith effort to do so. The SB Prime Contractor shall submit the necessary documentation to BDOD to demonstrate its plan to achieving the SB subcontracting participation goal. SB Prime Contractors shall not be exempted from contract-specific business Development goals.

B. Counting SB Subcontractors

When a SB participates as a subcontractor, the Prime Contractor shall count only the value of the work actually performed by the SB toward goal attainment.

The Prime Contractor shall count the entire amount of that portion of a contract that is performed by the SB's own workforce. The Prime Contractor may count the cost of supplies and materials obtained by the SB 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 SB 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 SB subcontracts part of the work to another SB firm, the value of the subcontracted work may be counted toward the goal only if the subcontractor is a SB. Subcontractor work performed by a non-SB firm does not count toward the goal.

C. Subcontracting Limit

The Prime Contractor may only count expenditures to a SB subcontractor if the subcontractor is performing at least 30% of the total original contract amount with the subcontractor's own organization. BDOD is responsible for obtaining satisfactory evidence that this requirement is satisfied. The NTTA department that owns the contract will support BDOD in those efforts.

The subcontractor's own organization includes only:

- workers employed and paid directly by the subcontractor or its wholly owned subsidiary;
- equipment owned by the subcontractor or wholly owned subsidiary;

- rented or leased equipment operated by the subcontractor's employees or wholly owned subsidiary employees;
- incorporation of materials into the work if the majority of the value of work involved in incorporating the materials is performed by the subcontractor's own organization, including a wholly owned subsidiary's organization; and/or
- labor provided by leasing firms licensed under Chapter 91 of the Texas Labor Code for non-supervisory personnel if the subcontractor or its wholly owned subsidiary maintains direct control over the activities of the leased employees and includes them in the weekly payrolls. (Payrolls may be submitted by either the subcontractor or the licensed staff leasing firm).

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 SB 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 SB 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 SB 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 SB goals.

- If a SB 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 SB Partnerships and Other Teaming Arrangements

NTTA encourages partnerships and teaming in any bona fide, legally recognized form. When BDOD determines that the level and value of participation of the SB partner in a partnership or other teaming arrangement is appropriate and not inconsistent with the Small Business Program Policy, BDOD will allow the SB'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 SB 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, BDOD will count utilization of the SB partner toward Prime Contractor participation and such SB partner utilization may be counted toward the contract- specific goal, in an amount to be determined by BDOD, based on a reasonable consideration of the totality of the circumstances presented. In the event the SB partner subcontracts any portion of the required work, BDOD will count only the work self-performed by the SB partner toward the contract-specific goal, and the remaining work required to meet the goal, if any, may be performed by other SBs.

BDOD 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.

BDOD 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 BDOD.

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 of SBs without a place of business in NTTA's Relevant Market Area will not differ from treatment of SBs maintaining a place of business within that Relevant Market Area. However, in order to promote better responsiveness and availability to NTTA, SBs are encouraged to establish a place of business within NTTA's Relevant Market Area.

SECTION 5. GOOD FAITH EFFORT (GFE)

Following the execution of contracts where NTTA has established a numerical SB participation percentage goal, Prime Contractors must comply in good faith with applicable requirements set forth in the CCM and the Good Faith Effort form.

The Prime Contractor shall submit the Good Faith Effort Form, fully completed in accordance with the form's instructions. The Prime Contractor will have the burden of correctly and accurately preparing and submitting the documentation required by NTTA.

Upon verification by BDOD, compliance with requirements of the Good Faith Effort Form shall satisfy the good faith effort requirement.

If the Prime Contractor strives to meet the goal and falls short of achieving the goal, it shall nevertheless remain in compliance with the contract if it can demonstrate to the BDOD that it has made a good faith effort to meet the goal. The GFE documentation shall be submitted when requested by BDOD. However, self-performed work will not count toward attainment of the SB goal.

The Prime Contractor is responsible for meeting or exceeding the established goal and/or demonstrate a good faith effort. The BDOD 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.

In making a determination that the Prime Contractor has made a good faith effort to meet the goal, BDOD 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 SB participation and whether the Prime Contractor obtained a current list of certified subcontractors and/or suppliers from the BDOD office or on NTTA.org;
- Whether the Prime Contractor timely advertised in general circulation, trade association, and/or SB-focused media concerning subcontracting and supplier opportunities;
- Whether the Prime Contractor provided timely written notice to SBs via mail/email or facsimile for subcontracting opportunities;
- Whether the Prime Contractor solicited to SBs 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 SBs to determine with certainty whether the SBs were interested;

- Whether the Prime Contractor selected portions of the work to be performed by SBs 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 SBs with the plans, specifications, scope of work, and requirements of the contract;
- Whether the Prime Contractor negotiated in good faith with interested SBs, not rejecting SBs as unqualified without sound reasons, based on a thorough investigation of applicable capabilities;
- Whether the Prime Contractor negotiated in good faith with interested SBs, using good business judgment, taking into consideration each subcontractor's price quote and not rejecting interested firms without a valid justification;
- Whether the Prime Contractor can provide documentation of efforts to obtain SBs certified firms to meet the goal.

BDOD 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. Failure by Prime Contractors to demonstrate a good-faith effort may subject Prime Contractors to remedies under the contract, as NTTA deems appropriate.

SECTION 6. PROCUREMENTS EXEMPT FROM FORMAL PROCUREMENT METHODS

A. Informal Procurements

NTTA's Procurement Policy defines informal procurements as procurements costing less than \$50,000. Informal procurements are not required to be competitively procured and are subject to special SB procedures. Refer to the Procurement Policy for SB requirements pertaining to informal procurements.

B. Other Procurements Exempted from Formal Procurement Methods

The Procurement Policy exempts the following types of purchases from formal methods requiring a competitive procurement. These procurement types are not subject to the requirements of the Small Business Program. Refer to the Procurement Policy for information concerning these procurement types: Proprietary Purchases, Sole Source Procurements, Single Source Procurements, Cooperative Purchases, and Emergency Purchases.

C. Discretionary Exemptions Requiring a Determination by the Executive Director

The Procurement Policy also exempts the following types of purchases from formal methods requiring a competitive procurement, but only if NTTA's Executive Director determines that that the purchase falls within one of the following categories:

- 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.

Refer to the Procurement Policy for information concerning these procurements.

SECTION 7. CERTIFICATION

BDOD reserves the right to review, accept, or reject SB certifications on NTTA projects and procurements. In order to credit participation on NTTA procurements towards the SB contract- specific goal, NTTA will require SB'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:

- Texas Unified Certification Program
- Dallas/Fort Worth Business Council; and
- WBC – Southwest

A. Certification Upon Eligibility

In circumstances where a SB has submitted its application for certification with one or more of the aforementioned certification agencies, in order to verify application submission, BDOD 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 SB 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. BDOD 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 specified SB participation 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 fulfillment of the SB participation plan, departmental personnel are required to notify BDOD in writing within ten (10) business days of receipt of such information.

B. Counting SB Participation Ineligibility

If a SB subcontractor becomes ineligible for certification in the course of a contract due to circumstances beyond the control of the subcontractor, including, but not limited to, the subcontractor's graduating out of SB status, BDOD may make accommodations regarding continued small business participation including but not limited to granting 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 BDOD has established the validity of its ineligibility will not be counted towards SB participation, 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 SB 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 included in an SB participation plan.

If the certification status of a SB subcontractor becomes ineligible in the course of a contract due to circumstances that demonstrate to NTTA's satisfaction fraudulent practices by the Contractor concerning the subcontractor's purported certification, none of that subcontractor's work will be counted toward the goal (and Contractor may be subject to any other consequences and liabilities imposed under the contract and applicable law).

SECTION 8. PRE-AWARD CONTRACTOR SUBMISSIONS

A. Subcontractor Plan Form

SB participation in NTTA contracts must be confirmed by appropriate contracting-support documentation, including without limitation, a Subcontractor Plan Form available at NTTA's website (www.ntta.org) under the [BDOD page](#), and valid certification.

All proposed Prime Contractors submitting bids, responses and proposals to NTTA include the Subcontractor Plan Form, fully completed in accordance with the form's instructions, and all other related documents.

B. Evidence of Good Faith Effort

If the Prime Contractor has failed to secure SB participation or if SB participation is less than NTTA's goal, the Prime Contractor shall submit:

- The Good Faith Effort Form as described in Section 5, and
- Documentation of solicitation to SB firms within the subcontracting and/or supplier areas previously listed by telephone, and attach the contact list to include SB firm, person contacted, telephone number and the date and time of contact.

If a Prime Contractor properly and timely submits the Good Faith Effort form and the required documentation concerning solicitation of SB firms, the failure to meet the goal shall not make the Prime Contractor ineligible for award of the contract.

SECTION 9. POST-AWARD COMPLIANCE PLAN

To ensure that the Prime Contractor meets its obligations under contract, BDOD will review the contractor's SB 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

The Prime Contractor is required to submit a Monthly Subcontractor Progress Report via NTTA's vendor compliance and management system online on the NTTA website under the [BDOD page](#) or via the following link: <https://ntta.gob2g.com/>.

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, BDOD 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 fulfillment of the SB participation plan 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 vendor compliance and management system.

If the vendor compliance and management system becomes inoperable or unavailable to the Prime Contractor, the Prime Contractor shall notify BDOD 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. BDOD will maintain a tracking system to:

- Review overall subcontractor utilization on NTTA contracts with a goal established;
- Identify and monitor Prime Contractors and subcontractors utilization for overall project and task performed; and
- Identify, list and report participation for certified SBs.

C. Subcontractor Modifications or Substitutions

Prime contractors are required to obtain approval from the project manager or engineer and BDOD verifies before any modifications or substitutions are made to the initial subcontractor plan. If a Prime

Contractor is replacing a SB 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. The Prime Contractor will be required to make good faith efforts to find a substitute SB subcontractor for the original SB plan.

The good faith effort shall be directed at finding another SB to perform or provide at least the same amount of work, material or service under the contract as the original SB subcontractor. The Prime Contractor may also find additional SB firms and/or adjust the current/projected SB participation to meet the designated goal. The Prime Contractor shall notify the BDOD regarding any additions, modifications or deductions that would affect the contract's SB participation. Any SB participation performed by a firm that replaced a SB firm through a substitution, modification or addition of a new firm without prior approval by BDOD, at BDOD's discretion, may not be credited towards the contract's goal.

BDOD is responsible for obtaining satisfactory evidence that the requirements in this Section 9.C. are satisfied. The NTTA department that owns the contract will support BDOD in those efforts.

D. Subcontractor Final Audit Summary Report

NTTA's Subcontractor Final Audit Summary Report should be notarized, list suppliers and/or subcontractors that performed work throughout the duration of the project, and submitted promptly at the end of the project. The Final Audit Summary Report is utilized to document that subcontractors utilized to fulfill a SB 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.

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. A finding of non-payment in violation of this paragraph may constitute a material breach of the respective contract with NTTA."

SECTION 10. NON-COMPLIANCE ENFORCEMENT

Participants in the SB business process shall comply with NTTA's requirements set forth in the Small Business Program Policy and applicable federal and state laws.

NTTA may pursue lawfully available remedies if a contractor fails to comply with the Small Business Program rules and associated procedures under this CCM.

The SB participation plan submitted by the Prime Contractor at the time of the contract award is deemed to be contractual in nature..

BDOD may recommend remedies against Prime Contractors that are found to be in noncompliance with SB contract provisions at any time during the term of an NTTA contract.

SECTION 11. OUTREACH

An integral component of NTTA's BDOD processes, procedures, and efforts is to identify and solicit SB participation in NTTA procurement and contracting opportunities. Further, BDOD seeks to maximize SB 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 SBs.

Key to NTTA's outreach efforts are internal and external communication and interaction by BDOD and other NTTA departments with the SB business community. Through these efforts, NTTA has numerous opportunities to promote SB firms through:

- Monthly Business Chats,
- BOSS – Business Opportunities Stakeholder Sessions
- Targeted outreach for individual procurements,
- Mentor/protégé program called “Relationships and Opportunities Advancing Development” (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

SECTION 12. GLOSSARY OF DEFINITIONS

BDOD – The Business Development and Opportunities Department of the North Texas Tollway Authority.

Bid or Quote or Proposal – 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.

CCM – NTTA's BDOD Contracting and Compliance Manual (*i.e.*, this document).

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

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

DFWBC – Dallas- Fort Worth Business Council.

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

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.

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 - NTTA's Policy Regarding the Procurement of Goods and Services and Disposition of Personal Property

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

Small Business – a business that is certified as a small business enterprise by an NTTA-recognized certification agency as determined by BDOD and listed on NTTA's website under the [BDOD page](#).

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.

TUCP –Texas Unified Certification Program

TxDOT – Texas Department of Transportation.

WBC Southwest – Women's Business Council - Southwest.

SECTION 13. COMPLIANCE FORMS

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

Subcontractor Modification or Substitution Form - This form should be completed and submitted to NTTA Business Development and Opportunities 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 SBs prior to awarding this contract will also apply to the substitution of SB subcontractors or suppliers during the performance of the contract.

Subcontractor Final Audit Summary Report - A final audit summary report is generated by the vendor compliance and management system and email to the Prime Contractor by BDOD 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 SB participation and has subcontracting and/or supplier opportunities, or if SB 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.