

State of Hawaii
Department of Transportation
Disadvantaged Business Enterprise
2004 Program Plan

**Harbors
Division**

**Highways
Division**

**Airports
Division**

State of Hawaii
Department of Transportation
Office of Civil Rights
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813

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Department of Transportation
Disadvantaged Business Enterprise (DBE)
2004 Program Plan

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Introduction

The Hawaii Department of Transportation (HDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U. S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations Part 26 (49 CFR Part 26). HDOT has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, HDOT has signed an assurance with the USDOT that it will comply with 49 CFR Part 26. To this end, the Hawaii Administrative Rules, Title 19, Department of Transportation, Subtitle I, Administration Chapter 2, "Participation in the Disadvantaged Business Enterprise Program" (Appendix A), effectuates HDOT's DBE program pursuant to 49 CFR Part 26.

Policy Statement

Hawaii Department of Transportation (HDOT) is committed to a policy of equal opportunity and nondiscrimination in the award and administration of USDOT-assisted contracts to DBEs in its Federal highway, airport, harbor, and transit financial assistance programs.

HDOT has established a narrowly-tailored DBE program in accordance with applicable laws, for the purpose of creating a "level playing field" on which DBEs can compete fairly for USDOT-assisted contracts; to ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs; to help remove barriers to the participation of DBEs in USDOT-assisted contracts; and to assist in the development of firms that can compete successfully in the market place outside the DBE program.

Furthermore, HDOT, its sub-recipients, contractors and subcontractors shall not discriminate on the basis of race, color, national origin, and sex in the award and performance of USDOT-assisted contracts, or in the administration of the DBE program.

The HDOT Director is responsible for implementation of this policy. The Office of Civil Rights, DBE Program Manager, is delegated with the authority and overall responsibility to implement HDOT's DBE program on a day-to-day basis. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by HDOT in its financial assistance agreements with USDOT.

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



RODNEY K. HARAGA
Director of Transportation

November 12, 2004

Date

Definitions

Affiliation – Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships. This definition is from the Small Business Administration Regulations, 13 CFR 121.

Alaska Native – A U.S. citizen who is a person of one-fourth degree or more of Alaskan Indian, Eskimo, or Aleut blood, or a combination of bloodlines.

Alaska Native Corporation – Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska.

Compliance – A recipient has correctly implemented the requirements of the DBE regulations and other related laws, rules and regulations.

Concession – A for-profit enterprise located on airport premises that is engaged in the sale of consumer goods or services to the public under a contract with the sponsor, another concessionaire, or the owner of a terminal.

Concessionaire – An individual or entity that operates a concession.

Contract – A legally binding relationship obligating the seller to furnish supplies or services and the buyer to pay for them. For the purposes of this Program Plan, a lease is considered a contract.

Contractor – One who participates, through a contract or subcontract, in a USDOT-assisted highway, transit, or airport program.

Department – The U.S. Department of Transportation (USDOT), including the Office of the Secretary (OST), the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

Director - Director of HDOT

Disadvantaged Business Enterprise (DBE) - A for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, wherein 51% of the stock is owned by one or more socially and economically individuals, who also control the management and daily business operations of the corporation.

DOT/SBA Memorandum of Understanding – Refers to the agreement signed on November 23, 1999, between the U.S. Department of Transportation and the U.S. Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small & Disadvantaged Business (SDB) programs, and DOT's DBE program for small and disadvantaged businesses.

Good Faith Efforts – Efforts to achieve a DBE goal or other requirement, which by its scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

HDOT - Hawaii Department of Transportation

Immediate Family Member – Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian Tribe – Any Indian tribe, band, nation, or other organized group or community of Indians, which is recognized as eligible for special programs and services provided by the United States for Indians.

Joint Venture - An association of a DBE firm and one or more other firms to carry out a single, for-profit enterprise, for which the parties or entities combine their property, capital, efforts, skills and knowledge; provided that the DBE participant is responsible for a distinct, clearly defined portion of the work of the contract and said participants share in the capital contribution, control and management of the joint venture. Risks and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian – Any individual whose ancestors were natives prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization – Any community service organization that services Native Hawaiians in the State of Hawaii which is a non-profit organization, chartered by the State of Hawaii, controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance – A recipient has not correctly implemented the requirements of the DBE regulations and other related laws, rules, and regulations.

Operating Administration "OA" - Any of the following: Federal Aviation Administration "FAA", Federal Highway Administration "FHWA", and the Federal Transit Administration "FTA".

Personal Net Worth - The assets of an individual after total liabilities are deducted. A person's net worth does not include the individual's equity in a primary residence or the value of the individual's ownership interest in the firm applying for DBE certification.

Primary Industry Classification – The six digit North American Industry Classification System (NAICS) code designation, which best describes the primary business of the firm.

Primary Recipient – An entity that receives USDOT financial assistance. Said entity may pass some or all of the assistance received onto another recipient.

Principal Place of Business – The business location at which the firm's day-to-day operations are managed and where the firm's business records are kept.

Program – Any undertaking on a recipient's part to use DOT financial assistance.

Race-Conscious - A measure or program that utilizes DBE preferences to assist DBEs to compete for contracts.

Race-Neutral - A measure or program that is race and gender-neutral, and assists all small businesses without preference.

Recipient – Any entity, public or private, to which U.S. DOT financial assistance is extended, whether directly or through another recipient.

Set-aside – A contracting practice restricting eligibility of the competitive award of a contract solely to DBE firms.

Secretary – The Secretary of Transportation or his/her designee.

Small Business Administration (SBA) – United States Small Business Administration.

Small Business Concern - A small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implemented in 13 CFR Part 121; provided that the small business does not exceed the allowable ceiling on average annual gross receipts specified in 49 CFR 26.65.

Socially & Economically Disadvantaged Individuals - Any individual who is a citizen or lawfully admitted permanent resident of the United States who the HDOT determines to be socially and economically disadvantaged and any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:

1. "Black American", which includes persons having origins in a Black racial group of Africa;
2. "Hispanic American", which includes persons having Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
3. "Native American", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
4. "Asian-Pacific American", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kumpuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
5. "Subcontinent Asian American", which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6. Women; and
7. Any other group whose members are designated as socially and economically disadvantaged by the SBA.

Sub-Recipients – City and County of Honolulu, County of Maui, County of Kauai, County of Hawaii, Oahu Metropolitan Planning Organization, the Office of Hawaiian Affairs, and any other entity that receives USDOT financial assistance through a primary recipient.

Tribally Owned Concern – Any concern that is at least 51% owned by an Indian tribe.

Unified Certification Program (UCP) – An agreement executed via a Memorandum of Understanding (MOU) between HDOT and participants (i.e. sub-recipients), wherein HDOT agrees to be the sole certifying agency for the DBE program.

USDOT - United States Department of Transportation, including the Office of the Secretary (OST), the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

USDOT-assisted contract – Any contract between the recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees.

Assurances

HDOT shall include the following assurance in all applicable federal financial assistance agreements.

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

Further, each USDOT-assisted contract that HDOT signs with a contractor, and each subcontract the prime contractor signs with a subcontractor, will include the following language pursuant to 49 CFR §26.13:

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

Program Administration

Applicability, 49 CFR §26.3

The DBE Program Plan shall apply to contracts that receive federal financial assistance from USDOT, to certain airport and harbor leases and concessions, and to all DBE applicants and participants.

Nondiscrimination, 49 CFR §26.7

HDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26, on the basis of race, color, national origin, or sex.

HDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, national origin, or sex.

DBE Directory, 49 CFR §26.31

HDOT shall compile, maintain, and distribute a directory consisting of DBE firms. The DBE Directory will include:

1. Firm's name and type of work that it is certified to perform as a DBE;
2. Firm's telephone and fax numbers;
3. Firm's street and email addresses;
4. Whether a firm is 8(a) certified with Small Business Administration;
5. Whether a firm is woman-owned;
6. Date of initial certification; and
7. Date certification expires.

The DBE Directory shall be printed annually and will be distributed in the first quarter of each calendar year. The DBE Directory is available at:

Hawaii Department of Transportation
Office of Civil Rights
869 Punchbowl Street, Room #112
Honolulu, Hawaii 96813

Telephone: (808) 587-2023
FAX: (808) 587-2025
TTY: (808) 587-2210

The electronic DBE Directory is updated weekly and is posted on HDOT's web page at <http://www.state.hi.us/dot>. From HDOT's web page, link to Business Related Information, then to the DBE web page.

The DBE Directory shall not, in any way, prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

DBE Program Updates, 49 CFR §26.21

HDOT will continue to carry out this program until all funds from USDOT have been expended. Moreover, HDOT will provide USDOT with updates representing the significant changes to the program.

Quotas, 49 CFR §26.43

HDOT will not use quotas in any way in the administration of this DBE program.

DBE Financial Institutions, 49 CFR §26.27

It is the policy of HDOT to investigate the full extent of services offered by the financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT contracts to utilize these institutions.

Over-concentration, 49 CFR §26.33

HDOT has not conducted an assessment as to whether or not over-concentration exists for certain types of work or the extent that such over-concentration may unduly burden the opportunity of non-DBE firms to participate in these types or work. If the issue of over-concentration arises, the DBE Liaison Officer (DBELO), after securing approval of USDOT, may initiate some of the following actions:

1. Work with prime contractors to find and use DBEs in other industry areas.
2. Discontinue assigning a goal on a contract that offers work in the concentrated field.

3. Establish a business development program such as a mentor-protégé program, to assist DBEs in performing work outside of the specified field that HDOT has determined to have an over-concentration of DBE participation.

Monitoring the Performance of Other Program Participants, 49 CFR §26.37

Prior to the beginning of each federal fiscal year, HDOT shall request that the program participants, including, but not limited to, sub-recipients, contractors, and subcontractors, provide written assurances that they are in compliance with all DBE requirements pursuant to 49 CFR, Part 26. HDOT shall not release federal funds until assurances are received.

Assignment of Responsibility

The organizational charts for the following positions within HDOT are attached hereto as Appendix B.

Director:

The Director has the overall responsibility for HDOT, which includes general oversight of the Disadvantaged Business Enterprise (DBE) program.

Civil Rights Coordinator:

The Office of Civil Rights (OCR) was established by HDOT on July 26, 2001, in response to a federal mandate to provide a comprehensive and coordinated civil rights program at the department level. HDOT Civil Rights Coordinator (CRC) serves as the chief staff officer to the HDOT Director and is responsible for overseeing and administering the HDOT's civil rights programs which include, the DBE, Americans with Disabilities Act (ADA), Title VI (of the Civil Rights Act of 1964)/Environmental Justice, and Equal Employment Opportunity/Affirmative Action (EEO/AA) programs.

DBE Liaison Officer, 49 CFR §26.25

The DBE Program Manager within the OCR is the designated DBE Liaison Officer (DBELO) for HDOT. The DBELO may be contacted at the following address and telephone numbers:

Department of Transportation
Office of Civil Rights
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813

Telephone: (808) 587-2023
FAX: (808) 587-2025
TTY: (808) 587-2210

While the DBELO reports to the CRC, the incumbent in this position has direct and independent access to the Director concerning DBE program matters. The DBELO's duties and responsibilities include, but are not limited to, the following:

1. Planning, developing, managing, coordinating, and implementing the DBE program on a day-to-day basis;
2. Advising the CRC and the Director of DBE matters and achievements;
3. Conducting administrative hearings on good-faith effort disputes;
4. Reviewing the goal setting methodology and proposed overall goals established by the Airports and Highways Divisions, Statewide Transportation Planning Office, Oahu Metropolitan Planning Organization, and the Office of Hawaiian Affairs; and
5. Approving and monitoring sub-recipients' DBE Program Plans and compliance activities relative to the DBE program.

DBE Staff Specialist:

The duties and responsibilities of the DBE Staff Specialist include, but are not limited to, the following:

1. Assisting the DBELO in the development and evaluation of the DBE program;
2. Providing outreach to DBEs, non-DBE firms, and other groups to improve DBE participation;
3. Researching, developing, implementing, and monitoring special projects, such as those that will increase DBE utilization, remove barriers to DBE participation, and assist in the development of DBEs to participate in the marketplace outside the DBE program.
4. Developing, planning, and participating in DBE training seminars and outreach that may include providing technical assistance to DBEs, and disseminating information on available business opportunities;
5. Creating and maintaining a Bidders List; and
6. Conducting compliance reviews.

DBE Certification Specialist:

The DBE Certification Specialist is the principal certifier for Unified Certification Program (UCP). The duties and responsibilities of the DBE Certification Specialist include, but are not limited to, the following:

1. Providing assistance to firms that are seeking DBE certification in accordance with eligibility criteria set forth by USDOT;
2. Determining initial and continued eligibility by reviewing the DBE Program Uniform Certification Application or Recertification Application, Personal Financial Statement and other supporting documents; conducting on-site reviews; and evaluating other available information;
3. Maintaining and updating the statewide DBE Directory of certified firms; and
4. Investigating DBE related complaints and challenges.

HDOT Contracts Engineer:

The HDOT Contracts Engineer shall implement procedures to facilitate DBE participation in federally-assisted HDOT projects. These procedures include, but are not limited to the following:

1. Arranging for solicitations, time for presentation of bids, quantities, specifications, and delivery schedules to facilitate the participation of DBEs;
2. Providing assistance to DBEs to overcome barriers such as inability to obtain bonding, financing, or technical assistance; and
3. Disseminating information on contracting procedures and specific contracting opportunities in a timely manner.

Airports Division DBE Coordinator:

The duties and responsibilities of the HDOT Airports Division DBE Coordinator include, but are not limited to, the following:

1. Coordinating the day-to-day DBE compliance activities in the Airports Division;
2. Serving as the DBE liaison between the Airports Division and the FAA, contractors, airport concessionaires, DBEs, and other individuals and entities, as appropriate;
3. Establishing overall and contract DBE goals in accordance with FAA guidelines;

4. Preparing and submitting annual fiscal year reports to the FAA, that include:
 - a. DBE goals and a narrative description of the methodology used in establishing DBE goals.
 - b. Reports of DBE accomplishments for the preceding year.
5. Establishing and maintaining a record keeping system that:
 - a. Documents DBE affirmative actions efforts of the Airports Division;
 - b. Identifies and implements procedures adopted by the Airports Division in compliance with the requirements of the DBE program; compares projected DBE goals with actual accomplishments, and lists efforts to identify and locate DBEs; and
 - c. Contains all DBE-related correspondence, reports, FAA materials, publications, etc.
6. Conducting investigations of good faith efforts made by the lowest responsible bidder, and making recommendations to the Airports Division Administrator regarding the award of a contract;
7. Providing information and other assistance to DBEs;
8. Attending pre-bid meetings;
9. Developing affirmative action programs and procedures to facilitate DBE participation in Airports Division projects;
10. Preparing and updating DBE concession plans for each airport concession;
11. Establishing DBE concession goals; and
12. Monitoring on-going projects to ensure that the contract provisions for DBE participation and prompt payment are in compliance with applicable laws, rules, and regulations, and to ensure actual participation of DBEs on awarded contracts.

Highways Division DBE Coordinator:

The duties and responsibilities of the HDOT Highways Division DBE Coordinator include, but are not limited to, the following:

1. Implementing the DBE program in concert with the requirements of the respective federal modal agency;

2. Establishing overall and contract DBE goals in accordance with FHWA guidelines;
3. Preparing and submitting to the FHWA annual fiscal year reports that include:
 - a. DBE goals and a narrative description of the methodology used in establishing DBE goals; and
 - b. Reports of DBE accomplishments for the preceding year.
4. Preparing and submitting quarterly DBE participation reports and year-end assessment reports regarding DBE participation in Highways Division projects;
5. Reviewing contracts to ensure that DBEs are serving a commercially useful function;
6. Conducting investigations of good faith efforts made by the low bidder, and making recommendations to the Division Administrator regarding the award of a contract; and
7. Monitoring on-going projects to ensure that the contract provisions for DBE participation and prompt payment are in compliance with applicable laws, rules, and regulations, and to ensure actual participation of DBEs on awarded contracts.

Statewide Transportation Planning Office (STP) DBE Coordinator:

The STP Planner responsible for the Federal Transit Administration (FTA) Program is also responsible for the FTA DBE program compliance requirements. The duties and responsibilities of the STP DBE Coordinator, as related to the FTA DBE program, include, but are not limited to the following:

1. Serving as the liaison to the HDOT OCR;
2. Developing and implementing FTA DBE program;
3. Preparing and submitting required FTA DBE program reports;
4. Maintaining FTA DBE program record keeping system;
5. Developing and implementing affirmative action programs and procedures to facilitate DBE participation; and
6. Coordinating the day-to-day FTA DBE program in STP.

Oahu Metropolitan Planning Organization (OMPO) DBE Coordinator:

The duties and responsibilities of the OMPO DBE Coordinator include, but are not limited to the following:

1. Implementing all aspects of the DBE program and ensuring that OMPO complies with all the provision of 49 CFR Part 26;
2. Gathering and reporting statistical data and other information that may be required by HDOT or USDOT;
3. Reviewing third party contracts and purchase requisitions for compliance with the applicable laws, rules, and regulations;
4. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner;
5. Identifying contracts and procurements so that DBE goals are included in solicitations, if appropriate;
6. Analyzing and monitoring OMPO's progress toward goal attainment, and identifying ways to improve the process;
7. Attending pre-bid meetings;
8. Consulting with legal counsel and project director to determine contractor compliance with good faith efforts;
9. Advising the Executive Director/Policy Committee on DBE matters and achievements; and
10. Preparing and submitting to the FHWA through the Highways Division, annual fiscal year reports that include:
 - a. DBE goals, and a narrative description of the methodology used in establishing DBE goals.
 - b. Reports of DBE accomplishments for the preceding year.

Sub-recipients:

Each Sub-recipient shall designate a DBELO to implement the DBE program within their respective organizations. Sub-recipients shall be responsible for assuring that their respective federal financial assistance programs comply with the requirements of 49 CFR, Pat 26.

Legal Counsel:

The Deputy Attorney General from the Department of the Attorney General, Land/Transportation Division, will provide legal assistance to the OCR.

Goals

Overall Goals, 49 CFR §26.45

HDOT shall establish overall goals in accordance with the requirements of 49 CFR §26.45. The overall goal will be developed and will be published in a general circulation media, minority-focused media, and trade association publications, to inform the public of the proposed goals. The rationale will be made available for public inspection during normal business hours in OCR for 30 days following the date of the notice. The notice shall state that comments will be accepted for 45 days after the notice date, and will include the address to which comments may be sent.

HDOT may meet with minority, women, and general contractor groups, and community organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, to discuss the effects of discrimination on the opportunities for DBEs, and HDOT's efforts to establish a level playing field for participation of DBEs.

The proposed goals, a summary of public comments, and HDOT's responses to said comments, will be sent to each USDOT operating administration by August 1st of each year. The goals submitted to the respective USDOT operating administrations by August 1st are effective October 1st (i.e. beginning of the federal fiscal year).

In addition to the proposed goals, HDOT will provide a description of the methodology used to obtain the goals, including an explanation of how the base figures were obtained, and any adjustments to such figures.

Methodology, 49 CFR §26.45

The following methodology will be used to calculate the overall goal for HDOT's divisions and sub-recipients:

Step One: To calculate the relative availability of DBEs, HDOT's divisions and sub-recipients may use the DBE Bidders List, DBE Directory, and Census Bureau Data to determine the base figure. This base figure is expressed as a percentage, and may be achieved by dividing the number of ready, willing and able DBEs from the DBE Directory, by the total number of ready, willing, and able firms in the marketplace, as identified by current census data.

Step Two: HDOT may adjust the base figure, if appropriate, in establishing an overall goal. The following evidence may be considered when adjusting the base figure:

1. The current capacity of DBEs to perform work on USDOT-assisted contracts, as measured by the volume of work DBEs have performed in past years;
2. Evidence from disparity studies conducted within HDOT's jurisdiction;
3. Statistical disparities in the ability of DBEs to get financing, bonding, and/or insurance;
4. Data of employment, self-employment, education and training, and union apprenticeship programs; and
5. Any other demonstrative evidence that is logically and directly related to the effect for which the adjustment is sought.

Breakout of Race-Neutral and Race-Conscious Methods, 49 CFR §26.51

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

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

HDOT shall meet the maximum feasible portion of its overall goals through race-neutral means. HDOT will use the following race-neutral means to increase DBE participation:

1. Arranging solicitation times for presentation of bids, quantity specifications, and delivery schedules that will facilitate the participation of DBEs and other small businesses. This may include unbundling large contracts, and encouraging prime contractors to subcontract portions of their work that they may otherwise perform with their own forces.
2. Providing information and technical assistance to DBEs and other small businesses.

3. Distributing the DBE Directory through print and electronic means.
4. Letting projects out with unspecified goals and encouraging prime contractors to use DBEs.

Contract Goals, 49 CFR §26.51 (d)

HDOT shall establish contract goals to the extent that contract goals will cumulatively meet any portion of the annual overall goal that HDOT projects it will not meet through race-neutral means. Contract goals will be expressed as a percentage of the total amount of a USDOT-assisted contract, less allowances and mobilization.

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

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

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

Counting DBE Participation Towards Contract Goals, 49 CFR §26.55

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

1. The entire amount of work actually performed by DBEs on all tiers on a contract;

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

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

In order to determine the DBE participation of firms that have been decertified, HDOT shall take the following steps:

1. If a DBE firm becomes decertified after the contract award but before the notice to proceed has been issued by HDOT, HDOT shall require the prime contractor to meet the DBE goal by continuing to subcontract with the decertified DBE, and by expending good faith efforts to find other work not already subcontracted out to DBEs, in an amount sufficient to meet the DBE goal. The work performed, or supplies provided by an ineligible (i.e. decertified) DBE, shall not be counted towards the DBE contract goal or HDOT's overall goal.

2. If a prime contractor has executed a subcontract with the firm before the notice of ineligibility, the prime contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE contract goal for the firm's work. When HDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the issuance of the notice shall not count toward the overall goal, but may count toward the contract goal.
3. If a DBE firm becomes ineligible solely because it has exceeded the business size standard during the performance of the contract, HDOT shall continue to count its participation on that contract towards HDOT's overall goal, as well as the contract goal.

The UCP shall provide written notice of a decertification to:

1. HDOT Contracts Engineer
2. HDOT Airports Division DBE Coordinator
3. HDOT Highways Division DBE Coordinator
4. City & County of Honolulu, Department of Transportation Services, Planner
5. STP and OMPO DBE Coordinators
6. Hawaii, Maui and Kauai Public Works DBE Coordinators

Transit Vehicle Manufacturer Goals, 49 CFR §26.49

HDOT requires each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, HDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Federal Transit Administration (FTA) Goals

City and County of Honolulu, Department of Transportation Services (DTS), will set a DBE goal for federal aid-projects funded by FTA. A copy of the proposed goal, and the methodology utilized to calculate the goal, shall be submitted to HDOT. DTS will also publish its DBE goal through a public notice in the daily newspaper.

Good Faith Efforts

Information to be submitted, 49 CFR §26.53

When a contract goal has been established for a USDOT-assisted contract, HDOT shall ensure that bidders/offerors demonstrate good faith efforts by documenting that they have obtained enough DBE participation to meet the goal, or, if they have not met the goal, by demonstrating that they made adequate good faith efforts to obtain the DBE participation to meet the goal, even though they did not succeed in obtaining enough DBE participation to do so.

For each solicitation in which a contract goal has been established, HDOT shall require that the bidders/offerors submit the following with their bid documents:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of work that each DBE will perform; and
3. Written and signed documentation of the bidder's/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

Each bidder/offeror must provide the following information within five (5) working days of bid opening:

1. The dollar amount of each DBE and non-DBE subcontractor participating in the project; and
2. A written and signed confirmation by the participating DBE to verify its active status, as provided in the prime contractor's commitment.

In a project without a contract goal, HDOT will monitor the DBEs that are listed and paid by the prime contractor.

Demonstration of Good Faith Efforts, 49 CFR §26.53

When a contract goal is not met, the respective organization's DBE Coordinator shall conduct the initial review of good faith efforts submitted by the bidder/offeror. The DBE Coordinator shall determine whether the bidder/offeror has performed the quality, quantity, and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the contract goal in accordance with 49 CFR Part 26, Appendix A.

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

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

1. Whether the bidder/offeror solicited through all reasonable and available means (e.g. attendance at meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform part or all of the work to be included under the contract. HDOT will also consider whether the bidder/offeror solicited the participation of potential DBEs in sufficient time to allow the DBEs to properly inquire about the project and respond to the solicitation, and will also review whether the bidder/offeror took appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in this project;
2. Whether the bidder/offeror identified and broke up portions of work that can be performed by DBEs in order to increase the likelihood that DBEs would be able to participate, and the DBE goal could be achieved (e.g. breaking out contract items into economically feasible units to facilitate DBE participation, even when the bidder/offeror might otherwise prefer to perform these work items with its own forces);
3. Whether the bidder/offeror made available or provided interested DBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner, and assisted them in responding to the bidder's/offeror's solicitation;
4. Whether the bidder/offeror negotiated in good faith with interested DBEs. Evidence of such negotiations includes documenting: a) the names, addresses, and telephone numbers of DBEs that were contacted by the bidder/offeror; b) a description of the information that was provided to DBEs regarding the plans and specifications; and c) detailed explanations for not utilizing individual DBEs in the project. The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for a bidder's/offeror's refusal to utilize a DBE, or the failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire of a bidder/offeror to perform a portion of the work with its own forces, that could have been undertaken by an available DBE, does not relieve the bidder/offeror of the responsibility to make good faith efforts to meet the DBE goal, and to make available and solicit DBE participation in other areas of the project to meet the DBE goal;

5. Whether the bidder/offeror rejected DBEs as being unqualified without sound reasons, based on a thorough investigation of their capabilities. The DBE's standing within the industry, membership in specific groups, organizations, or associations, and political or social affiliation, are not legitimate bases for the rejection or non-solicitation of bids from particular DBEs;
6. Whether the bidder/offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance;
7. Whether the bidder/offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
8. Whether the bidder/offeror effectively used the services of available minority/women community organizations, minority/women business groups, contractors' groups, local, state, and federal minority/women business assistance offices, or other organizations to provide assistance in recruitment and placement of DBEs.

It is the sole responsibility of the bidder/offeror to submit any and all documents, logs, correspondence, and any other records or information to HDOT that will demonstrate that the bidder/offeror made good faith efforts to meet the DBE goal. Additionally, for each DBE that was contacted but not utilized by the bidder/offeror for a contract, the bidder/offeror shall submit a detailed written explanation for each DBE detailing the reasons for the bidder's/offeror's failure or inability to utilize, or to allow the DBE to participate in the contract. In its good faith effort evaluation, HDOT may, but shall not be required to perform the following as part of its evaluation:

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

Administrative Reconsideration, 49 CFR §26.53(d)

A bidder/offeror may request an administrative reconsideration within 5 working days of being informed by HDOT (Director) that a bidder's/offeror's bid was deemed non-responsive, because the bidder/offeror did not demonstrate sufficient good faith efforts.

The request for administrative reconsideration shall be in writing to the HDOT Director, and shall be delivered or mailed to:

Director
Department of Transportation
869 Punchbowl Street, Room 509
Honolulu, Hawaii 96813

The bidder/offeror shall have the opportunity to provide a written rebuttal to support its position that the bidder/offeror met the goal or made adequate good faith effort to do so.

The bidder/offeror shall be given an opportunity to meet with the DBELO, to present and discuss oral and written arguments in support of the bidder's/offeror's claim that adequate good faith efforts were made to achieve the contract goal. The DBELO shall not be involved in the original determination that the bidder/offeror failed to meet the goal, or made adequate good faith efforts to do so.

In the administrative reconsideration, HDOT may consider whether other bidders/offerors were able to attain the contract goal, as well as all previously submitted documents, oral and written arguments, and other evidence presented in the reconsideration, in making its decision.

The Contracts Engineer will inform the bidder/offeror of HDOT's reconsideration decision, within 45 days of the proceeding. The decision will state the HDOT's findings with respect to whether or not the bidder/offeror met the contract goal, or whether the bidder/offeror exhibited adequate good faith efforts to achieve the contract goal.

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

Replacement on a Contract, 49 CFR §26.53(f)

The Project Engineer shall work with a prime contractor when the prime contractor finds that a DBE subcontractor selected by the prime contractor is unwilling or unable to perform work specified in their subcontract.

The Project Engineer shall determine if the prime contractor will be permitted to find a replacement DBE. This determination shall be based upon a written explanation from the prime contractor that details why the DBE in question is unable or unwilling to perform. The Project Engineer shall notify the prime contractor as to whether or not the replacement of the DBE has been approved, before the prime contractor may take action to replace the DBE.

If it is determined that the prime contractor will be permitted to replace the DBE subcontractor, the prime contractor shall replace such DBE subcontractor to the extent needed to meet the contract goal. If the prime contractor is unable to obtain substitute DBEs, the prime contractor shall submit complete documentation of good faith efforts made by the prime contractor to obtain substitute DBEs to complete the unfinished work, or to break out other work under the contract to provide additional opportunity for DBE participation, and subcontracting such work out to DBE subcontractors.

If the prime contractor fails or refuses to comply with good faith efforts procedures specified in §26.53, the HDOT Contracts Engineer will issue an order stopping all or part of the payment, and/or stopping work until satisfactory action has been taken by the prime contractor to comply with said requirements. If the contractor still fails to comply, the HDOT Contracts Engineer may issue a termination for default under the contract.

Certification Standards

HDOT, through the Unified Certification Program (“UCP”), will follow the certification standards of Subpart D and the certification procedures of Subpart E, of 49 CFR Part 26, to determine the eligibility of firms to participate as DBEs on USDOT-assisted contracts.

Burden of Proof, 49 CFR §26.61

To be certified as a DBE, a firm has the burden of establishing, by a preponderance of the evidence, that it meets all eligibility requirements of Subpart D concerning group membership or individual disadvantage, business size, ownership, and control. In determining whether or not the firm has met its burden, UCP shall consider the facts in the record, viewed as a whole.

Group Membership Determination, 49 CFR §26.63

If UCP has reason to question whether an individual is a member of a presumptively eligible group, that individual will be required to demonstrate by a preponderance of evidence that he/she is a member of that group.

UCP will consider whether or not the individual has held himself/herself to be a member of the group over a long period of time prior to the certification application, and whether the relevant community regards the individual as a member.

A denial concerning membership in a designated group is subject to the certification appeals procedures of §26.89.

Social and Economic Disadvantage, 49 CFR §26.67(a)

There is a rebuttable presumption under UCP, that U.S. citizens or lawfully admitted permanent residents who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found disadvantaged by the SBA, are socially and economically disadvantaged.

UCP will require each individual owner of a firm applying for participation as a DBE (except firms applying as airport concessionaires), whose ownership and control are relied upon for DBE certification, to certify that he/she has a personal net worth that is less than \$750,000. UCP will require that such individuals sign and notarize a statement of personal net worth and submit supporting documentation, such as U.S. Individual Income Tax Returns.

The applicant's ownership interest in the applicant or participating firm and equity in the applicant's primary residence shall be excluded. If an individual's net worth exceeds \$750,000, the individual is not eligible to participate as a DBE and may, after one year of the denial or de-certification notice, regain eligibility upon demonstrating social and economic disadvantage. If there is a question regarding the reliability of the information, UCP may request additional documents or conduct an independent investigation.

Individual Disadvantage, 49 CFR §26.67 Appendix E of 49 CFR Part 26

Individuals who are not presumed to be socially and economically disadvantaged, and individuals for whom the presumption of disadvantage has been rebutted, have the burden of proving by a preponderance of evidence that they are socially and economically disadvantaged. Appendix E of 49 CFR Part 26, "Individual Determinations of Social and Economic Disadvantage," is adopted, with minor modifications, from the SBA's regulations 13 CFR §124.103c, and §124.104.

Business Status, 49 CFR §26.65

UCP shall determine if a firm is an existing, for-profit business.

The owner's resume will be reviewed to determine whether the disadvantaged owner(s) possess the resources or expertise to operate in the firm's field of business. (Expertise may be defined as having, among other things, the RME license in the firm's field of work). The firm must provide more than prima facie evidence that it does not just exist on paper, and that it was not organized in an attempt to take advantage of the project goals.

Business Size, 49 CFR §26.65

UCP will apply current SBA business size standards pursuant to 13 CFR §121, appropriate to the types of work that the firm seeks to perform in USDOT-assisted contracts. Even if the firm meets the SBA's requirements, a firm is not an eligible DBE if the firm's (including its affiliates) average annual gross receipts, as defined by SBA Regulations (13 CFR §121.402), over the previous three fiscal years, exceeds the maximum business size standard as defined in 49 CFR §26.65. The USDOT Secretary may adjust this amount for inflation.

UCP will review the annual gross receipts of the firm's previous three years and compute the average annual receipts. The firm's U.S. Income Tax Returns or audited financial statement shall constitute proof of annual gross receipts. If a firm fails to submit the required documents, it may be determined that it failed to cooperate as provided by 49 CFR §26.109(c).

Ownership Determination, 49 CFR §26.69

To be an eligible DBE, a firm must be at least 51% owned and controlled by one or more socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51% of each class of voting stock outstanding, and 51% of the aggregate of all stock outstanding. In the case of a partnership, at least 51% of each class of partnership interest must be owned by such individuals, and that ownership interest must be reflected in the firm's partnership agreement. In the case of a limited liability company, disadvantaged individuals must own at least 51% of each class of member interest.

The socially and economically disadvantaged individuals must have a real, substantial, and continuing ownership that goes beyond pro forma ownership, as may be reflected in ownership documents; must directly hold all securities, and must have used contributions of capital or expertise to acquire ownership interest.

If an individual's expertise is used to acquire ownership, such expertise must be documented in the firm's records to reflect that the expertise is in a specialized field, of outstanding quality, in areas critical to the firm's operations, indispensable to the firm's potential success, and specific to the type of work that the firm performs.

HDOT shall always deem as being held by a socially and economically disadvantaged individual, any business interest obtained through final property settlement or court order in a divorce or legal separation, or through inheritance.

For purposes of determining ownership, HDOT shall not consider as being held by a socially and economically disadvantaged individual, all interest in a business or other assets obtained by the individual as a result of a gift or transfer from a non-disadvantaged individual, or a non-DBE firm, that is involved in the applicant firm, is an affiliate, or is involved in a similar type of business.

With respect to marital assets, HDOT shall consider such assets if it is established that the non-disadvantaged spouse has irrevocably renounced and transferred all rights of ownership interest in the firm to the disadvantaged owner.

Control, 49 CFR §26.71

Only independent firms may be certified as a DBE. An independent firm is one that does not depend on its relationship with another firm for its viability. In addition to being an independent firm, socially and economically disadvantaged individuals must exercise control of the firm. In this regard, all the facts in the record will be considered to determine whether the disadvantaged individual

possesses the power to direct, or cause the direction of the management and policies of the firm, and to make long-term decisions on matters of management, policy, and operations. This includes whether the owners have an overall understanding to make an independent decision by critically evaluating information from others. This assessment will be made based on a personal interview with the owners, and a review of documents provided by the firm. To demonstrate that a socially and economically disadvantaged individual exercises control over the firm, and/or to demonstrate that the firm is independent, the firm must:

1. Not have relationships with other firms that demonstrate a pattern of exclusiveness or primary dealings that may affect its independence;
2. Not have restrictions that limit the discretion of the socially and economically disadvantaged owners;
3. Establish a business structure wherein the disadvantaged owner holds the highest office. In corporations, the disadvantaged owner must control the Board of Directors. In partnerships, at least one of the disadvantaged owners must serve as a general partner with control over partnership decisions;
4. Not have non-disadvantaged individuals that are involved in the firm be responsible for the overall management of the firm, or have the power to control the firm;
5. Have socially and economically disadvantaged owners that have an overall understanding of, and management and technical competence and experience that are directly related to the type of business in which the firm is engaged;
6. Establish that the differences in remuneration between the socially and economically disadvantaged owners and the other participants in the firm, in the context of the duties, are within normal business practice, and the firm's policies and practices. The disadvantaged owner should not be engaged in outside employment which conflict with the management of the firm or prevent the individual from devoting sufficient time to the firm's affairs;
7. Have sufficient proof to establish that the socially and economically disadvantaged owners of a family operated firm actually have control;
8. Establish that a disadvantaged owner actually controls the management, policy, and operations of the firm, although the former non-disadvantaged owner remains involved in the firm;

9. Provide proof that the firm owns equipment necessary to perform its work;
10. Establish that the socially and economically disadvantaged owners actually control the firm for the specific type of work that is being certified;
11. Establish that if a business is operating under a franchise or license agreement, that it meets the regulation standards, and that the franchiser is not affiliated with the franchisee;
12. Ensure that non-disadvantaged partners do not have the power, without the specific written concurrence of the disadvantaged partners, to contractually bind the partnership, or subject the partnership to contract or tort liability;
13. Establish that socially and economically disadvantaged owners maintain an employer-employee relationship with employees that are leased from an employee leasing company. Disadvantaged owners must be responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as the ultimate responsibility for wage and tax obligations related to the employees.

Other Considerations, 49 CFR §26.73

The following shall also be considered when making certification determinations:

1. UCP will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
2. UCP will consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
3. UCP will evaluate the eligibility of a firm on the basis of present circumstances, and will not refuse to certify a firm based solely on historical information, or refuse to certify a firm solely on the basis that it is newly formed.
4. DBE firms and firms seeking certification shall cooperate with UCP in its requests for relevant information. Failure or refusal to comply may be grounds for denial or removal of certification.
5. Only firms organized for profit may be certified as DBEs.

6. Individuals who are socially and economically disadvantaged must own 51% of a firm.
7. UCP will not require a DBE firm to be pre-qualified as a condition for certification, unless this requirement is imposed on all firms that participate in its contracts and subcontracts.
8. A firm that is owned by an Indian tribe or Native Hawaiian organization as an entity, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards, and is controlled by socially and economically disadvantaged individuals.
9. A firm that is owned by an Alaska Native Corporation (ANC), rather than by an Alaska Native, shall be certified in accordance with 49 CFR §26.73(i).

Certification Process

Unified Certification Program, (UCP), 49 CFR §26.81

HDOT will act as the sole certifying agency for the USDOT DBE program in the State of Hawaii. The Memorandum of Understanding (MOU) signed by participants of the UCP (Appendix C) was submitted to USDOT in December 2003, and approved in March 2004.

UCP participants include HDOT; City & County of Honolulu, Department of Transportation Services; Hawaii County, Department of Public Works; Maui County, Department of Public Works & Environmental Management; Kauai County, Department of Public Works; and the Office of Hawaiian Affairs.

UCP certification decisions shall be binding on all participants and recipients in the State that participate in HDOT federal-aid projects.

To achieve the objectives of the DBE program, the UCP will ensure that only firms that fully meet the eligibility standards participate as DBEs.

UCP will not process an application for certification from a firm having its principal place of business outside the State of Hawaii, if the firm is not certified by the UCP in the state in which it maintains its principal place of business. UCP will share its information and documents concerning the firm with other state UCPs that are considering the firm's application.

Application, 49 CFR §26.83

Firms seeking certification shall complete a DBE Program Uniform Certification Application and Personal Financial Statement (hereinafter collectively referred to as "application forms") which are attached as Appendix D.

The application forms may be downloaded from the Internet at <http://www.state.hi.us/dot/administration/dbe/index.htm>, or obtained from any of the following offices:

HDOT, Office of Civil Rights
DBE Section
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813

Telephone: (808) 587-6333
FAX: (808) 587-2025

HDOT, Airports Division
Operations Branch
400 Rodgers Boulevard, Suite 700
Honolulu, Hawaii 96819

Attn: DBE Coordinator

Telephone: (808) 838-8708
FAX: (808) 838-8760

HDOT, Highways Division
Construction & Maintenance Branch
Equal Opportunity Section
869 Punchbowl Street, 5th Floor
Honolulu, Hawaii 96813

Attn: DBE Coordinator

Telephone: (808) 587-2628
FAX: (808) 587-2340

City & County of Honolulu
Department of Transportation Services
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

Attn: DBE Coordinator

Telephone: (808) 527-6894
FAX: (808) 527-6987

Information provided by a firm in the application forms is provided under penalty of perjury of the laws of the United States, and shall be accurate as of the application date. Firms may be terminated from the program or a contract if any misrepresentations in the application forms are discovered. The applicant may also be subject to prosecution under federal and/or state perjury laws.

UCP will review the application forms and supporting documents, which are identified in the application's checklist, for completeness, and, as necessary, may request other pertinent data. The applicant shall provide the data within 30 days, and may request an extension of this 30-day time period, either orally or in writing.

UCP will determine an applicant firm's eligibility based on the available information provided by the applicant firm, within 90 days of the receipt of all pertinent data. This period may be extended for good cause.

On-Site Visit, 49 CFR §26.83(c)

Except as otherwise provided, an on-site visit shall be conducted on every firm applying for certification, and on currently certified DBEs whose eligibility under Part 26 has not been determined. The DBE-Certification Specialist, DBE Staff Specialist, or other designated personnel will conduct the on-site visit.

The on-site visit will assist in establishing the veracity of the statements provided on the application, and verifying that the firm actually possesses the equipment and expertise necessary to perform the required work. In this regard, UCP will obtain a list of equipment owned or available to the firm, and verify possession of any licenses held by the firm or its key personnel to perform the required work. UCP will interview the highest officer of the firm, review the resumes of the relevant officers of the firm, and in the case of corporations, analyze stock ownership.

An on-site visit will be scheduled upon receipt and staff review of the DBE application forms. The on-site visit will be conducted at the firm's principal place of business, and/or job site(s) that the firm may be working on at the time of the eligibility review.

Certification of Out-of-State Firms

Out-of-state firms shall provide UCP with certified copies of the application forms submitted to the home state UCP, and shall submit evidence of its current DBE certification from the home state UCP. In addition, UCP will request the most current on-site report from the home state UCP, and may request supplemental information from the applicant firm.

SBA-Certified Firms, 49 CFR §26.84

When SBA-certified firms participating in the SBA's 8(a) Business Development and Small and Disadvantaged Business (SDB) Programs apply for DBE certification, the application and certification process shall be in accordance with the Memorandum of Understanding (MOU) between USDOT and SBA. UCP shall accept a certified copy of the application package submitted by the firm to the SBA in lieu of HDOT's application forms. UCP shall conduct an on-site visit of such firms, and may request any additional information necessary to determine DBE eligibility.

When a DBE-certified firm applies for 8(a) or SDB certification, UCP shall, upon written request from the DBE-certified firm, submit a copy of the firm's application package to SBA within thirty (30) days of the request. This time period may be extended for good cause.

Notice of Certification, 49 CFR §26.83

When an applicant firm meets all of the eligibility requirements to be certified as a DBE, HDOT will provide written notification of this determination to the applicant firm. The certification letter shall include, the type of work that the firm has been certified to perform, the period of eligibility (i.e. no less than three years), and information on the firm's responsibility to immediately report any changes that may impact its DBE eligibility.

Recertification, 49 CFR §26.83(a)(b)(c)

UCP will review the eligibility of DBEs that were certified under the former 49 CFR Part 23, to ensure that they meet the standards of Subpart D of Part 26, "Certification Standards." Subsequent to this initial review under Subpart E of Part 26, "Certification Procedures," the eligibility of existing DBE firms shall be reviewed once every three years.

Firms seeking recertification shall submit a Recertification Application (Appendix E), Personal Financial Statement, and other relevant documents, which are identified in the application's document checklist, that support the application and financial statement, to determine continued eligibility. Upon review of the application, UCP shall determine if there have been any significant changes to the disadvantaged status, business status, business size, ownership, or control of the firm. If there is a significant change that may impact upon a firm's continued eligibility, an on-site will be conducted at the discretion of UCP.

UCP shall make a determination of eligibility within ninety (90) days after receipt of the application for recertification. This time period may be extended for good cause. The firm shall receive written notification of eligibility similar to that received during initial certification. The certification will remain in effect for no less than three years, or until such time that it is determined that the firm no longer meets the requirements to be certified as a DBE.

DBE Change Affidavit, 49 CFR §26.83 (i)(j)

Once certified, all DBEs must provide a notarized Change Affidavit (Appendix F) to UCP within 30 days of any changes in the DBE's circumstance that may affect its ability to meet business size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or any material changes in the information provided with its DBE application for certification.

Moreover, each year on the anniversary date of a firm's certification, the firm must provide a notarized Change Affidavit to UCP reporting any changes (if any) to the firm's circumstances that may affect the firm's ability to meet business size, disadvantaged status, ownership, or control requirements or any material changes to the initial certification application. The firm shall also submit evidence of its annual gross receipts to verify the firm's business size. If a DBE fails to

provide this information in a timely manner, it will be deemed to have failed to cooperate with the requirements of 49 CFR §26.109(c).

Denial of Certification, 49 CFR §26.86

When an applicant firm does not meet the eligibility requirements to be certified as a DBE, HDOT shall deny the application and provide written notification to the firm of this determination. The denial letter shall cite the reasons for the denial, reference relevant sections in the record that support the determination, provide information on the appeal process, and stipulate the time frame for re-application, which is 60 days from receipt of the written determination.

Decertification, 49 CFR §26.87(b)

When UCP concludes that a firm no longer meets the eligibility requirements to be a certified DBE, UCP shall notify the firm in writing of its proposal to initiate decertification proceedings. The proposal shall state the reasons for the proposed decision, the evidence in the record that supports the proposal, applicable DBE regulations, and the firm's right to a hearing. The firm shall have ten (10) days to request a hearing or provide information to support the DBE certification.

If the firm does not respond to the decertification proposal within ten (10) days, UCP shall provide written notification to the firm that the HDOT will remove its eligibility.

UCP may also be directed by the concerned operating administration within USDOT, to initiate a proceeding to remove a firm's eligibility, if USDOT has determined that there is information in the certification records or other information available to the concerned operating administration, which provided reasonable cause to believe that a firm does not meet the eligibility criteria. USDOT must provide UCP and the firm with a notice, which includes the reasons for the directive, and any relevant documentation. UCP will immediately begin decertification proceedings to remove the DBE certification of a firm.

Third Party Challenges, 49 CFR §26.87(a)

Any person may file a third party challenge (hereinafter referred to as the "complainant") regarding the eligibility of a currently certified DBE firm (hereinafter referred to as the challenged firm). The written complaint shall specify the alleged reasons why a challenged firm is ineligible and shall include any information or arguments supporting a complainant's assertion. UCP is not required to accept a general allegation or an anonymous complaint. The complainant may elect confidentiality, and this request shall be honored pursuant to 49 CFR §26.109.

UCP shall conduct an investigation of the third party challenge and shall include, but shall not be limited to, reviewing the DBE's case file maintained by UCP, and obtaining additional information and materials from the complainant and/or the challenged firm.

At the conclusion of UCP's investigation, the complainant and challenged firm shall be provided written notification of the investigative findings, which explains the reasons for the decision, and cites evidence in the record upon which the decision is based.

Decertification Hearings, 49 CFR §26.87(d)

In order to ensure that there is separation of functions in the decision-making process, the Civil Rights Coordinator, or his/her designated representative, will conduct the decertification hearing. DBE personnel that were involved in the certification process shall not be involved in the decertification hearing.

During the administrative hearing process, the challenged firm will be allowed an opportunity to respond to the decertification proposal, and to provide evidence in support of retaining its DBE certification.

In the event that there is an appeal to USDOT under §26.89, and a transcript of the hearing is required the administrative hearing shall be tape recorded in order to retain a verbatim record of the administrative hearing. The challenged firm may also request the transcript but will be assessed a photocopying fee.

The challenged firm may opt to submit additional information, documents, and written arguments, in lieu of an administrative hearing, to support retaining its DBE certification. In such circumstances, UCP shall have the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.

Appeals, 49 CFR §26.89 (a)

An appeal may be filed by a firm that has been denied certification, a firm that has been decertified, or a complainant whose third party challenge did not result in the removal of a challenged firm's eligibility (hereafter referred to as "aggrieved party") to:

U.S. Department of Transportation
Office of Civil Rights
400 7th Street, S.W. 5414
Washington D.C. 20590

The appeal by the aggrieved party must contain information and arguments that support the reversal of the UCP's decision, and said appeal must be received by USDOT within 90 days of the date of UCP's final decision letter.

An aggrieved party, other than a complainant, shall also provide information regarding the name and address of:

1. Any other USDOT grantee that currently certifies the firm;
2. Any USDOT grantee that may have rejected an application for certification from the firm, or removed the firm's eligibility within one year prior to the date of appeal; or
3. Any other USDOT grantee with which an application for certification or action to remove eligibility is pending.

USDOT may accept an appeal received after 90 days if there is a showing of good cause by the aggrieved party for the late filing of the appeal.

In accordance with 49 CFR §26.89, UCP's decertification decision remains in effect pending the appeal with USDOT.

The DBELO shall provide USDOT with a copy of the administrative record relating to a decertification decision within 20 days of USDOT's request. The administrative records shall be organized, indexed and paginated.

If UCP relied on the decision of another state in rendering its decision, both states must provide their respective administrative records to USDOT. UCP must provide the aggrieved party or any third party complainant involved, with any supplemental information that is provided to USDOT for consideration in the appeal.

A UCP decertification decision shall be affirmed by USDOT, unless USDOT determines that the decision is unsupported by substantial evidence, or is inconsistent with the substantive or procedural provisions of the federal regulations.

USDOT is not required to reverse UCP's decision due to a procedural error that does not result in fundamental unfairness to the aggrieved party, and which does not substantially prejudice the opportunity of the aggrieved party to present its case.

USDOT may remand the record to UCP for clarification or augmentation of the record before making a finding.

The final decision by USDOT on an appeal of a decision by UCP shall be based on the status and circumstances of a firm as of the date of the appeal to USDOT.

The final decision by USDOT shall be sent to UCP, the aggrieved party, and complainant (if applicable). It shall state the reasons for the decision, including specific references to the evidence in the record that supports the decision, and shall be issued within 180 days after receiving the complete administrative record.

UCP Actions Following USDOT Decisions, 49 CFR §26.91

The decisions by USDOT on an appeal are binding on UCP, but are not binding on other USDOT grantees. The decisions are final, and are not subject to petition for reconsideration.

If USDOT determines that UCP erroneously certified a firm, UCP must remove the firm's eligibility upon receipt of the determination without further proceedings.

If USDOT determines that UCP erroneously failed to find reasonable cause to remove the firm's eligibility, UCP will expeditiously commence a proceeding to determine whether the firm's eligibility should be removed.

If USDOT determines that UCP erroneously denied an application for certification, or removed a firm's eligibility, UCP must certify the firm effective from the date UCP receives written notice of USDOT's determination.

If USDOT determines that UCP erroneously determined that the presumption of social and economic disadvantage either should or should not have been deemed rebutted, UCP must take appropriate corrective action as stipulated by USDOT.

If USDOT affirms UCP's determination, no further action is necessary.

Where USDOT has upheld UCP's denial of certification, removal of eligibility of a firm, or directed the removal of a firm's eligibility, other USDOT grantees with which the firm is certified may commence proceedings to remove the firm's eligibility. If UCP receives information regarding a USDOT decision relating to the eligibility or ineligibility of a DBE, UCP will take USDOT action into account in any certification action involving the firm.

Contract Administration

Contract Assurances, 49 CFR §26.13

HDOT shall ensure that all assurances required under 49 CFR §26.13 with respect to contract award and administration, are included in all federal-aid contracts. Specific language regarding such assurances are contained within this Program Plan under Section IV. Additionally, contract provisions discussed below may be found in documents contained within Appendix G.

Contract Provisions

The bid documents containing HDOT's contract provisions relative to the DBE program are attached hereto as Appendix G.

Prompt Payment Policy and Provisions, 49 CFR §26.29

The HDOT, Project Manager, will make an estimate in writing each month based on the items of work performed, the materials incorporated in the work, and the value therefore at the unit prices or lump sum prices set forth in the contract. All progress estimates and payments will be approximate only, and shall be subject to correction at any time prior to, or in the final estimate and payment. HDOT will not withhold any amount from any payment to the prime contractor.

The prime contractor shall pay all subcontractors within ten (10) calendar days after receipt of payment from HDOT for work performed by the subcontractors. This clause applies to both DBE and non-DBE subcontractors, and all tiers of subcontracts.

When any subcontractor has met all the terms and conditions of the subcontract, and there are no bona fide disputes, the bidder/offeror shall make full payment to the subcontractor of all monies due, including retainage, within ten (10) calendar days from the receipt of an approved invoice from the subcontractor. The prime contractor shall obtain interim approval from HDOT before it can continue to withhold retainage from any subcontractor who has completed its portion of the work. This clause applies to both DBE and non-DBE subcontractors, and all tiers of subcontracts.

Monitoring and Enforcement Mechanisms 49 CFR §26.37

HDOT will bring to the attention of USDOT any false, fraudulent, or dishonest conduct that HDOT discovers in connection with the DBE program, in order that USDOT can take appropriate action (e.g., referral to the Department of Justice for criminal prosecution, referral to USDOT Inspector General, action under debarment or Program Fraud and Civil Penalties rules) pursuant to 49 CFR §26.109. HDOT may also consider similar action under its own legal remedies, including not allowing prime contractors or subcontractors that have engaged in such conduct, to perform work on contracts let by HDOT.

**Remedies for Non-Compliance with the DBE Program, 49 CFR §26.103,
§26.105**

Appendix H contains the regulations, provisions, and contract remedies available in the event of non-compliance with the DBE requirements by a participant in HDOT procurement activities.

Record Keeping and Reporting

Bidders List, 49 CFR §26.11(c)

HDOT will create and maintain a Bidders List, consisting of information about DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The Bidders List will include each firm's:

1. Name;
2. Address;
3. Status as DBE/non-DBE;
4. Date of Inception; and
5. Annual gross receipts.

The contract specifications will advise prime bidders/offerors to provide the above information for all firms who submit quotes on subcontracts. The forms that will be used by the prime bidders/offerors are included in the contract provisions attached hereto as Appendix G.

The Bidders Registration List may be found on the DBE website. From the main HDOT website at: <http://www.state.hi.us/dot/>, link to the Business-Related Information, and then to the Disadvantaged Business Enterprise web page.

Monitoring Payments to DBEs, 49 CFR §26.37

HDOT shall require, and will ensure, that prime contractors maintain a running tally of actual payments to DBE firms for work performed.

Reporting to USDOT, 49 CFR §26.11

HDOT will report DBE participation to the USDOT as follows:

1. FAA recipients will submit DBE annual reports as required.
2. FHWA recipients will submit DBE semi-annual reports of DBE participation.
3. FTA recipients will submit reports as required.

Confidentiality

HDOT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, under federal, state, and local law.

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

Appendices

Appendix A	Hawaii Administrative Rules, Title 19, Department of Transportation, Subtitle 1, Administration, Chapter 2 – Participation in the Disadvantaged Business Enterprise Program
Appendix B	Hawaii Department of Transportation Organizational Charts
Appendix C	Memorandum of Understanding Regarding the Unified Certification Program
Appendix D	DBE Uniform Certification Application and Related Forms
Appendix E	DBE Recertification Application and Related Forms
Appendix F	Disadvantaged Business Enterprise (DBE) Change Affidavit
Appendix G	Contract Provisions <ol style="list-style-type: none">1. Notice to Bidders2. Supplemental Notice – Disadvantaged Business Enterprise (DBE) Program3. General Information Regarding Disadvantaged Business Enterprise (DBE)4. Regulatory Requirements for Federal Aid Projects Regarding Disadvantaged Business Enterprises (DBEs)5. Proposal to the State of Hawaii Department of Transportation6. Subcontractor Listing7. Joint Contractor, Supplier and Manufacturer Listing8. Prompt Payment Certification9. Final Report of DBE Participation10. Exhibit B – Requirements for Participation by Disadvantaged Business Enterprises (DBEs) (Professional Services Contracts only)
Appendix H	Default and Termination of Contract, Prompt Payment, Reconsideration and Protest Procedures

DEPARTMENT OF TRANSPORTATION

Amendment and Compilation of Chapter 19-2
Hawaii Administrative Rules
(Date of adoption)

SUMMARY

1. Title is amended.
2. §§19-2-1 to 19-2-5 are amended.
3. §19-2-6 is repealed.
4. A new §19-2-6.1 is added.
5. §19-2-7 is repealed.
6. Chapter 2 is compiled.

Amendments to and compilation of Title 19,
Subtitle 1, Chapter 2, Hawaii Administrative Rules, on
the Summary Page dated _____ were adopted on
_____ following public hearings that were
held on _____ after
public notice was given in the _____
on _____

They shall take effect ten days after the filing with
the Office of the Lieutenant Governor.



KAZU HAYASHIDA
Director of Department of
Transportation



BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

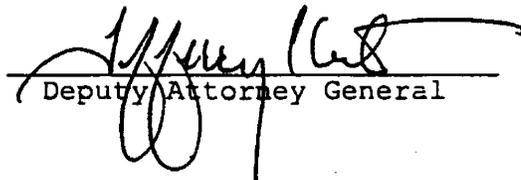
12/8/99

DEC 09 1999
Filed

LIEUTENANT GOVERNOR'S
OFFICE

'99 DEC -9 A9:44

APPROVED AS TO FORM:



Deputy Attorney General

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 1

ADMINISTRATION

CHAPTER 2

PARTICIPATION IN THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

§19-2-1	Purpose
§19-2-2	Authorization
§19-2-3	Substance of rules
§19-2-4	Adoption
§19-2-5	Applicability
§19-2-6	Repealed
§19-2-6.1	Emergency rulemaking
§19-2-7	Repealed

§19-2-1 Purpose. The purpose of this chapter is to implement the Disadvantaged Business Enterprise ("DBE") Program as required by Title 49, Code of Federal Regulations, Parts 23 and 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs." [Eff 8/4/80; am and comp **DEC 20 1999**] (Auth: HRS §§261-12, 264-23, 264-24, 266-2) (Imp: HRS §§261-12, 264-23, 264-24, 266-2)

§19-2-2 Authorization. The state director of transportation is required to implement a disadvantaged business enterprise program in order to receive federal financial assistance. Sections 261-12, 264-23, 264-24, 266-2, Hawaii Revised Statutes, authorize the state director of transportation to promulgate rules and regulations for the purposes of complying with federal rules and program requirements. The state director of

transportation shall also adopt a program plan that reflects the federal rule requirements referenced in Section 19-2-4. [Eff 8/4/80; am and comp
DEC 20 1999] (Auth: HRS §§ 261-12, 264-23, 264-24, 266-2) (Imp: HRS §§261-12, 264-23, 264-24, 266-2)

§19-2-3 Substance of rules. Title 49, Code of Federal Regulations, Parts 23 and 26, requires that states participating in the federal transportation program establish a disadvantaged business enterprise program in which firms owned and controlled by minorities and women may participate in federally assisted transportation projects. The State's failure to comply with the federal department of transportation disadvantaged business enterprise rules may result in the termination of the State's financial agreement with the federal Department of Transportation and may affect the State's ability to obtain future federal Department of Transportation grants. [Eff 8/4/80; am and comp
DEC 20 1999] (Auth: HRS §§ 261-12, 264-23, 264-24, 266-2) (Imp: HRS §§261-12, 264-23, 264-24, 266-2)

§19-2-4 Adoption. The provisions of Title 49, Part 23 Code of Federal Regulations, Participation by Disadvantaged Business Enterprises in the Department of Transportation Programs in Airport Concessions, and Part 26 Disadvantaged Business Enterprises in the Department of Transportation Financial Assistance Programs, are adopted and incorporated by reference as part of the state department of transportation's rules and regulations. [Eff 8/4/80; am and comp
DEC 20 1999] (Auth: HRS §§261-12, 264-23, 264-24, 266-2) (Imp: HRS §§261-12, 264-23, 264-24, 266-2)

§19-2-5 Applicability. This chapter shall only apply to federal programs that are administered by the state department of transportation by which funds are made available to members of the public for the

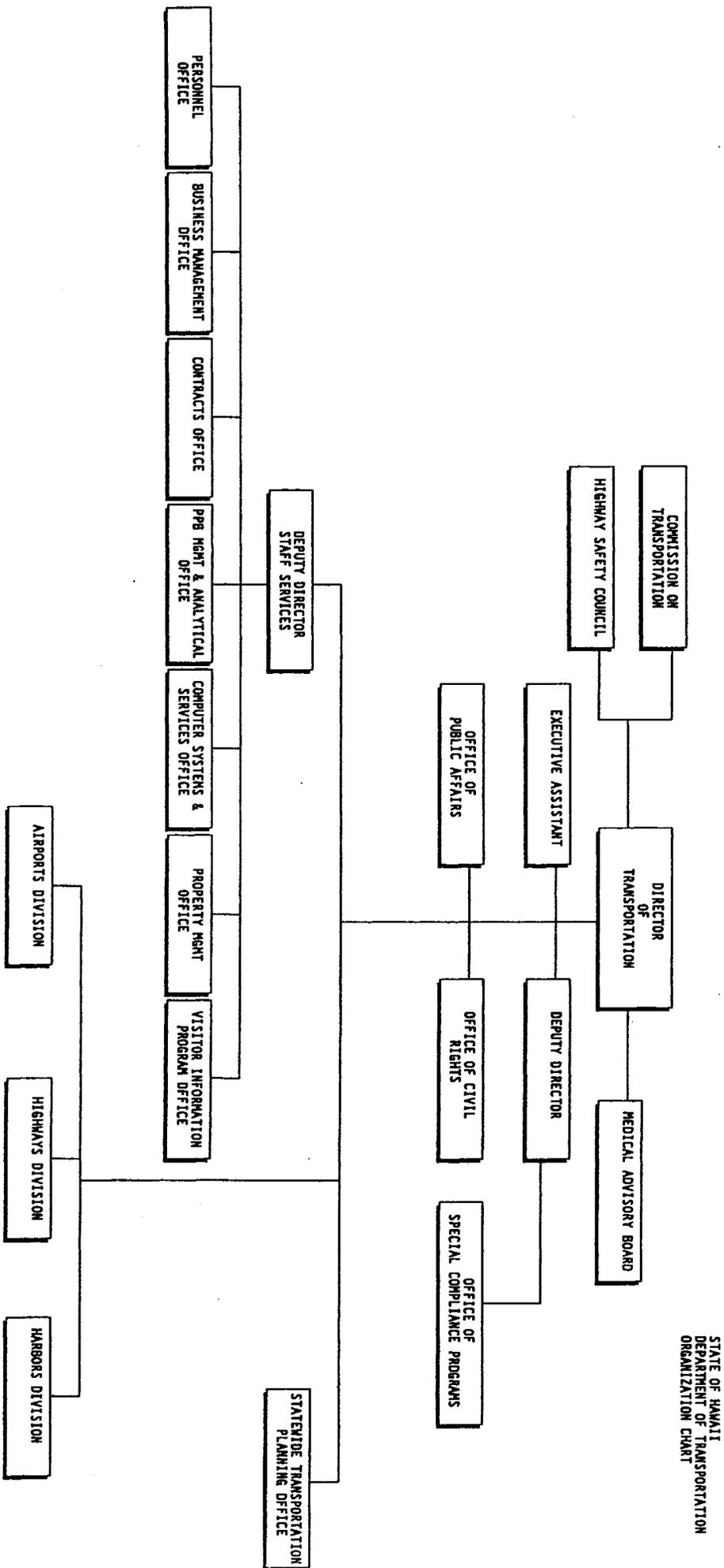
§19-2-5

accomplishment of the purposes of the department. [Eff 8/4/80; am and comp **DEC 20 1999**] (Auth: HRS §§261-12, 264-23, 264-24, 266-2) (Imp: HRS §§261-12, 264-23, 264-24, 266-2)

§19-2-6 REPEALED. [R **DEC 20 1999**]

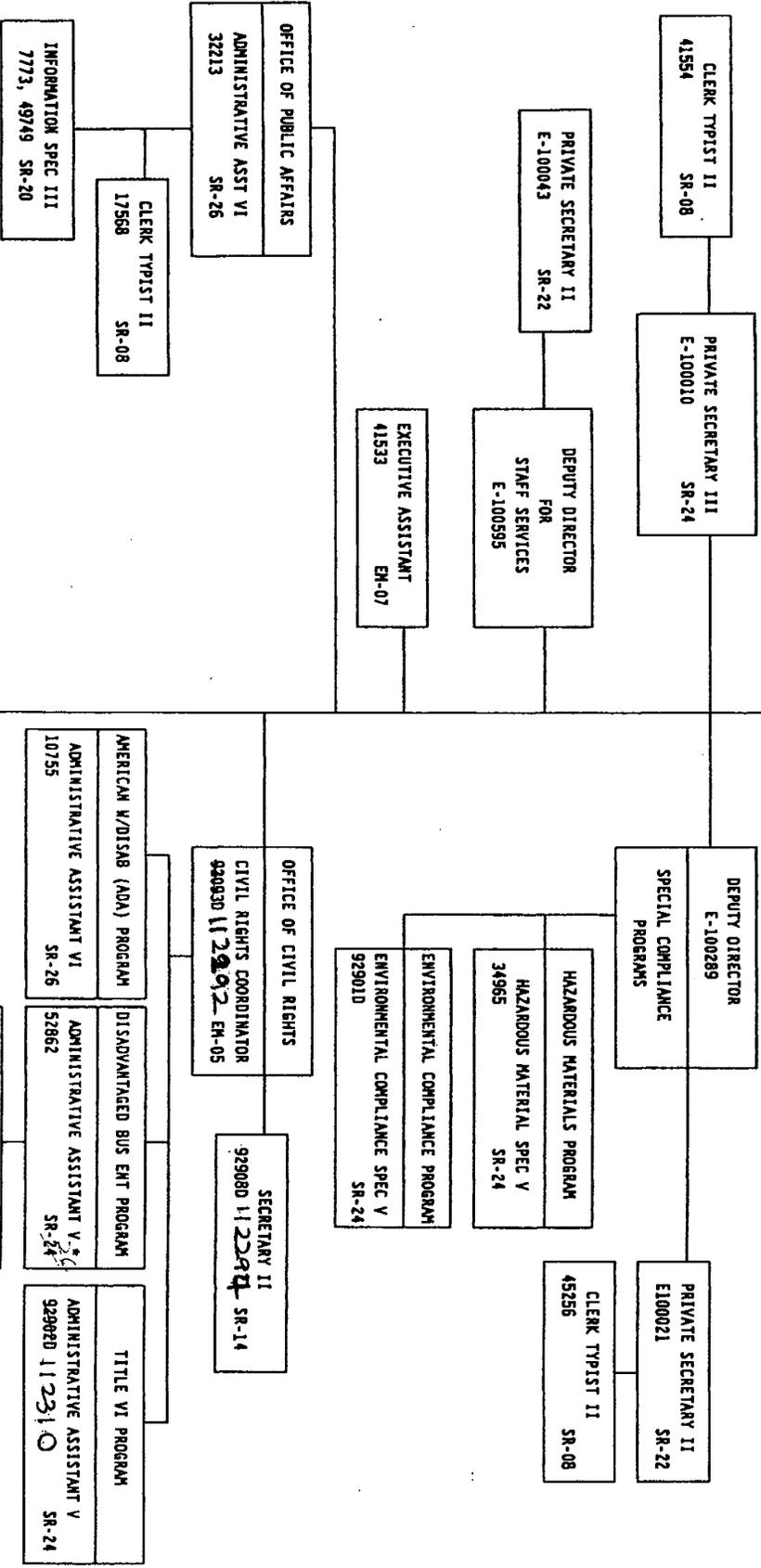
§19-2-6.1 Emergency rulemaking. The department of transportation may adopt emergency rules pursuant to the requirements of section 91-3(b), HRS. [Eff and comp **DEC 20 1999**] (Auth: HRS §91-2) (Imp: HRS §91-3)

§19-2-7 REPEALED. [R **DEC 20 1999**]



DIRECTOR OF TRANSPORTATION
E-100129

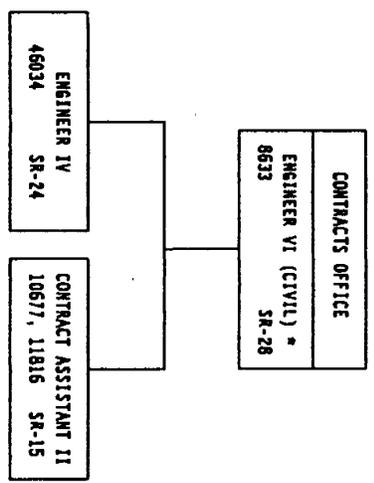
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
POSITION ORGANIZATION CHART



TO STAFF & DIV ES

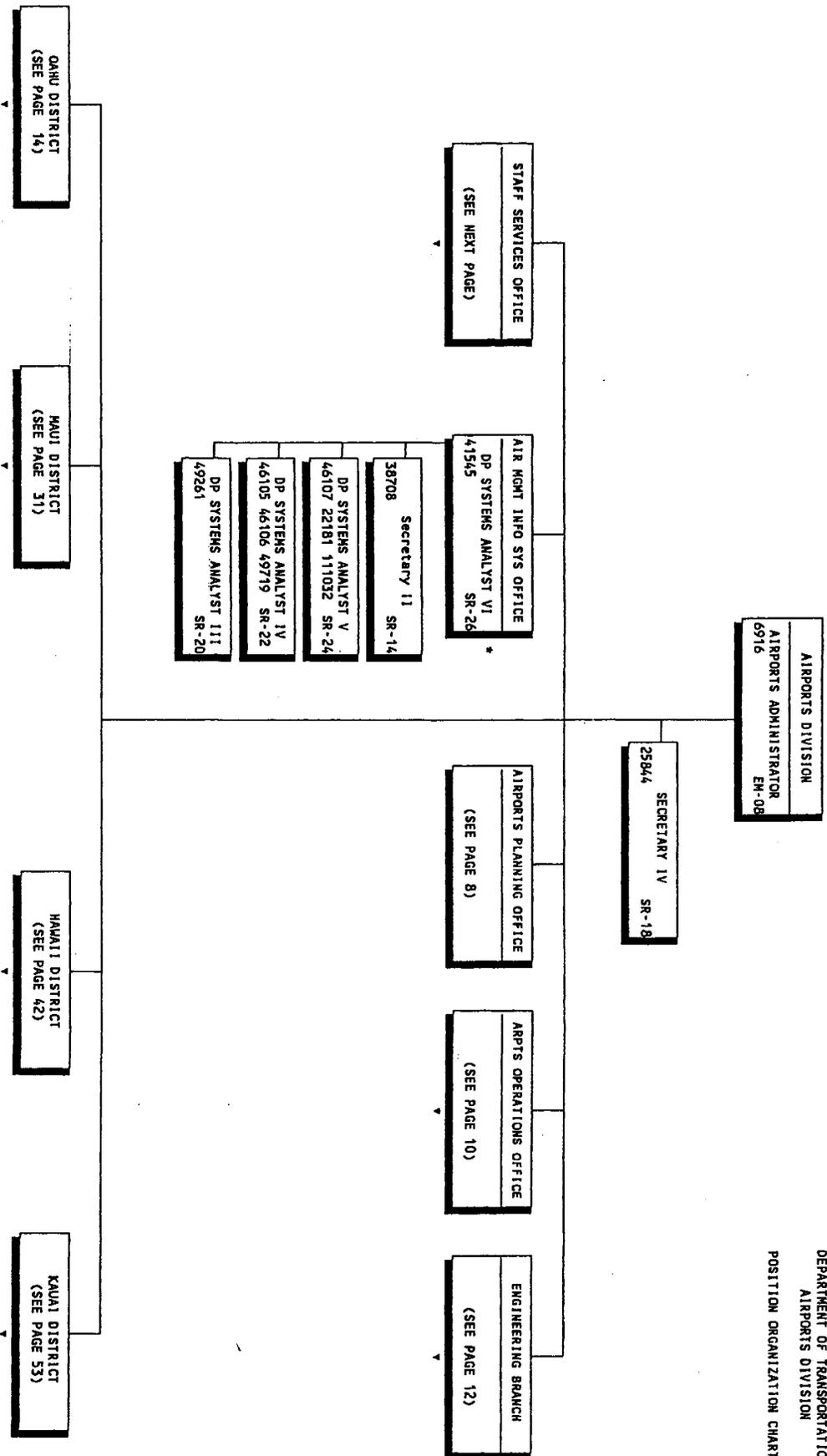
* To be redesigned.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
CONTRACTS OFFICE
Position Organization Chart



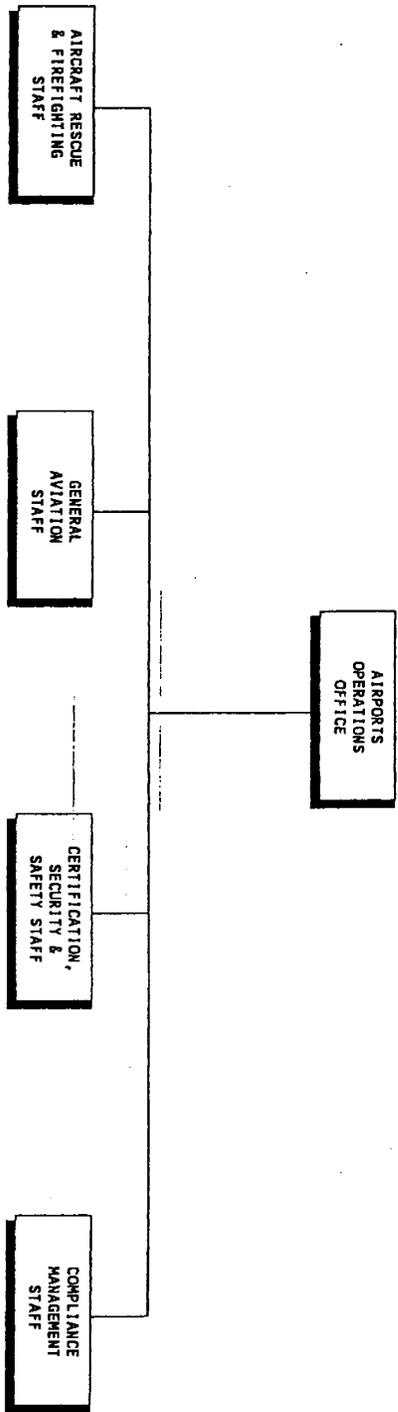
* To be redescrcribed
All Special funded.

DEPARTMENT OF TRANSPORTATION
 AIRPORTS DIVISION
 POSITION ORGANIZATION CHART

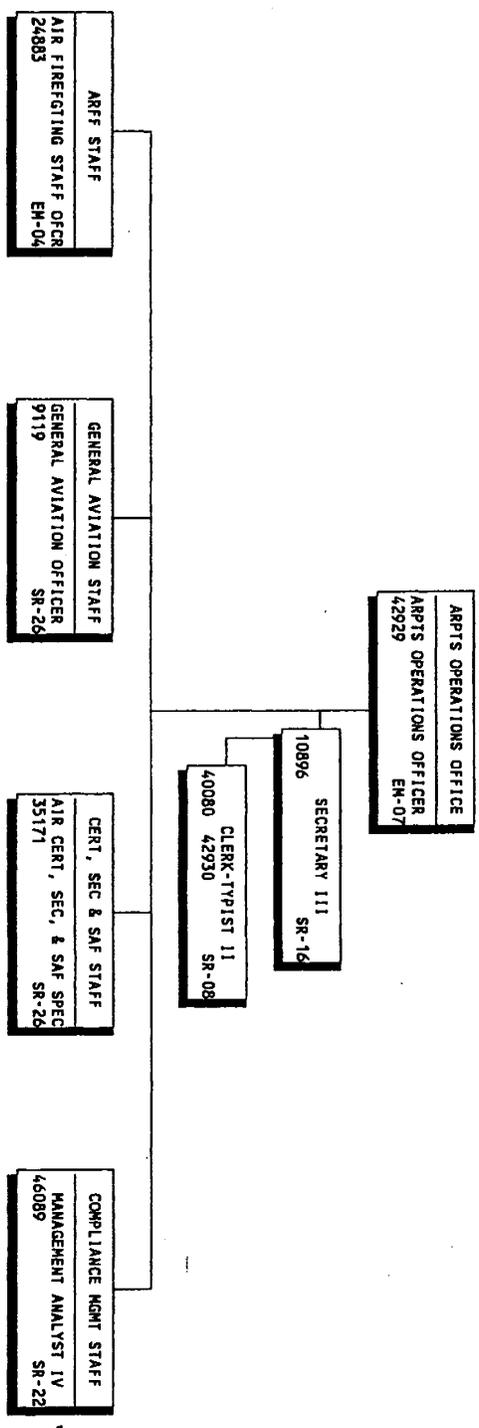


NOTES: All positions are special funded
 * Position to be redescribed.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION
AIRPORTS OPERATIONS OFFICE
ORGANIZATION CHART

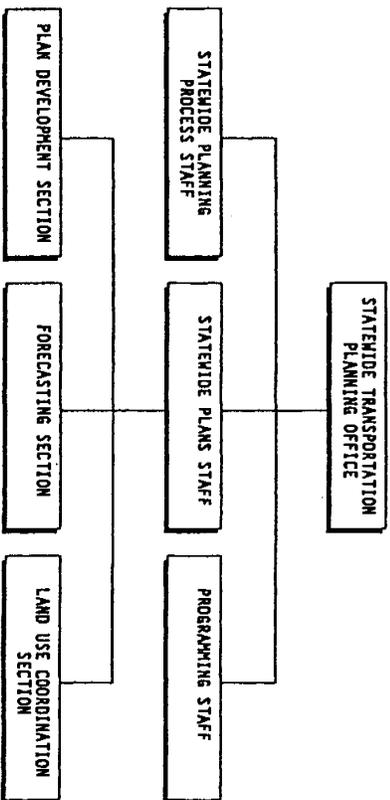


STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 AIRPORTS DIVISION
 AIRPORTS OPERATIONS OFFICE
 POSITION ORGANIZATION CHART

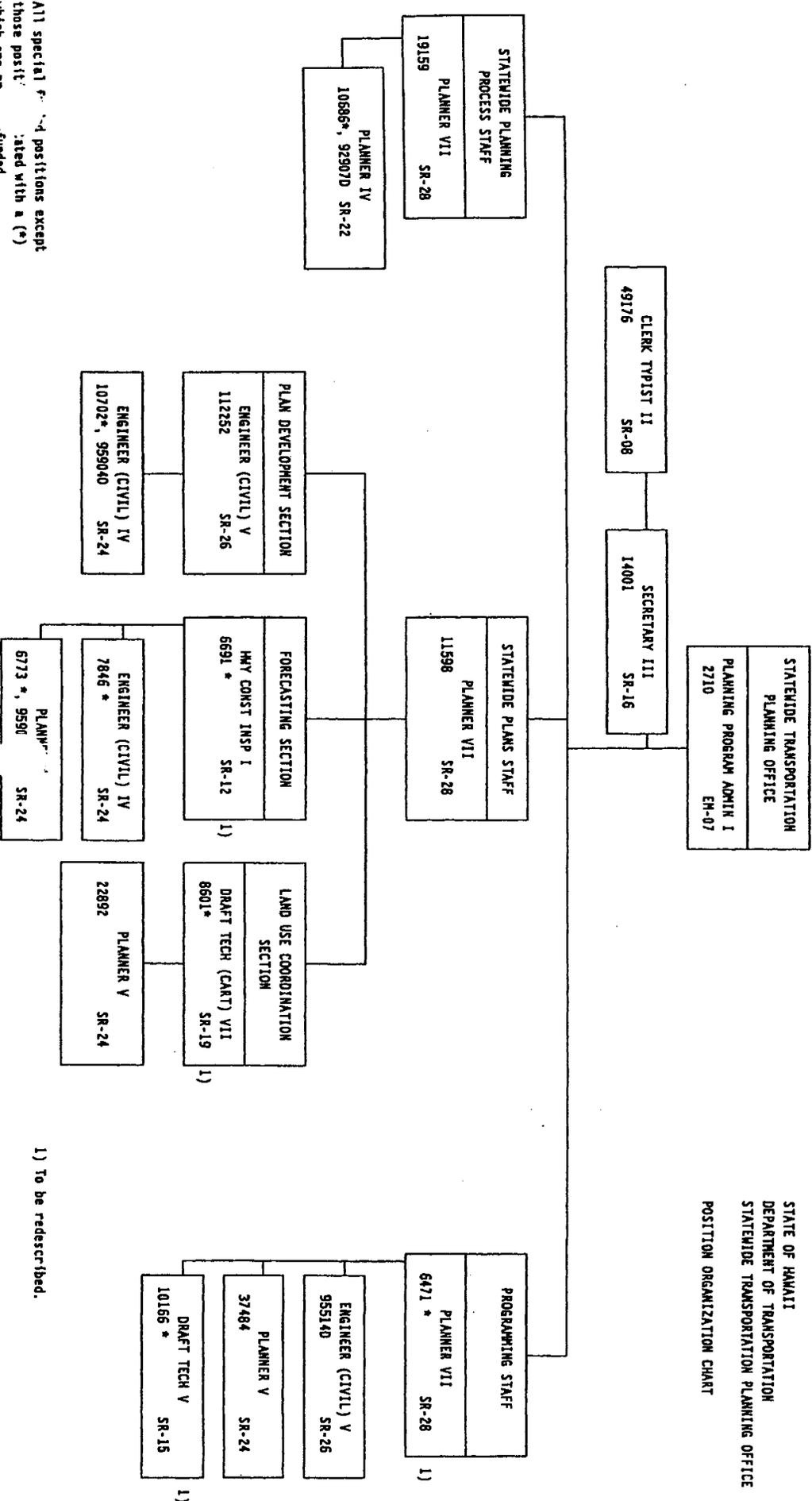


NOTES: All positions are special funded.
 * This position has direct, independent access to the Airports Administrator on matters relating to the Disaster Relief Business Enterprise Program.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
STATEWIDE TRANSPORTATION PLANNING OFFICE
Organization Chart



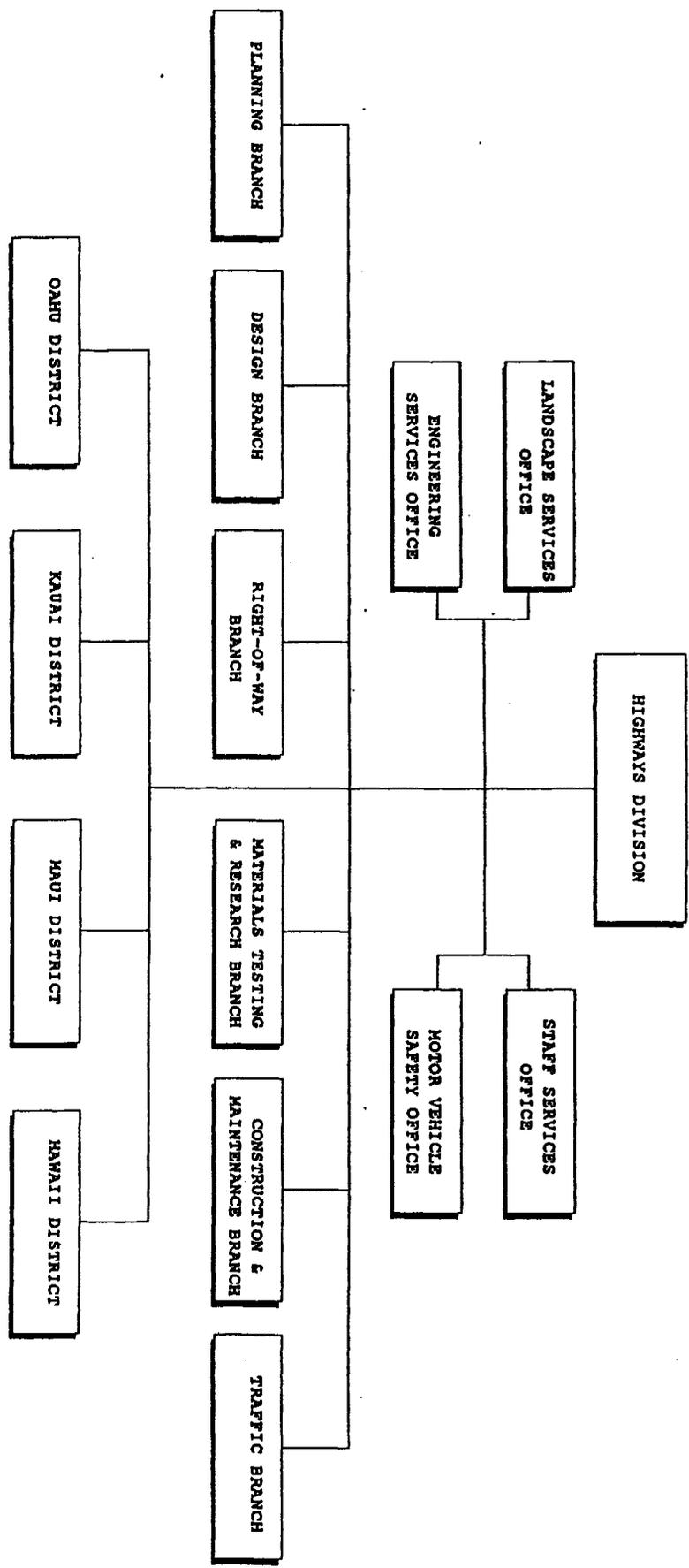
STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 STATEWIDE TRANSPORTATION PLANNING OFFICE
 POSITION ORGANIZATION CHART



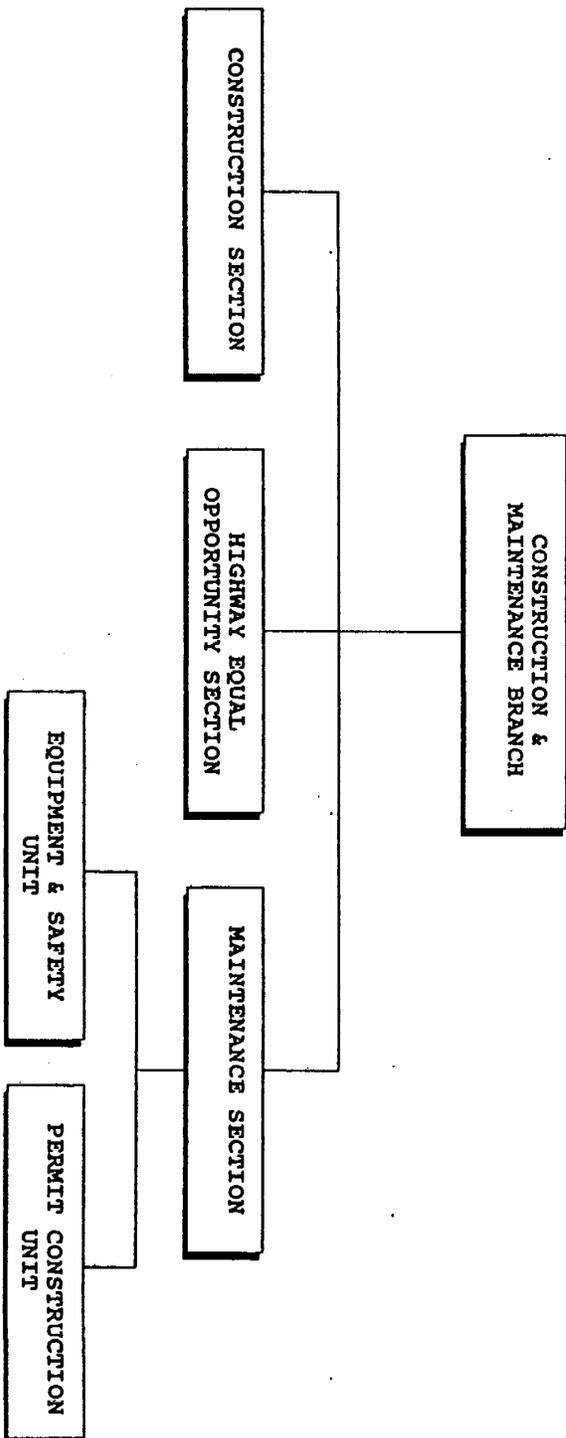
All special positions except those indicated with a (*) which are pre-funded.

1) To be re-described.

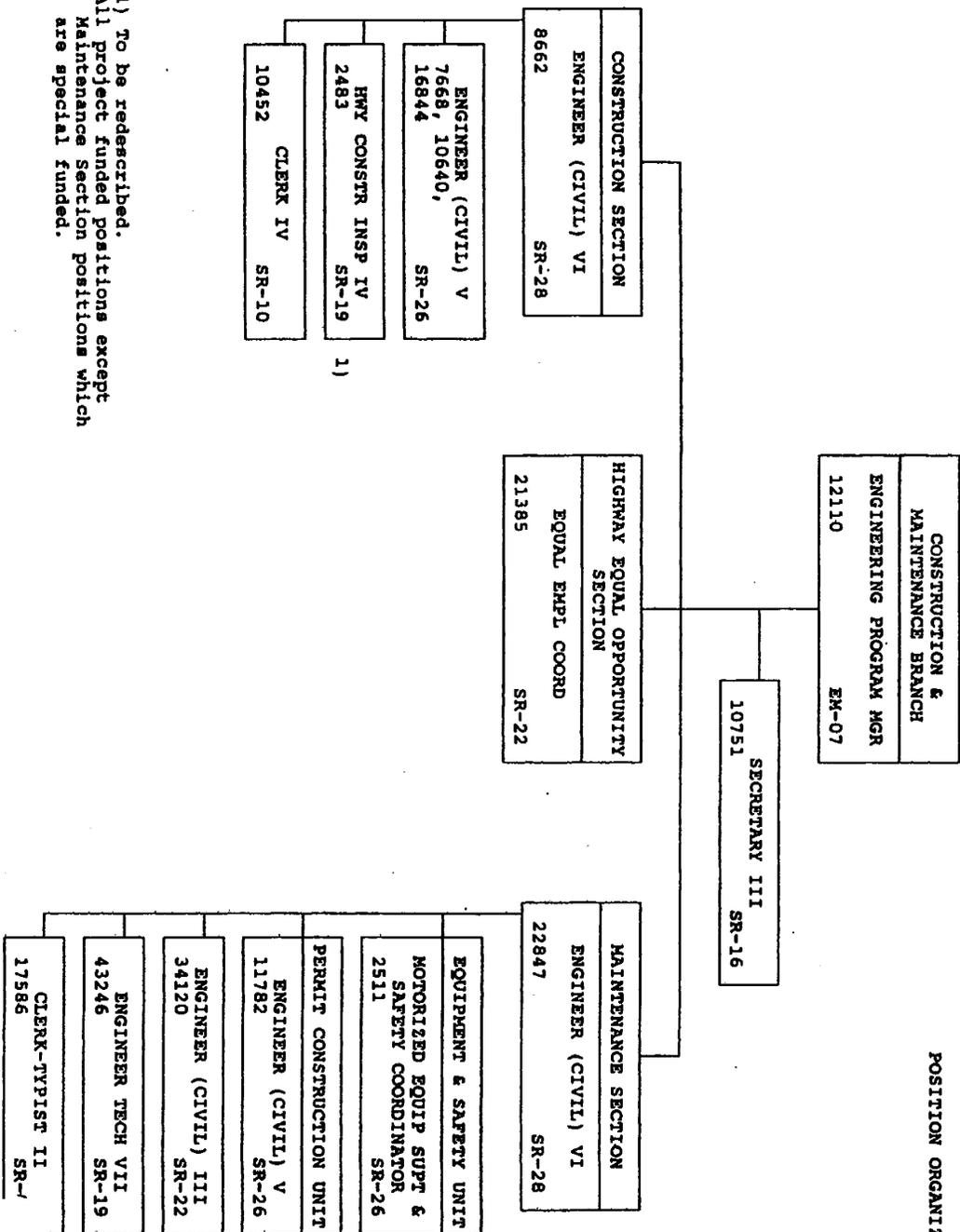
STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION
 ORGANIZATION CHART



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
CONSTR & MTNCE BRANCH
ORGANIZATION CHART

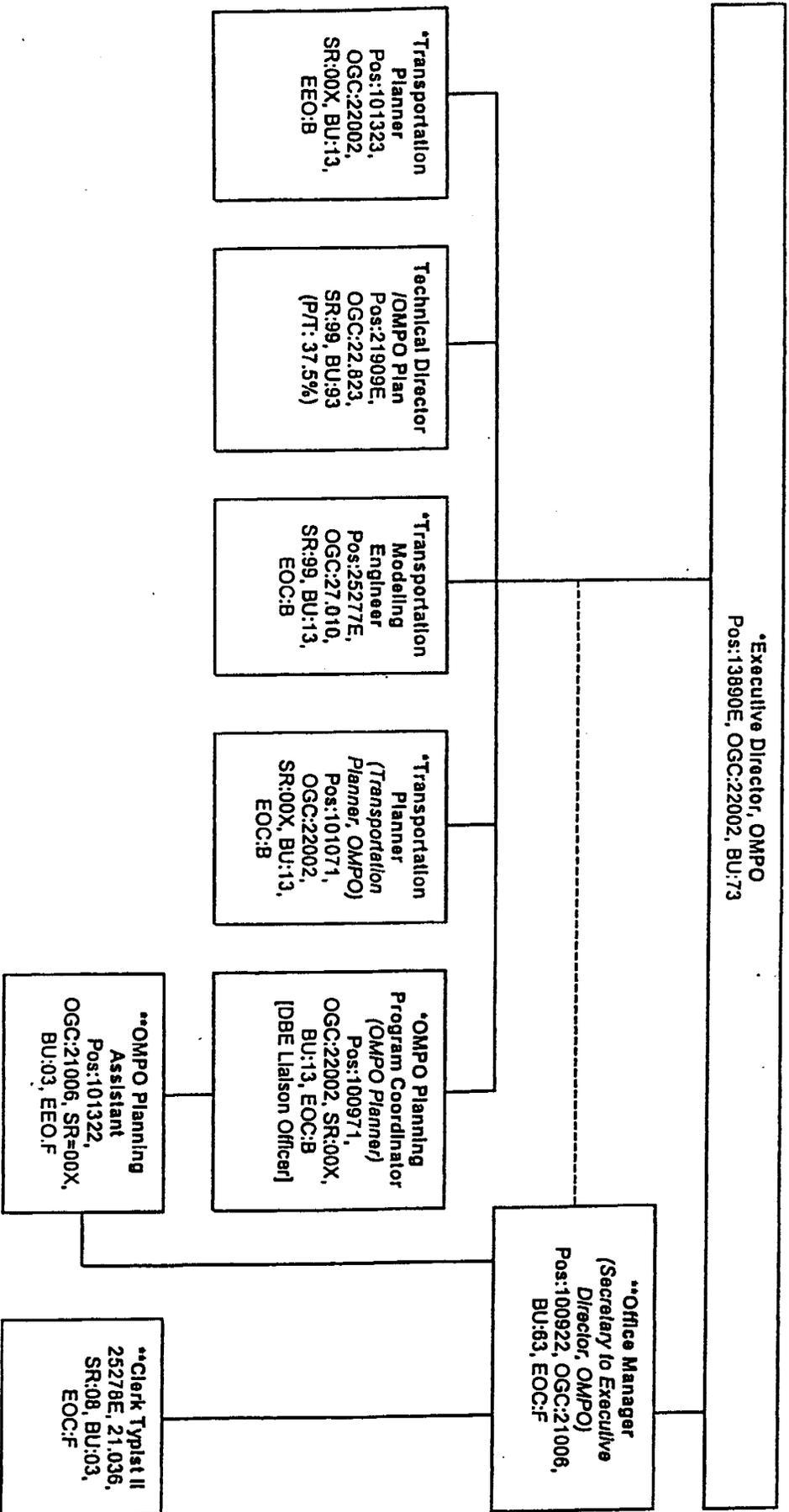


STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION
 CONSTR & MTNCE BRANCH
 POSITION ORGANIZATION CHART



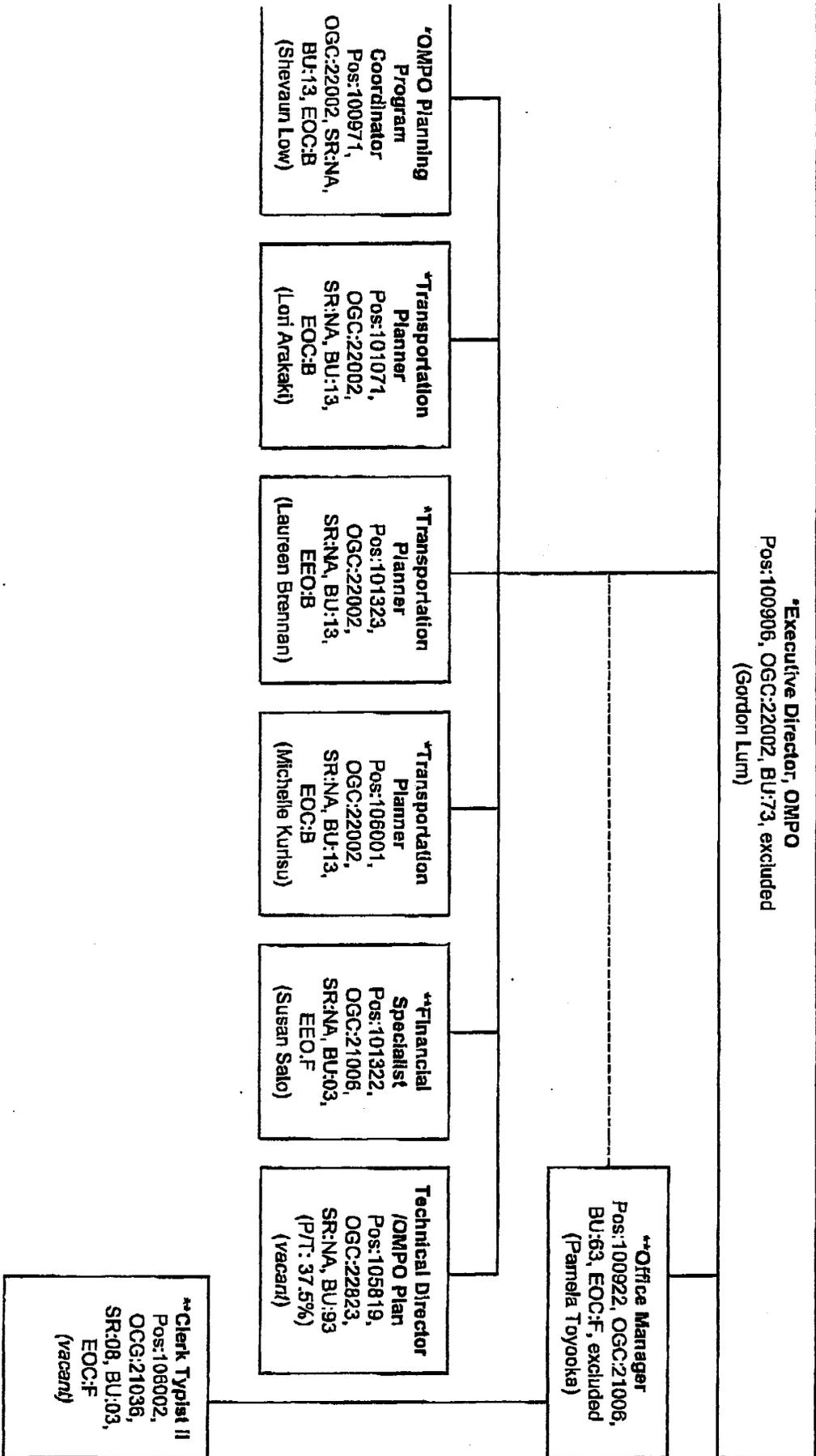
1) To be redescrribed.
 All project funded positions except
 Maintenance Section positions which
 are special funded.

OAHU METROPOLITAN PLANNING ORGANIZATION ORGANIZATIONAL CHART[†]



[†] Bold title is the one used by OMPO. Title in parentheses is position title in DPS form 5 before changed to generic class title.
^{**} "General Professional" is the generic class title for these exempt positions.
^{**} "General Clerical" is the generic class title for these exempt positions.

OAHU METROPOLITAN PLANNING ORGANIZATION ORGANIZATIONAL CHART[†]



folded title is the one used by OMPPO.
 General Professional" is the generic class title for these exempt positions.
 "General Clerical" is the generic class title for these exempt positions.

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MEMORANDUM OF UNDERSTANDING
Between
STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION
And
CITY & COUNTY OF HONOLULU, DEPARTMENT OF TRANSPORTATION
SERVICES; HAWAII COUNTY, DEPARTMENT OF PUBLIC WORKS; MAUI
COUNTY, DEPARTMENT OF PUBLIC WORKS & ENVIRONMENTAL
MANAGEMENT; KAUAI COUNTY, DEPARTMENT OF PUBLIC WORKS;
AND THE OFFICE OF HAWAIIAN AFFAIRS

I. PURPOSE:

To establish and operate a Unified Certification Program (“UCP”) for the State of Hawaii whereby the State of Hawaii, Department of Transportation (“HDOT”) Office of Civil Rights will provide state-wide certification, re-certification, and de-certification for the HDOT Disadvantaged Business Enterprise (“DBE”) Program. The HDOT’s Airport, Harbor and Highway Divisions, the Statewide Transportation Planning Office and the Oahu Metropolitan Planning Organization are direct recipients of funds from the Federal Aviation Administration (FAA), Federal Highways Administration (FHWA) and/or the Federal Transit Administration (FTA) and are located within the DOT’s organizational structure.

II. CERTIFYING AGENCY:

HDOT

III. PARTICIPANTS:

HDOT; City & County of Honolulu, Department of Transportation Services (“DTS”); Hawaii County, Department of Public Works (“DPW-H”); Maui County, Department of Public Works & Environmental Management (“DPW-M”); Kauai County, Department of Public Works (“DPW-K”); and the Office of Hawaiian Affairs (“OHA”). DTS, DPW-H, DPW-M, DPW-K, and OHA are hereinafter collectively referred to as “PARTICIPANTS.”

IV. AUTHORITY:

Title 49 Code of Federal Regulations (“CFR”), Section 26.81, requires that all United States Department of Transportation (“USDOT”) recipients in Hawaii participate in a UCP. 49 CFR 26.81 further requires that the Unified Certification Program follow all the Certification Standards of 49 CFR, Part 26, Subpart D, and the Certification Procedures in 49 CFR, Part 26, Subpart E.

V. RESPONSIBILITIES AND PROCEDURES:

1. HDOT agrees that it has been and will continue to act as the sole certifying agency for the USDOT DBE Program in the State of Hawaii. All applicants that are seeking DBE certification or re-certification will be

directed to the HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.

2. The DBE Certifier shall be responsible for investigating, reviewing, and making a determination regarding the initial certification application of a firm that is interested in participating in the DBE Program, as well as the determination regarding the re-certification or decertification of an existing DBE firm.
3. The DBE Program Manager shall process and hear appeals made by DBE firms that have been de-certified. As stated in the HDOT's DBE Program Plan, the DBE Program Manager shall not be involved in the initial de-certification review and determination. The DBE Program Manager shall also be responsible for providing the USDOT with information requested by the USDOT which pertains to the denial of a firm's initial application for DBE certification.
4. HDOT's DBE Program and Plan were approved by the USDOT in August 2000 and adopted by the PARTICIPANTS. It specified the responsibilities of the HDOT DBE Liaison Officer (DBELO) and each HDOT DBELO division, planning office and sub-recipient.
5. HDOT agrees that it will undertake certification and re-certification reviews in accordance with the certification standards that are included in 49 CFR, Subpart D, §§ 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, and the certification procedures of 49 CFR, Subpart E, §§ 26.81, 26.83, 26.85, 26.87, 26.89, and 26.91, as may be amended, and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
6. HDOT agrees that it will not process an application for certification from a firm having its principal place of business outside the State of Hawaii if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The HDOT will share its information and documents concerning the firm with other UCPs that are considering the firm's application.
7. HDOT agrees that it will cooperate fully with the oversight, review, and monitoring activities of the USDOT, and will implement USDOT's directives and guidance concerning certification matters.
8. HDOT agrees that it will compile, maintain, and distribute a DBE Directory consisting of all eligible DBEs. The DBE Directory will include a firm's name, address, the type of work that the firm has been certified to perform, and the date of the most recent certification. A DBE Directory shall be printed and distributed annually. The electronic version of the

DBE Directory, is posted on the Internet site at www.state.hi.us/dot/administration/dbe/index.htm. The electronic DBE Directory is revised weekly and provides information on the previously certified DBEs and those DBEs that were certified or re-certified in the previous week.

9. HDOT also agrees that it will accept from the PARTICIPANTS, referrals relating to complaints concerning DBE eligibility, and will review complaints in accordance with the provisions of 49 CFR, Subpart D, §§26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, and of 49 CFR, Subpart E, §§26.81, 26.83, 26.85, 26.87, 26.89, and 26.91, as may be amended and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
10. The PARTICIPANTS agree to refer all complaints that may be filed by any individual, firm, or agency regarding the eligibility of a DBE firm to HDOT, and HDOT agrees to investigate and issue a written decision on such complaints.
11. HDOT shall advise all new applicants that have been denied certification, of their right to appeal the HDOT's denial of their certification application, to the USDOT, provided that the appeal is filed within 90 days from the date of the applicant's receipt of the written notification of denial from HDOT. The appeal must be filed with the USDOT, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington D.C., 20590.
12. HDOT shall advise all firms that have been decertified by the HDOT (hereinafter "Decertified Firm") of their right to an administrative hearing before a neutral third party. HDOT agrees to provide a neutral third party to conduct the hearing challenging the HDOT's decision to decertify a firm for failure to meet the DBE eligibility criteria. As provided in the DOT DBE program plan, the HDOT DBE Program Manager or a designated representative who has been designated by the DBE Program Manager, and has not participated in the initial fact-finding, review, or decertification decision, shall conduct the hearing (hereinafter "Hearings Officer"). The Hearings Officer shall be knowledgeable in the DBE Program and Plan. If the Decertified Firm is not satisfied with the decision of the Hearings Officer, the Decertified Firm may file an appeal of the decision with the USDOT by mailing a written appeal to the U.S. Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington D.C., 20590, within 90 days of the Decertified Firm's receipt of a copy of the decision from the Hearings Officer.
13. The PARTICIPANTS agree to refer all applicants seeking DBE certification to HDOT.

14. The PARTICIPANTS agree to abide by all HDOT and USDOT's DBE certification and decertification findings and determinations.
15. The PARTICIPANTS agree that it shall not count a firm as a DBE unless the firm has been certified as a DBE as follows: 1) prior to the opening of a sealed bid and 2) at contract award for all other methods of procurement.
16. The PARTICIPANTS agree to provide all reasonable assistance to ensure that HDOT has sufficient resources as may be requested by HDOT to facilitate the HDOT review and processing of DBE certification reviews and applications.
17. HDOT has been the single certifying agency since the adoption of the DBE Program. Upon approval of the UCP, the HDOT shall continue in this capacity and the PARTICIPANTS agree to fully implement all terms and conditions of the UCP no later than 18 months following the approval of the agreement by the Secretary.

VI. LIMITATIONS:

Nothing in this Memorandum of Understanding between HDOT and the PARTICIPANTS shall be construed as limiting or expanding the statutory or regulatory responsibilities of the HDOT or any PARTICIPANT with regard to the implementation and operation of the DBE program. Each provision of this Memorandum of Understanding is subject to the laws and regulations of the State of Hawaii and of the United States.

Nothing in this Memorandum of Understanding shall be construed as expanding the liability of any party with regard to the DBE program. In the event of a lawsuit or claim arising from this Memorandum of Understanding, or the HDOT's DBE certification review or determination, each party shall be responsible for its own defense, and all costs related thereto. No party shall be required to provide indemnification of any other party.

VII. EFFECTIVE DATE:

This Memorandum of Understanding shall become effective immediately upon its execution by all the parties.

VIII. METHOD OF TERMINATION:

This Memorandum of Understanding shall remain in force until the USDOT DBE program terminates or changes its requirements.

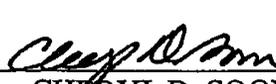
IX. AMENDMENTS:

No amendment of this Memorandum of Understanding shall be effective until it has been approved by the USDOT and the Director of HDOT has approved the amendment in writing, and the PARTICIPANTS and HDOT execute a written amendment of this Memorandum of Understanding.

STATE OF HAWAII
Department of Transportation

CITY & COUNTY OF HONOLULU
Department of Transportation Services

BY: 
RODNEY K. HARAGA
Director

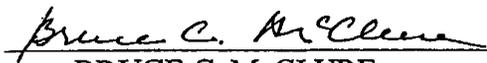
BY: 
CHERYL D. SOON
Director

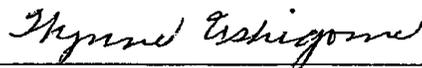
DATE: AUG 05 2003

DATE: AUG 12 2003

HAWAII COUNTY
Department Of Public Works

KAUAI COUNTY
Department Of Public Works

BY: 
BRUCE C. McCLURE
Director

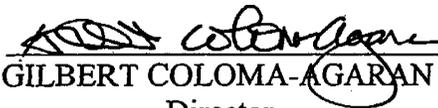
BY: 
WYNNE USHIGOME
Deputy County Engineer

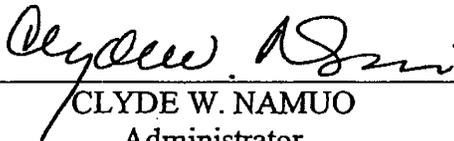
DATE: August 28, 2003

DATE: October 9, 2003

MAUI COUNTY
Department Of Public Works &
Environmental Management

OFFICE OF HAWAIIAN AFFAIRS

BY: 
GILBERT COLOMA-AGARAN
Director

BY: 
CLYDE W. NAMUO
Administrator

DATE: November 5, 2003

DATE: NOV 24 2003

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

- ① **Should I apply?**
- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
 - Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
 - Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
 - Is your firm organized as a for-profit business?
- ⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.
- ② **Is there an easier way to apply?**
If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.
NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.
- ③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**
- ④ **Where can I find more information?**
- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
 - SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tableofsize.html> (provides a listing of NAICS codes)
 - 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of Certifying Agency:
	Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ___/___/___ State: _____ <input type="checkbox"/> No	
	<input type="checkbox"/> (8)a <input type="checkbox"/> SDB	⊗STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application, Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ___/___/___ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact Person and Title:	(2) Legal Name of Firm		
(3) Phone #: ()	(4) Other Phone #: ()	(5) Fax # ()	
(6) E-mail		(7) Website (if have one)	
(8) Street Address of firm (No P. O. Box)	City:	County/Parish:	State: Zip: HI
(9) Mailing Address of firm (if different)	City:	County/Parish:	State: Zip: HI

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID (if any)
(3) This firm was established on: ___/___/___	(4) I/We have owned this firm since: ___/___/___
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started New Business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)	
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No	⊗STOP! If your firm is NOT for-profit, then your do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply)

Sole Proprietorship
 Partnership
 Corporation
 Limited Liability Partnership
 Limited Liability Corporation
 Joint Venture
 Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees: Full time _____ Part time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P. O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are partners in other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and /or (3), identify the following for each (attach extra sheets, if needed):

<u>Name</u>	<u>Address</u>	<u>Type of Business</u>
1.		
2.		
3.		

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #
(4) Home Address (street and number) <div style="text-align: center;">City: Honolulu</div>		State: HI Zip: 978578
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply)	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type:	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date Acquired</u> <u>Method Acquired</u>			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (if additional space is required, attach a separate sheet)

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<p>(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify for each: Person _____ Title: _____ Business: _____ Function: _____</p>					
<p>(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____</p>					

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.)?
 Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:
 (a) Name of bank: _____ (b) Phone No.: () _____
 (c) Address of bank: _____ City: _____ State: **HI** Zip: _____

Bonding Information: If you have bonding capacity, identify: (a) Binder No.: _____

(b) Name of agent/broker _____ (c) Phone No.: () _____

(d) Address of agent/broker: _____ City: _____ State: **IL** Zip: _____

(e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List current contributions or transfers of assets to/from your firm and to/from any of its owners over the Past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

**HAWAII DEPARTMENT OF TRANSPORTATION UNIFIED CERTIFICATION PROGRAM
SUPPLEMENTAL DOCUMENTS TO BE SUBMITTED WITH DBE UNIFORM
CERTIFICATION APPLICATION**

In order to complete your application for DBE certification, you must attach copies of the following documents that apply to you and your firm.

All Applicants

- Proof of U.S. Citizenship or Lawful Permanent Residency
Acceptable documents include, but are not limited to: (submit one only)
 - U.S. Passport
 - Birth Certificate
 - Certificate of U.S. Citizenship (INS Form N-560 or N-561)
 - Certificate of Naturalization (INS Form N-550 or N-570)
 - Permanent Resident Card or Alien Registration Receipt Card with photograph (INS Form I-151 or I-551)
- Hawaii General Excise Tax License
- All schedules for your firm's federal tax returns
- All schedules and W2s for the applicant's individual federal tax returns

All SBA-certified Applicants who wish to apply for certification pursuant to the USDOT/SBA Memorandum of Understanding

- Forms and packages submitted to the SBA for either the 8(a) or SDB programs
(Note: You may submit the package directly, or may request that the SBA forward the package to HDOT.)

All out-of-state Applicants

- Copy of the DBE Certification from the Unified Certification Program in the State in which your firm maintains its principal place of business i.e. home state

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application. I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

**State of Hawaii
Department of Transportation
Instructions for
Re-certification of Disadvantaged Business Enterprise**

The information requested in this application is necessary to determine whether your firm continues to qualify as a *bona fide* Disadvantaged Business Enterprise (DBE) according to the guidelines established by the Code of Federal Regulations (CFR) 49, Part 26, Subparts D and E.

Contents

DBE Recertification Application	(Attachment I)
Affidavit of Certification	(Attachment II)
Supplemental Documents	(Attachment III)
Instructions for Completing the Personal Financial Statement	(Attachment IV)
Personal Financial Statement	(Attachment V) [Not Required For Airport Concessionaires]
Affidavit of Personal Net Worth	(Attachment VI)

Documentation

The applicable documents identified in Attachment III must be submitted with each application. The re-certification process cannot be completed until all these documents are received by the State of Hawaii, Department of Transportation (HDOT). Additional documents may be required at the discretion of the HDOT. Send completed application, Personal Financial Statement and supporting documents to:

State of Hawaii
Department of Transportation
Office of Civil Rights/Disadvantaged Business Enterprise
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813
Phone: (808) 587-2023 TTY: (808) 587-2210 Fax: (808) 587-2025

Site Visits

The HDOT staff may schedule an on-site visit prior to re-certification if there are substantive changes that affect your DBE eligibility. The on-site visit is not applicable to out-of-state firms.

Acknowledgement

Submission of this application indicates that you understand and accept the conditions for participation in HDOT's DBE Program:

1. Applicant agrees to permit the HDOT access to inspect the applicant's place(s) of business.
2. Applicant agrees to notify HDOT within 30 days of any changes in information supplied in this application.
3. Applicant agrees to submit a "Change Affidavit" and supply gross receipts information annually to HDOT (except in the re-certification year).

HDOT reserves the right to require further information for the applicant prior to or during the recertification process. Once re-certified, the certification is effective for at least three years. Upon completing the review, you will receive written notification of your certification status. If you are denied certification, you will be notified in writing of the reasons and the appeal procedure.

ALL ITEMS NOT APPLICABLE MUST BE SO INDICATED WITH N/A.

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
RECERTIFICATION APPLICATION**

Application Date _____

1. FIRM PROFILE

Name of Firm: _____			
Contact Person: _____		Title: _____	
Business Address: _____			
<small>(P.O. Box unacceptable) No.</small>		<small>Street</small>	<small>Suite/Unit Number</small>
<small>City</small>	<small>State</small>	<small>Zip Code</small>	
Mailing Address: _____			
<small>(if different) No.</small>		<small>Street</small>	<small>Suite/Unit Number</small>
<small>City</small>	<small>State</small>	<small>Zip Code</small>	
E-Mail Address: _____		Web-Site: _____	
<small>Telephone Number: ()</small>		<small>Fax Number: ()</small>	
<small>Area Code + Number</small>			
<small>Other Number (cell or pager) ()</small>			
Is Business address and/or business phone number also a residence address or phone number? <input type="checkbox"/> Yes <input type="checkbox"/> No			

Federal Identification Number: _____

2. TYPE OF BUSINESS

Indicate the nature of the firm's business with a check mark, and list the North American Industry Classification System (NAICS) code(s) for which you are seeking certification in the space below (you may search your firm's NAICS and size standard at <http://www.census.gov/epcd/naics02>):

- Concession
 Construction
 Consultant
 Manufacturer
 Service Provider
 Supplier
 Other (please describe): _____

NAICS: _____

State of Hawaii/Department of Transportation/DBE Recertification Application

3. FIRM QUALIFICATIONS

- A. Is your firm registered to do business in Hawaii? Yes No
 (you may access the web sites at www.state.hi.us/dcca and www2.state.hi.us/spo for information about registering your business and the State of Hawaii procurement requirements.)
- B. Date this firm was established _____
- C. Indicate your firm's active business license(s) and other pertinent license(s) or permit(s).

Type of Licensee	Issuing Authority	Name of Licensee	License No.	Exp Date

4. OWNERSHIP OF THE FIRM

- A. Percent Ownership: _____% Women _____% Minority
- B. Type of Ownership:
- Sole Proprietor Partnership Corporation LLC LLP
- Joint Venture Other Business Entity (please describe): _____
- C. List all owners whose ownership and control are relied upon for DBE certification.

NAME	ETHNICITY	GENDER	DATE OF OWNERSHIP	PARTNERSHIP % / VOTE %	NUMBER OF SHARES (CORP. ONLY)	U.S. CITIZEN OR RESIDENT

Has the ownership of the company changed since the last certification by the HDOT? If so, please explain and attach supporting documentation evidencing the change.

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D. List any additional contributions (of money, equipment, real estate, etc.) made to the company since the last certification by the HDOT.

TYPE OF ADDITIONAL CONTRIBUTIONS	DOLLAR VALUE IF OTHER THAN CASH	FROM	PURPOSE

E. Describe or attach a copy of any stock options or other ownership options that are outstanding and any agreements between owners, or between owners and third parties, which restrict ownership, or control of disadvantaged owners.

F. State the amount of all compensation, income, payments, revenue, reimbursements and distributions of any kind each owner is entitled to receive and/or accrue from the applicant firm.

Name	Current Annual Salary	Total Dividends for past 2 years	*Total Debt Repayment	*Total Other Compensation
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$

* If these columns apply, please attach an explanation for these items

G. If Applicant is a corporation, partnership, LLP or LLC, please provide the name, position, and date elected (if applicable) for each officer, director, partner, member, etc.:

Name	Position(s) **	Date(s) Elected

** For corporations: Indicate whether director, and if officer, state position as well.
 For partnerships/LLPs/LLCs: Indicate all that apply - either general, limited, or managing partner, and/or management committee member

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H. Has the Board of Directors, Officers, governing body or membership changed within the last three years?

- Yes No

If so, attach a list of the names of the former participants.

5. MANAGEMENT OF THE FIRM

A. The following duties are actually performed by the persons named below: (indicate with an * all authorized check signers).

MANAGEMENT TASK	NAME	REPORTS TO
Proposal, estimate and bid writing		
Hiring and firing of management personnel		
Purchasing of major equipment and supplies		
Financial control		
Contract negotiation and approval		
Contract administration		
Determines jobs firm will undertake		
Marketing and sales		
Warehouse and inventory control		
Field supervision		

B. For each person listed above attach a brief summary of the person's experience, and number of years with the firm, indicating the person's qualifications for the responsibility given him or her.

C. Identify any owner or management official of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing or employees, as well as both firms having the same owners. Describe in Item 6C.

D. What were the firm's gross receipts (including *all* affiliates) and number of employees for the last three (3) years.

YEAR ENDING	GROSS RECEIPTS	NO. OF EMPLOYEES

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E. List all sources and amounts of money loaned to the firm.

DATE	SOURCE	AMOUNT

6. CERTIFICATION INFORMATION

A. Has this firm been certified as a DBE within the last three years by any State or Governmental agency?

Yes No

If yes, please list name(s) of State(s) and Certifying Agency: _____

Date of Certification: _____

ATTACH COPIES OF CERTIFICATION LETTERS

B. Indicate if the firm or other firms with any of the same officers has previously been denied certification or participation as a DBE and describe the circumstances. Indicate the name of the certifying authority and the date of such denial.

CERTIFYING AUTHORITY	DATE OF CERTIFICATION DENIAL

C. Please use the space provided below to explain any of the above items. You may attach additional sheets if necessary.

AFFIDAVIT OF CERTIFICATION

(Must be signed and notarized for EACH owner upon which disadvantaged status is relied.)

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I, _____ (print full name), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of including certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denials of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certified Program (UCP) of any material change to the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.)

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I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (check all that apply):

- Female
- Black American Hispanic American
- Native American
- Asian-Pacific American
- Subcontinent Asian American
- Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identify as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Name of Firm

Print Name

Title

Signature

Date

On this _____ day of _____, _____, before me appeared _____, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was property authorized by _____ (name of firm) to execute the affidavit and did so as his or her free act and deed.

Witness my hand and seal.

Notary Public
State of _____
My Commission expires: _____

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
REQUIRED SUPPLEMENTAL DOCUMENTS FOR DBE RECERTIFICATION**

The following documents must be submitted with this application. Failure to submit all the required information will result in a delay and/or termination in the processing of your application for recertification. To avoid loss of important documents, please present a complete packet at one time. All applicants *must* submit the required documents for Section I, and Section IIA, IIB, IIC or IID, as applicable to your form of legal organization. Please place checkmarks in the appropriate blanks. If certain items are not applicable to your business, please indicate by writing N/A next to the item and attach an explanation.

I. REQUIRED DOCUMENTS FOR ALL APPLICANTS

- 1. Any changes to the resume(s) of owners or principals (education, training and employment experience).
- 2. Applicable license(s) and permits
- 3. Signed leases for office/storage space within the last 3 years
- 4. Copies of DBE, SBA 8(a) or SDB certification or denial letters within the last 3 years
- 5. Copies of all signed loan agreements within the last 3 years
- 6. List of projects/contracts completed or ongoing for the last calendar year
- 7. Affidavit of Certification for each disadvantaged owner (Attachment II)
- 8. Personal Financial Statement for each disadvantaged owner (Attachment V)
- 9. U. S. Individual Income Tax Returns for last 2 years for each disadvantaged owner (all schedules and W2s)
- 10. Affidavit of Personal Net Worth for each disadvantaged owner (Attachment VI)

**II. REQUIRED DOCUMENTS BY FORM OF LEGAL ORGANIZATION
(Complete either Section A, B, C or D according to your form of legal organization)**

A. For a Sole Proprietor

- 1. Federal Tax Returns (Form 1040), Schedule C, Profit or Loss from Business, for the last 3 years

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B. For a Partnership

- 1. Any changes to the Partnership Agreement within the last 3 years
- 2. Buy-out rights agreement within the last 3 years
- 3. Profit sharing agreement within the last 3 years
- 4. Federal Tax Returns (Form 1065) (**first page only**) for the most recent 3 years

C. For a Limited Liability Company (LLC)

- 1. Any changes to the Articles of Organization within the last 3 years
- 2. Any changes to the Operating Agreement within the last 3 years
- 3. Minutes of the Board meetings held within the last year
- 4. Federal Tax Returns (Form 1065) (**first page only**) for the most recent 3 years

D. For a Corporation

- 1. Any changes to the Articles of Incorporation within the last 3 years
- 2. Any changes to the Corporate By-Laws within the last 3 years
- 3. Minutes of Stockholders and Board Meetings for the last year
- 4. Minutes of the most recent corporate organizational meeting affecting ownership, management, and control
- 5. Stock transfer ledger
- 6. Copies of stock certificates issued, front and back (not specimen) during the last 3 years
- 7. Copies of any written agreements concerning financial operations and/or control of the firm
- 8. Federal Tax Returns (Form 1120S or 4562) (**first page only**) for the last 3 years

**PLEASE CHECK OFF EACH DOCUMENT TO BE SUBMITTED IN ORDER
TO FACILITATE THE PROCESSING OF THE APPLICATION**

Instructions for Completing the Personal Financial Statement

The Personal Financial Statement is a PDF fill-able file. The program will add the assets and liabilities and compute your personal net worth.

Each socially and economically disadvantaged owner(s) who owns or contributes to an ownership interest of 51% or more in the firm; and whose ownership and control are relied upon for DBE certification, must complete a Personal Financial Statement and Affidavit of Personal Net Worth.

If an individual is married, please note the following:

All assets and liabilities, **except** the ownership interest in the firm, should be halved accordingly on the form if jointly held. If assets and liabilities are separately owned, these items should only be reported on the respective owner's form.

EXAMPLES:

John and Mary Smith jointly own their primary residence valued at \$200,000. They each claim 50% ownership on the property. John would only report his 50% interest, \$100,000, on his Personal Financial Statement.

Mary Smith has a vacation home in another state valued at \$200,000. She owns the vacation home in its entirety. John would not report this on his Personal Financial Statement.

Individuals who are married and who collectively own 51% or more of the firm, must submit separate Personal Financial Statements and Affidavits of Personal Net Worth. For example, if a married couple owns 50% each of the business, both individuals are required to submit Personal Financial Statements and Affidavits of Personal Net Worth. However, if one spouse individually owns 51% of the firm, then only that individual will be required to submit these documents.

Note: The Hawaii Department of Transportation (HDOT) will exclude an individual's ownership interest in his or her firm and the individual equity in his or her primary residence. However, you must still provide this information.

ASSETS

Cash on hand & in banks:

Enter the amount of cash on-hand in you checking accounts.

Savings Account:

Enter the total cash in all savings accounts.

IRA or other Retirement Accounts:

Enter the total present value of all IRAs and other retirement accounts, including any Deferred Compensation and Pension Plans, less any tax and/or interest penalties that would accrue if the assets were distributed at the present time. You may be requested by HDOT to provide copies of most recent statements to substantiate the amount listed.

Accounts & Notes Payable

Enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm.

Life Insurance:

Enter the cash surrender value of any life insurance policies. A complete description is required in Section 8.

Stocks and Bonds:

Enter the current market value of your stocks/bonds. A complete listing and description is required in Section 3.

Real Estate:

Enter the current fair market value of all real estate owned. A complete listing and description of all real estate owned is required in Section 4.

Automobile:

Enter the current fair market value of all automobiles owned.

Other Personal Property:

Enter the current fair market value of all other personal property owned, but not included in the previous sections (i.e. furniture, jewelry, etc.). A complete description of these assets is required in Section 5.

Other Assets:

Enter the current fair market value of all other assets owned, but not included in the previous sections. Indicate the value of your portion of the ownership interest/equity of the applicant firm and any other businesses owned by applicant, on this line (e.g. if your sole proprietorship is worth \$40,000, this entire amount should be indicated). A complete description of these assets is required in Section 5.

LIABILITIES

Accounts Payable:

Enter the total value of all unpaid accounts payable that is your responsibility (i.e. gas, electric, telephone bills, etc.).

Notes Payable to Bank and Others:

Enter the total amount due on all notes payable to banks and others paid on an installment basis. Please be sure to indicate the total monthly payment in the space provided. This should include the amount of any loans from the applicant firm. This should not, however, include any mortgage balances. A complete description of all installment accounts is required in Section 2.

Loans on Life Insurance:

Enter the total value of all loans due on Life Insurance Policies. A complete description is required in Section 8.

Mortgages on Real Estate:

Enter the total balance on all mortgage(s) payable on real estate. A complete breakdown of all mortgage(s) on real estate is required in Section 4.

Unpaid Taxes:

Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. A complete description is required in Section 6.

Other Liabilities:

Enter the total value due on all other liabilities not classified in the previous section. A complete description is required in Section 7.

Ownership Interest in Firm:

Enter the current fair market value of your portion of the ownership interest/equity in the applicant firm on this line (i.e. if your sole proprietorship is worth \$40,000, this entire amount should be indicated).

Equity in Primary Residence

Enter the difference between the present market value of your primary residence and your current mortgage balance.

SECTION 1. SOURCE OF INCOME

Salary:

Enter the amount of your total annual salary. This include any salary from the applicant firm and if applicable, any salary from outside employment.

Net Investment Income:

Enter the total amount of all investment income (i.e. dividends, interest, etc.)

Real Estate Income:

Enter the total amount of all real estate income received from the sale, rental, lease, etc. of real estate held.

Other Income:

Enter the total amount of all other income received (i.e. alimony, Social Security, Pension, etc.) Please be sure to describe the source of the other income in the space provided below in this section.

CONTINGENT LIABILITIES

As Endorser or Co-Maker:

Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

Legal Claims and Judgments:

Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

Provisions for Federal Income Tax:

Enter the total amount of all Federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt:

Enter the total amount due on all remaining potential debts not accounted for.

SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency, and how secured for each note payable as entered in the "Liabilities" column.

SECTION 3. STOCKS AND BONDS

Enter the number of shares, names of securities, cost, fair market value, and the date of fair market value for all shares of stock and bonds held.

SECTION 4. REAL ESTATE OWNED

Starting with your primary residence, enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment, and status of mortgage for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, commercial properties, etc.

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These values should correspond with the "Real Estate" amount listed in the "ASSETS" column. Additionally, these values should correspond with the "Mortgages on Real Estate" amount listed in the "LIABILITIES" column.

SECTION 5. OTHER PERSONAL PROPERTY/OTHER ASSETS

Describe the "Other Personal Property" and "Other Assets" owned as listed in the "ASSETS" column.

SECTION 6. UNPAID TAXES

Describe in detail, as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpaid taxes listed in the "LIABILITIES" column. If none, state NONE. This section should not include the contingent tax liabilities or anticipated taxes owned for the current year.

SECTION 7. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "LIABILITIES" column. If none, state NONE.

SECTION 8. LIFE INSURANCES HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company and beneficiaries and cash surrender values of the policies.

Checklist:

- 1. Did you sign the Personal Financial Statement?**
- 2. Did you provide your Social Security Number?**
- 3. Did you sign the Affidavit in front of a Notary Public?**
- 4. Did you enclose the U. S. Individual Income Tax Returns for the previous two years?**

**Personal Financial Statement
For Determination of Personal Net Worth
Disadvantaged Business Enterprise (DBE)**

ATTACHMENT V

Complete this form for each socially and economically disadvantaged owner whose ownership and control are relied upon.
Name _____ Business Phone () _____

Residence Address _____ Residence Phone () _____

City, State & Zip Code _____

Business Name of Applicant _____

ASSETS (Omit Cents)		LIABILITIES (Omit Cents)	
Cash on Hands & in Banks		Accounts Payable	
Savings Accounts		Notes Payable to Banks and Others (Describe in Section 2)	
IRA or Other Retirement Account		Installment Account (Auto) Mo. Payments \$ _____	
Accounts & Notes Receivable		Installment Account (other) Mo. Payments \$ _____	
Life Insurance - Cash Surrender Value Only (Complete Section 8)		Loan on Life Insurance	
Stocks and Bonds (Describe in Section 3)		Mortgages on Real Estate (Describe in Section 4)	
Real Estate (Describe in Section 4)		Unpaid Taxes (Describe in Section 6)	
Automobile - Present Value		Other Liabilities (Describe in Section 7)	
Other Personal Property (Describe in Section 5)		Ownership Interest in Firm	
Other Assets (Describe in Section 5)		Equity in Primary Residence	
Total Assets	\$ _____	Total Liabilities	\$ _____
		Net Worth	\$ _____
		Total	\$ _____

Section 1. Source of Income		Contingent Liabilities	
Salary	\$ _____	As Endorser or Co-Maker	\$ _____
Net Investment Income	\$ _____	Legal Claims & Judgments	\$ _____
Real Estate Income	\$ _____	Provision for Federal Income Tax	\$ _____
Other Income (Describe below)	\$ _____	Other Special Debt	\$ _____

Description of Other Income in Section 1. _____

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Bank and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Note holder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)

Signature: _____ Date: _____ Social Security Number: _____

Affidavit of Personal Net Worth

The Federal Regulations 49 CFR Part 26.67(2)(i) require that each individual owners of a firm apply to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of Personal Net Worth (PNW), with appropriate documentation. Appropriate supporting documentation generally includes, but not limited to "U.S. Individual Income Tax Returns" and other documents to support statements contained in the "Personal Net Worth Statement." Contingent liability does not reduce an individual's net worth.

The undersigned swears, under penalty of the perjury laws of the United States, that the foregoing statements are true and correct and include all material information necessary to identify and establish the applicant's personal net worth. Further, the undersigned swears that he or she **is in fact socially and economically** disadvantaged and that the applicant has halved all assets and liabilities, **except** his or her ownership interest in the firm. **Further, the undersigned agrees** to permit the audit and examination of your personal and business records and files to verify the accuracy of the statements made. Any material misrepresentation will be grounds terminating eligibility as well as any contract that may be awarded and for initiating action under Federal and/or State laws concerning false statements.

Name of Firm

Printed Name

Title

Signature

Date

On this _____ day of _____, _____ before me appeared _____ who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or

Name of Firm
her free act and deed.

Notary Public _____ Commission expires _____ {Seal}

STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 OFFICE OF CIVIL RIGHTS
 869 Punchbowl Street, Room 112
 Honolulu, Hawaii 96813
 Telephone No.: 808-587-2023 Fax No: 808-587-2025
 TTY: 808-587-2210

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CHANGE AFFIDAVIT

Name of Firm: _____

Address: _____

Telephone No.: _____ FAX No.: _____ E-mail: _____

Gross Annual Receipts: _____ \$ _____
Specify Period (Month/year to Month/year) As Reported on U. S. Tax Returns

Nature of Business: _____

If any change in ownership interest and/or control of the firm exists, please provide the following information:

<u>Name</u>	<u>*Ethnicity</u>	<u>Sex</u>	<u>Ownership %</u>	<u>Control %</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- Ethnicity:
- BA** Black American (any of the Black racial groups of Africa);
 - HA** Hispanic American (Mexican, Puerto Rican, Dominican, Cuban, Central or South American, Portuguese, or other Spanish culture or origin);
 - NA** Native American (American Indian, Eskimo, Aleut, or Native Hawaiian);
 - APA** Asian Pacific American (Persons whose origins are from Japan, China, Macao, Hong Kong, Taiwan, Korea, Vietnam, Laos, Thailand, Malaysia, Indonesia, Cambodia, Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Fiji, Tonga, and Northern Marianas);
 - WA** White American;
 - SAA** Subcontinent Asian American (Persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Island, Nepal or Sri Lanka);
 - OG** Any other group whose members are designated as socially and economically disadvantaged by the Small Business Administration.

I certify that each disadvantaged owner is socially and economically disadvantaged. The foregoing information is true and accurate and reflects changes to the original application and to other subsequent changes that were on file with the Hawaii State Department of Transportation. Attached is the first page of the firm's U.S. Corporate, Partnership or Individual Tax Returns that substantiates the firm's business size and gross receipts.

Print or Type Name	Title
Signature	Date

Affidavit

I authorize the State Department of Transportation to make inquiries as necessary to verify the accuracy of the statements made and to determine my continued eligibility as a DBE. I certify the above and the statements contained in the attachments are true and accurate as of _____. The information provided is for the purpose of determining eligibility for the DBE program.

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and establish the applicant's continued eligibility to participate in the DBE program. Further, the undersigned agrees to permit an onsite review of the company's operation as well as the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating the firm's eligibility as well as any contract that may be awarded and for initiating action under Federal and/or State laws concerning false statements.

Name of Firm

Name Title

Signature Date

On this _____ day of _____, _____ before me personally appeared _____ who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did

Name of Firm

so as his or her free act and deed.

Notary Public _____ Commission expires _____

{Seal}

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813
Telephone: 808-587-2023
Fax: 808-587-2025
TTY: 808-587-2210

Instructions for Completing the Change Affidavit

1. The Change Affidavit must be completed and submitted annually (except in the year the firm is due for re-certification) to the Hawaii Department of Transportation within 30 days of the firm's anniversary date, or whenever there are significant changes to the firm. Significant changes include:
 - a. Changes to the ownership or control of the firm;
 - b. Changes to the firm's addresses and/or telephone contact numbers;
 - c. Changes in the personal net worth of the individual owners; or
 - d. Changes in the business size that would cause the firm to exceed the maximum size standards.
2. Complete and sign the Change Affidavit in front of a Notary Public.
3. Attach the first page of the firm's most recent completed U.S. Income Tax Returns, or Schedule C of the owner's U.S. Individual Income Tax Returns.
4. Return the Change Affidavit to:

State of Hawaii
Department of Transportation
Office of Civil Rights
DBE Section
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813

NOTICE TO BIDDERS
(Chapter 103D, HRS)

SEALED BIDS for _____

_____, will be received at the Contracts Office,
Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, or
at the office of the District Engineer-_____

_____, until 2:00 p.m., _____
_____, at which time and place(s) they will be
publicly opened and read.

The scope of work consists of _____

_____.

Plans and specifications may be examined at or borrowed from the above
office(s). Borrowed plans and specifications shall be returned in good condition
within thirty (30) calendar days after the bid opening date.

To be eligible to bid, bidders must possess a valid State of Hawaii _____
_____, prior to the award of contract.

The "General Provisions" applicable to this project are also available for
purchase from the above offices for One Dollar (\$1.00) per copy.

The Department of Transportation, in accordance with the provisions of
Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the
U.S. Department of Transportation (Title 49, Code of Federal Regulations Part
21) issued pursuant to such Act, hereby notifies all bidders that it will affirmatively

insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, religion, sex, national origin age, or disability.

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended shall be complied with on this project.

The U.S. Department of Transportation Regulations entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Programs", Title 49, Code of Federal Regulations, Part 26 is applicable to this project. The contract Disadvantaged Business Enterprise (DBE) goal for this project is indicated in the Proposal. The bidder is directed to the Supplemental Notice - Disadvantaged Business Enterprise (DBE) Program contained herein and made an integral part of this bid.

A pre-bid conference is scheduled for _____ (Time, Date and Place) _____, to explain and clarify any questions regarding this project and to provide firms with an opportunity to ask questions about the DBE requirements and to inform DBEs of contracting, subcontracting and vendor opportunities. (Insert this paragraph for projects with an estimated contract value of more than \$500,000.)

Prospective bidders are advised to attend this pre-bid conference. Attendance at this conference by prospective prime contractors is a prerequisite for demonstrating reasonable effort to meet the goal of DBE participation. Questions must be submitted in writing, and received not later than a week prior to the conference, to _____.

Persons needing special accommodations at the pre-bid conference due to a disability may contact _____ (Project Manager) _____, at (Insert Telephone Number), or by facsimile at (Insert FAX Number).

The contract Disadvantaged Business Enterprise (DBE) goal for this project is indicated in the Proposal. The bidder is directed to the Supplemental Notice – Disadvantaged Business Enterprise (DBE) Program contained herein and made an integral part of this bid.

Each proposal shall be on a form furnished by said Department.

Estimated construction cost is between _____.

For additional information, contact _____ (Project Manager) _____ at (Insert Telephone Number and Address).

The State reserves the right to reject any or all proposals and to waive any defects in said proposals if in the best interest of the public.

Director of Transportation

Internet Posting:

SUPPLEMENTAL NOTICE

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Bidders are hereby notified that the Department of Transportation will strictly enforce full compliance with all of the requirements of the Disadvantaged Business Enterprise (DBE) program with respect to this project.

Bidders are directed to read and be familiar with the General Information Regarding Disadvantaged Business Enterprises (DBEs) and Regulatory Requirements for Federal Aid Projects Regarding Disadvantaged Business Enterprises, included herewith, which establishes the program requirements pursuant to Title 49 Code of Federal Regulations Part 26, and, particularly, the requirements of certification, method of award, and evidence of good faith.

Bidder's attention is further directed to the additional form now required to be executed and submitted by the Bidder as part of its bid, entitled "Statement of Affirmation and Acknowledgment of DBE Requirements", which is included herewith. By this statement the bidder certifies that the bidder has read and is fully knowledgeable and aware of the requirements and responsibilities with respect to the project's DBE requirements.

All of the above DBE program requirements, including the good faith effort requirements, will be strictly enforced in evaluating the bidder's efforts in obtaining DBE participation in this contract.

A bid that fails to meet these requirements will be considered nonresponsive and will be rejected.

**GENERAL INFORMATION REGARDING
DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

- I. **GENERAL** - The following shall be incorporated as part of the contract documents for compliance. If any requirements herein are in conflict with the general provisions, instruction to bidders, or special provisions applicable to this project, the requirements herein shall prevail unless specifically superseded or amended in the special provisions or by addendum.

II. **EFFECTS OF THE DECERTIFICATION OF A DBE**

- A. Should a DBE become decertified during the term of its subcontract with the prime bidder, for reasons beyond the control of, and through no fault or negligence of the contractor, any incomplete work remaining under the subcontract may subject to the review by the Department. The prime bidder shall continue to be credited for the work or supplies of the decertified DBE towards the DBE goal, but the Department shall not count the decertified DBE work or supplies towards the accomplishment of its overall goal.
- B. Should a DBE be decertified after the contract award, but before the notice to proceed has been issued by the Department, the contractor shall be required to meet the DBE goal by continuing with the subcontract with the decertified DBE and expending Good Faith Efforts to find other work not already subcontracted out to DBEs in an amount sufficient to meet the DBE goal. The work performed or supplies provided shall not be counted toward the DBE contract goal or the Department's overall goal.

III. **BIDDERS LIST**

- A. All bidders are requested to register with the Office of Civil Rights, DBE section. All bidders that previously bid on Department federal aid projects after January 1, 2001 and certified DBEs are considered registered with the Department. Registered bidders are posted on the Internet at the Department's home page: <http://www.state.hi.us/dot/>. From the Department's home page, link to the Business Related Information, then to the Office of Civil Rights home page and then link to the Disadvantaged Business Enterprise home page.
- B. New bidders are requested to complete a Bidder Registration form that may be obtained from the Office of Civil Rights, DBE Section. The completed form may be faxed to (808) 587-2025, e-mailed to: melanie.martin@hawaii.gov or mailed to address on the Bidder's Registration form.

IV. **EVIDENCE OF GOOD FAITH EFFORTS** - The kinds of effort that will be considered demonstrative of "Good Faith Efforts", include but are not limited to the following:

- A. Whether the bidder solicited through all reasonable and available means (e.g. attendance at meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform part or all of the work to be included under the contract. The Hawaii Department of Transportation ("HDOT") will also consider whether the bidder solicited the participation of potential DBEs in sufficient time to allow the DBEs to properly inquire about the project and respond to the solicitation, and will also review whether the bidder took appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in this project;

- B. Whether the bidder identified and broke up portions of work that can be performed by DBEs in order to increase the likelihood that DBEs will be able to participate, and that the DBE goal could be achieved (e.g. breaking out contract items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces);
- C. Whether the bidder made available or provided interested DBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner, and assisted them in responding to the bidder's solicitation;
- D. Whether the bidder negotiated in good faith with interested DBEs. Evidence of such negotiations includes documenting: a) the names, addresses, and telephone numbers of DBEs that were contacted by the bidder; b) a description of the information that was provided to DBEs regarding the plans and specifications; and c) detailed explanations for not utilizing individual DBEs in the project;

The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for a bidder's refusal to utilize a DBE, or the failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire of a bidder to perform a portion of the work with its own forces, that could have been undertaken by an available DBE, does not relieve the bidder of the responsibility to make good faith efforts to meet the DBE goal, and to make available and solicit DBE participation in other areas of the project to meet the DBE goal;

- E. Whether the bidder rejected DBEs as being unqualified without sound reasons, based on a thorough investigation of their capabilities. The DBE's standing within the industry, membership in specific groups, organizations, or associations, and political or social affiliation, are not legitimate bases for the rejection or non-solicitation of bids from particular DBEs;
- F. Whether the bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance;
- G. Whether the bidder made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
- H. Whether the bidder effectively used the services of available minority/women community organizations, minority/women business groups, contractors' groups, local, state, and federal minority/women business assistance offices, or other organizations to provide assistance in recruitment and placement of DBEs.
- I. It is the sole responsibility of the bidder to submit any and all documents, logs, correspondence, and any other records or information to the HDOT that will demonstrate that the bidder made good faith efforts to meet the DBE goal. Additionally, for each DBE that was contacted by, but not utilized by the bidder for this contract, the bidder shall submit a detailed written explanation for each DBE of the reasons for the bidder's failure or inability to utilize, or to allow the DBE to participate in this contract. In its good faith evaluation, the HDOT may, but shall not be required to perform the following as part of its evaluation: a) Request additional information and documents from the bidder; b) Compare the bidder's bid against the bids of other bidders, and comparing the DBEs and DBE work areas utilized by the bidder with the DBEs listed in other bids submitted for

this contract; c) Verify contacts by bidders with DBEs; and d) Compare the DBE and the categories of DBE work targeted by the bidder for participation in this contract, with the total available pool of DBEs available for each particular subcontract targeted by the bidder.

V. **RECORDS AND REPORTS** – The bidder shall maintain and keep all records necessary for the HDOT to determine compliance with the bidder's DBE obligations. The records shall be available at reasonable times and places for inspection by the HDOT, and appropriate Federal agencies. The records to be kept by the bidder shall include:

- A. The names of all DBE subcontractors and vendors identified as DBEs (for vendor, indicate also if a supplier or manufacturer);
- B. The nature of work of each DBE subcontractor and vendor; and
- C. The dollar amount contracted with each DBE subcontractor and vendor.

**REGULATORY REQUIREMENTS FOR FEDERAL AID PROJECTS REGARDING
DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

- I. **GENERAL** - The following shall be incorporated as part of the contract documents for compliance. If any requirements herein are in conflict with the general provisions, instruction to bidders, or special provisions applicable to this project, the requirements herein shall prevail unless specifically superseded or amended in the special provisions or by addendum.
- II. **DISADVANTAGED BUSINESS ENTERPRISE** - This project is subject to Title 49, Code of Federal Regulations, Part 26, entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Programs," hereinafter referred to as the ("DBE Regulation") and is incorporated and made a part of this contract herein by this reference.

- A. **Policy.** It is the policy of the U.S. Department of Transportation ("U.S. DOT") and the State of Hawaii, Department of Transportation and all of its political subdivisions ("Department") that Disadvantaged Business Enterprises ("DBE"), as defined in the DBE Regulation, have an equal opportunity to receive and participate in federally assisted projects. Consequently, the requirements of the DBE Regulation, apply to this project.
- B. **DBE Obligation.** The contractor shall take all necessary and reasonable steps in accordance with the DBE Regulation, to ensure that DBEs have an equal opportunity to compete for and perform on contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts financed in whole or in part with Federal funds.
- C. **DBE Assurances.** This agreement is subject to the requirements of the DBE Regulation. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in connection with the award or performance of this contract.

The contractor agrees to include the above statements in any subsequent contracts that it enters into with other contractors, and shall cause those contractors to include similar statements in further agreements.

- D. **Failure to Comply with DBE Requirements.** All contractors and subcontractors are hereby advised that failure to carry out all DBE requirements specified herein constitutes a material breach of contract that may result in termination of the contract or such other remedy as deemed appropriate by the Department.
- E. **Bidders Responsibilities.** Bidders shall fully inform themselves with respect to the requirements of the DBE Regulation. Particular attention is directed to the following matters:
1. A DBE may participate as a consultant, prime contractor, subcontractor, joint venture, partnership, trucker, or vendor of materials or supplies.
 2. A DBE must perform a commercially useful function ("CUF"). This means that a DBE:
 - a. must be responsible for the execution of a distinct element of the work,

- b. must carry out its responsibility by actually performing, managing, and supervising the work involved by using its own employees and equipment,
 - c. must negotiate price, determine quality and quantity, order and install material (when applicable), and
 - d. must pay for the material itself.
- 3. A DBE must be certified by HDOT in order for credit to be allowed.
 - 4. Information regarding the current certification status of DBEs is available on the Internet at www.state.hi.us/dot/administration/dbe/index.htm
- F. Prompt Payment Certification. The successful bidder shall sign and submit the "Prompt Payment Certification" form concurrently with its invoice to the Project Manager. The Department will not process any invoices without this completed form.

III. PROPOSAL REQUIREMENTS.

- A. The bidder should complete the DBE contract goal percentage in the proposal. The Department shall verify this percentage, and correct the amount if necessary. In order to receive DBE credit to calculate the Bidder's DBE contract goal, the Bidder shall comply with the following:
- 1. DBEs must be certified by the bid opening date.
 - 2. DBE Manufacturers, Suppliers and any second tier subcontractors, must be listed in the proposal.
 - 3. Copies or faxes of all "Confirmation by DBE" forms signed by the DBE for each DBE listed in the proposal submitted to the Project Manager listed in the proposal within five (5) working days after bid opening.
 - 4. The dollar amount of each subcontract (both DBE and non-DBE firms) for all subcontractors, manufacturers and suppliers listed in the proposal shall also be submitted to the Project Manager listed in the proposal within five (5) working days after bid opening.
- D. The DBE contract goal for this project (expressed in percentage terms) is the proportionate contract dollar value of work performed, materials, and goods to be supplied by DBEs. This DBE contract goal is applicable to all the contract work performed for this project. The bidder shall indicate in the appropriate space provided in the Proposal form furnished by the Department, the DBE contract goal percentage that the bidder will achieve in this contract, as well as the name of and the nature of work to be performed by, or materials and goods to be supplied by each DBE.
- 1. The DBE Percentage is determined as follows:
 - a. A bidder's DBE contract goal percentage shall be calculated as follows: DBE contract goal percentage = Contract Dollar Value of the work to be performed by DBE subcontractors and manufacturers, plus 60% of the contract dollar value of DBE suppliers, divided by the sum of all contract items, less mobilization, force account items, and allowance items.

- b. The credit to be allowed a prime bidder for each DBE vendor of materials or supplies listed in the proposal, will depend upon whether such vendor is:
 - i. only a supplier of such commodities,
 - ii. a supplier who is also the manufacturer of such commodities, or
 - iii. a supplier who is not a manufacturer, but who is required to perform substantial alteration to such commodities before delivery to the prime contractor.

The percentage of a vendor's quoted price to the prime bidder which will be credited toward the DBE goal, will be 100% for vendors in the (ii) and (iii) categories, and 60% for vendors in the (i) category.

- 2. The following is a list of appropriate DBE credit to be allowed for work to be performed by a DBE subcontractor.
 - a. The bidder may receive DBE credit for the entire amount of the subcontract if the work is performed by the DBE's own forces, if supplies and materials are obtained by the DBE for the work, and if leased equipment is leased by the DBE for the work.
 - b. The bidder may receive DBE credit for the entire amount of fees or commissions charged by a DBE firm for performing professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required by the project.
 - c. The bidder may receive DBE credit for the work of a second tier subcontractor if the second tier subcontractor is a DBE and is listed on the Subcontractor Listing form in the Proposal.
- 3. The following is a list of appropriate DBE credit to be allowed when using trucking firms.
 - a. The total value of the transportation services of a certified DBE trucker if the DBE trucker uses trucks it owns, insures, and operates using drivers it employs.
 - b. The total value of the transportation services if a DBE trucker leases trucks from another DBE firm.
 - c. The value of the fees, commission or mark up from a lease arrangement if a DBE trucker leases trucks from a non-DBE firm and credit is not allowed for the lease amount.
 - d. The total value of the transportation services provided by a non-DBE lessee, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, credit will be awarded only for the fee or commission the DBE firm receives as a result of the lease arrangement.

EXAMPLE: DBE firm X uses two of its own trucks on a contract, leases two trucks from DBE Firm Y and six trucks from non-DBE

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

4. The bidder may be a joint venture or partnership that has a certified DBE as a partner. A "Joint Venture" means an association between a DBE firm and one or more other firms to carry out a single, for-profit, business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract, and whose share in the capital contribution, control, management, risks and profits are commensurate with its ownership interest.

IV. **AWARD OF CONTRACT** - The Department reserves the right to reject any or all bids. The award of contract, if it is awarded, will be to the lowest responsible bidder who meets or exceeds the DBE project goal, or who makes good faith efforts to meet or exceed the DBE project goal, as determined by the Department.

- A. If the lowest responsible bidder meets or exceeds the DBE project goal, such bidder will be awarded the contract.
- B. If the lowest responsible bidder does not meet the total DBE project goal, such bidder shall submit all information that the bidder believes is relevant, and which demonstrates to the Department, that the bidder made good faith efforts to meet the DBE project goal. The Department must receive all documents, and other information that the bidder believes supports its claim that it made good faith efforts to meet the DBE project goal. The documents and information must be received, no later than five (5) working days after requested by the Department. After a thorough review and investigation of the bidder's actions, such bidder will be awarded the contract if the Department is satisfied that such bidder has made sufficient good faith efforts to meet the DBE project goal.
- C. If the lowest responsible bidder does not meet the DBE project goal and does not demonstrate to the satisfaction of the Department that it made good faith efforts to meet the DBE project goal, such bid shall be rejected as non-responsive. The Department will then consider the next lowest responsible bidder for award in accordance with paragraph A or B above.

V. **ADMINISTRATIVE RECONSIDERATION.** Under the provisions of 49 CFR, Part 26.53(d), if it is determined by the Department that the apparent low bidder has failed to meet the provisions of this subsection, the bidder may submit a request for an administrative reconsideration. The bidder must file this request with the Office of Civil Rights within five (5) working days of notification by the Department that the bidder failed to meet the requirements of this subsection. As part of this reconsideration request, it is the bidder's responsibility to provide to Department, any and all written documentation, correspondence, logs, and any other documents or evidence the bidder believes relates to the issue of whether it met the DBE project goal or made good faith effort to do so.

- A. The Department's DBE Liaison Officer ("Liaison Officer") will be responsible for resolving the reconsideration dispute.
- B. Upon request by the bidder, the bidder will be allowed an opportunity to meet in person with the Liaison Officer to discuss the issue of whether it met the DBE project goal, or made good faith effort to do so. If a meeting is requested, the bidder must be ready, willing, and able to meet with the Liaison Officer within 5 working days of the bidder's receipt of written notification that the bidder failed to meet the requirements of this subsection.
- C. The Liaison Officer will render a written decision on the reconsideration, and notify the bidder in writing of the decision. The written decision will explain the basis for the Liaison Officer's findings and the decision.
- D. The decision is not appealable to the U.S. DOT, but is appealable in accordance with Section 103D-709, HRS.

VI. SUBCONTRACTING

- A. All bidders should be registered with the Office of Civil Rights, DBE Section, prior to submitting a bid.
- B. No substitution of a DBE subcontractor shall be made at any time without the prior written consent of the Department.
- C. If a DBE subcontractor is unable to perform work under the contract, and is to be replaced, the contractor's failure to obtain a substitute, certified DBE for said work, or to make good faith effort to obtain such a substitute DBE subcontractor to perform said work, may constitute a breach of this contract for which the Department may terminate the contract or pursue such remedy as deemed appropriate by the Department.
- D. Agreements between a bidder and a DBE in which a DBE promises not to provide subcontracting quotations to other bidders are strictly prohibited.

VII. PAYMENT

- A. The Department will make an estimate in writing each month based on the items of work performed and materials incorporated in the work and the value therefore at the unit prices or lump sum prices set forth in the contract. All progress estimates and payments will be approximate only and shall be subject to correction at any time prior to or in the final estimate and payment. The Department will not withhold any amount from any payment to the bidder.
- B. The bidder shall pay all subcontractors within ten (10) calendar days after receipt of any progress payments from the Department. This clause applies to both DBE and non-DBE subcontractors, and all tiers of subcontracts.
- C. The bidder shall submit the "Prompt Payment Certification" form with its payment request to the Department.
- D. When any subcontractor has satisfactorily completed its work as specified in the subcontract, and there are no bona fide disputes, the bidder shall make prompt and full payment to the subcontractor of all monies due, including retainage,

within ten (10) calendar days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented, as required by the Department. The bidder must obtain the prior written approval from the Department before it can continue to withhold retainage from any subcontractor who has completed its portion of the work. This clause applies to both DBE and non-DBE subcontractors, and all tiers of subcontracts.

- E. Final Payment - A completed "Final Report of DBE Participation" and "Prompt Payment Certification" must be submitted with the final payment request. Final payment will not be processed without the completed forms.

**PROPOSAL TO THE
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

PROJECT:

PROJECT NO.:

COMPLETION TIME: _____ Working or Calendar days from the date indicated in the Notice to Proceed from the Department.

DBE PROJECT GOAL: None Specified or _____%

DESIGN PROJECT MANAGER:

**NAME
ADDRESS
PHONE NO.
FAX NO.**

Director of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned bidder declares the following:

1. It has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.
2. It has not been assisted or represented on this matter by any individual who has, in a State capacity, been involved in the subject matter of this contract within the past two years.
3. It has not and will not, either directly or indirectly offered or given a gratuity (i.e.. an entertainment or gift) to any State or County employee to obtain a contract or favorable treatment under a contract.
4. It will not maintain for its employees any segregated facilities at any of its establishments.
5. Does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

The undersigned bidder further agrees to the following:

1. If this proposal is accepted, it shall execute a contract with the Department to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that it shall accept in full payment therefore the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished and furnish satisfactory security in accordance with Section 103D-324, Hawaii Revised Statutes, within 10 days after the award of the contract or within such time as the Director of Transportation may allow after the undersigned has received the contract documents for execution, and is fully aware that non-compliance with the aforementioned terms will result in the forfeiture of the full amount of the bid guarantee required under Section 1032D-323, Hawaii Revised Statutes.
2. That the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids.

3. That the Department does not either expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Director of Transportation, and that all increased or decreased quantities of work shall be performed at the unit prices set forth in the attached proposal schedule except as provided for in the specifications.
4. In case of a discrepancy between unit prices and the totals in said Proposal Schedule, the unit prices shall prevail.
5. Agrees to begin work within 10 working days after the date of notification to commence with the work, which date is in the notice to proceed, and shall finish the entire project within the time prescribed.
6. The Director of Transportation reserves the right to reject any or all bids and to waive any defects when in the Director's opinion such rejections or waiver will be for the best interest of the public.

The bidder acknowledges receipt of and certifies that it has completely examined the following listed items: the Hawaii Department of Transportation, Air and Water Transportation Facilities Divisions, "General Provisions for Construction Projects, 1977", the Notice to Bidders, the Special Provisions, the amendments to the Special Provisions, if any, the Technical Provisions, the Proposal, the Contract and Bond Forms, and the Project Plans.

The undersigned further agrees that if this proposal is accepted and the contract awarded, the bidder shall, prior to payment of the final estimate, execute the attached Certification of Compliance for Final Payment form (SPO Form-22).

In accordance with Section 103D-323, Hawaii Revised Statutes, this proposal is accompanied with a bid security in the amount of 5% of the total amount bid, in the form checked below. (Check applicable bid security submitted with bid.)

_____ Surety Bid Bond (Use standard form),

_____ Cash,

_____ Cashier's Check,

_____ Certified Check, or

_____ (Fill in other acceptable security.)

The undersigned bidder acknowledges receipt of any addendum issued by the Department by recording in the space below the date of receipt.

Addendum No. 1 _____

Addendum No. 3 _____

Addendum No. 2 _____

Addendum No. 4 _____

In accordance with Section 103D-302, Hawaii Revised Statutes, the undersigned as bidder has listed the name of each person or firm, who will be engaged by the bidder on the project as Joint Contractor or Subcontractor and the nature of work to be done by each. It is understood that failure to comply with the aforementioned requirements may be cause for rejection of the bid submitted.

The undersigned bidder asserts that affirmative action has been taken to seek out and consider Disadvantaged Business Enterprises (DBE) for portions of the work which can be subcontracted, and the affirmative actions of the bidder are fully documented in it's records and are available upon request by the Department. It is also understood that it must meet or exceed the DBE contract goal listed on page P-1, or demonstrate that it made good faith efforts to meet the DBE project goal. The undersigned as bidder, together with the joint contractors, subcontractors, suppliers and manufacturers listed on the following pages P-5 and P-6 will have a DBE

contract goal of _____ % (percentage to be completed by bidder) DBE participation if the contract is awarded to it, and shall maintain such DBE participation during the construction of this project.

SUBCONTRACTOR LISTING

(Attach additional sheets if necessary.)

	NAME OF FIRM	NATURE OF WORK	DBE (Y/N)
1.	_____	_____	_____
1a.	_____	_____	_____
2.	_____	_____	_____
2a.	_____	_____	_____
3.	_____	_____	_____
3a.	_____	_____	_____
4.	_____	_____	_____
4a.	_____	_____	_____
5.	_____	_____	_____
5a.	_____	_____	_____
6.	_____	_____	_____
6a.	_____	_____	_____
7.	_____	_____	_____
7a.	_____	_____	_____

NOTES:

Firms claiming DBE Status must be certified with HDOT prior to the bid opening date. Prime Bidder must reasonably assure itself that the listed firms claiming DBE status are certified with HDOT as of the bid opening date.

The Name of Firm and Nature of Work shall be indicated for all firms.

**JOINT CONTRACTOR, SUPPLIER AND
MANUFACTURER LISTING**
(Attach additional sheets if necessary.)

NAME OF FIRM	NATURE OF WORK	DBE (Y/N)
JOINT CONTRACTOR:		
1. _____	_____	_____
1a. _____	_____	_____
SUPPLIER:		
1. _____	_____	_____
1a. _____	_____	_____
2. _____	_____	_____
2a. _____	_____	_____
MANUFACTURER:		
1. _____	_____	_____
1a. _____	_____	_____
2. _____	_____	_____
2a. _____	_____	_____

NOTE:

Firms claiming DBE Status must be certified with HDOT prior to the bid opening date. Prime Bidder must reasonably assure itself that the listed firms claiming DBE status are certified with HDOT as of the bid opening date.

The Name of Firm and Nature of Work shall be indicated for all firms.

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct and final.

This declaration is made with the understanding that the undersigned is subject to the penalty of perjury under the laws of the United States and is in violation of the Hawaii Penal Code, Section 710-1063, unsworn falsification to authorities, of the Hawaii Revised Statutes, for knowingly rendering a false declaration.

Bidder

By _____
Authorized Signature

Title

Business Address

Business Telephone

Date

Contact Person and Phone Number
(If different from above.)

NOTE:

If bidder is a CORPORATION, the legal name of the corporation shall be set forth above, the corporate seal affixed, together with the signature(s) of the officer(s) authorized to sign contracts for the corporation. Please attach to this page current (not more than six months old) evidence of the authority of the officer(s) to sign for the corporation.

If bidder is a PARTNERSHIP, the true name of the partnership shall be set forth above, with the signature(s) of the general partner(s). Please attach to this page current (not more than six months old) evidence of the authority of the partner authorized to sign for the partnership.

If bidder is an INDIVIDUAL, the bidder's signature shall be placed above.

If signature is by an agent, other than an officer of a corporation or a partner of a partnership, a **POWER OF ATTORNEY** must be on file with the Department before opening bids or submitted with the bid. Otherwise, the Department may reject the bid as irregular and unauthorized.

PROMPT PAYMENT CERTIFICATION

The undersigned hereby certifies that payment shall be dispersed to all subcontractors within 10 (ten) calendar days after receipt of payment from the Department, in accordance with the terms of the subcontract. This clause applies to both DBE and non-DBE subcontractors.

Pursuant to Title 49, Code of Federal Regulations, §26.37, the undersigned also agrees to maintain a running tally of all payments made to DBE subcontractors, and shall furnish these records to the Department, upon request. The records shall be available at reasonable times and places for inspection by the Department or its designee, and appropriate federal agencies.

This declaration is made under penalty of perjury under the laws of the United States, and the Hawaii Penal Code, Section 710-1063, Hawaii Revised Statutes, regarding unsworn falsification to authorities and knowingly rendering a false declaration.

Contractor

By:

Authorized Signature

Title

Date

FINAL REPORT OF DBE PARTICIPATION

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

Project Title: _____ Contractor Name: _____

Project No.: _____ Contract No.: _____

Period Covered by this Report: _____ Contract Amount (including amendments): \$ _____

Final Payment Amount: \$ _____ Invoice No.: _____

DBE Goal for the Contract: _____ % Total DBE Participation: _____ % Total Payment to DBE: \$ _____

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount	Total Payment
Name Address Telephone No.			

Note: Payments to DBE supplier or dealer that is not a manufacturer must be adjusted.

Signature

Print Name & Title

Telephone No.

**INSTRUCTIONS FOR COMPLETING THE
FINAL REPORT OF DBE PARTICIPATION**

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

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period Covered by this Report:	Same period as invoice period
Contractor Name:	Self-Explanatory
Contractor No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it will be allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
DBE Goal for this Contract:	% Goal stated on Contractor's Goal from Proposal or Bid
Total DBE Participation	Total % of DBE Participation
Total Payment to DBE	Total \$ amount paid to DBEs

EXHIBIT B

Requirements for Participation by Disadvantaged Business Enterprises (DBEs)

I. General

This federal-assisted project is subject to Title 49, Code of Federal Regulations, Part 26, entitled, "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs" (49 CFR 26).

II. Policy

It is the policy of the HDOT that Disadvantaged Business Enterprises (DBEs), as defined by 49 CFR 26, have an equal opportunity to receive and participate in federally assisted projects. Consequently, the requirements of 49 CFR 26, apply to this project.

III. DBE Obligation

The CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 CFR 26, to ensure that DBEs have an equal opportunity to compete for and perform on contracts. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts financed in whole or in part with Federal funds.

IV. Contract Assurance

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in connection with the award or performance of this contract.

The CONTRACTOR agrees to include the above statements in any subsequent contracts that it enters with other contractors, and cause those contractors to include similar statements in further agreements.

V. Failure to Comply with DBE Requirements

All contractors and subcontractors are hereby advised that failure to carry out all DBE requirements specified herein constitutes a material breach of contract that may result in termination of the contract or such other remedy as deemed appropriate by the HDOT.

VI. Prompt Payment Certification

The successful CONTRACTOR shall sign and submit the "Prompt Payment Certification" form concurrently with all its invoices to the Project Manager. The HDOT will not process any invoices without this completed form. Payment shall be dispersed to all subcontractors within 10 (ten) calendar days after receipt of payment from the HDOT, in accordance with the terms of the subcontract.

VII. Final Payment

A completed "Final Report of DBE Participation" and "Prompt Payment Certification" must be submitted with the final payment request. Final payment will not be processed without the completed forms.

VIII. DBE Participation

- a. The CONTRACTOR shall subcontract at least _____ percent (____%) of the dollar value of the prime contract to DBEs.
- b. The following DBE subcontractors, selected by the CONTRACTOR, shall be used for this project:

Name	Nature of Work	DBE Y/N	Dollar Amount

- c. All DBEs listed above must be certified by the HDOT.
- d. No substitution of a DBE subcontractor shall be made at any time without the written consent of the HDOT.

IX. Records and Reports

- a. The CONTRACTOR shall keep records as are necessary for the HDOT to determine compliance with the CONTRACTOR'S DBE obligation.
- b. These records shall be awarded at reasonable times and places for inspection by authorized representatives of the HDOT and appropriate Federal agencies.

Default and Termination of Contract.

- (A) If the Contractor:
- (1) Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
 - (2) Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or
 - (3) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
 - (4) Discontinues the prosecution of the work, or
 - (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
 - (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
 - (7) Allows any final judgement to stand against the Contractor unsatisfied for a period of 10 days, or
 - (8) Makes an assignment for the benefit of creditors, or
 - (9) Fails to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs"; or
 - (10) For any other cause whatsoever, fails to carry on the work in an acceptable manner, the Engineer will give notice in writing to the Contractor and its surety of such delay, neglect, or default.

Prompt Payment. According to 103-10.5, HRS,

Any money, other than retainage, paid to a contractor shall be dispersed to the subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract, provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.

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

A subcontract is any written agreement between the Contractor and its Subcontractors that contains the conditions under which the Subcontractor is to perform a portion of the work for the Contractor. The above applies to all tiers of subcontractors.

(A) Examples of Bona Fide Disputes.

- (1) When a Subcontractor delays the project to the extent that liquidated damages may be imposed on the Contractor and the Subcontractor with written justification for such delay;
- (2) When work done by a Subcontractor is paid for and later found to be non-conforming or unacceptable and the amount previously paid by the State is deducted from subsequent payment request;
- (3) When the Subcontractor fails to promptly correct any and all deficiencies and/or non-conforming work cited by the State; or
- (4) When the Subcontractor fails to fulfill any term, condition or requirement of its subcontract.

(B) Filing Of Complaint And Verification Of Its Validity. Complaints by Subcontractors of late or non-payment must be submitted in writing to the Director stating:

- (1) The amount past due for work performed and already paid for by the State,
- (2) That all the terms, conditions or requirements of its subcontract have been met, and
- (3) That no bona fide dispute over its performance exists.

The Director or its representative will hear and receive evidence to determine the validity of the complaint and the Director's decision on the matter shall be final.

- (C) Follow-Up Action.** If the Director or authorized representative determines that the Contractor failed to make payment required under the subcontract to a Subcontractor with whom the Contractor has no 'bona fide dispute' within the 10 consecutive calendar days after receipt of the money, the Director shall inform the Contractor of its findings and request the Contractor make payment accordingly.

If the Contractor does not act promptly, the Director or authorized representative shall take appropriate action as allowed under this contract and/or refer the matter to the Contractor Licensing Board for appropriate action according to 444-17(15), HRS, regarding the Revocation, Suspension and Renewal of (Contractor) Licenses.

PROTEST PROCEDURES

INITIAL PROTEST §3-126-3

1. Must be filed in **duplicate**, within **5 working days** to CPO or Director after the protestor knows or should have known of the facts leading to the protest.
 - a. Must be labeled "**PROTEST**".
 - b. Hand-delivered, sent by registered mail or certified mail, return receipt requested. If mailed, 48 hours from time of mailing will be considered if within the five working days.
2. Contracts Office shall submit a copy of protest within 3 working days to Legal Department.
3. No award of contract shall be made, if protest filed within 5 working days, until resolution of protest, unless CPO, in consultation with the Director, makes written determination that the award of contract without delay is necessary to protect substantial interests of the State. (§3-126-5)

RECONSIDERATION (§3-126-8)

1. Must be filed within **10 working days** after decision of initial protest.
2. Director shall inform protestor of decision to deny or sustain protest as expeditiously as possible.
3. If protestor is denied, he/she may file for an administrative hearing. Protestor must file an **intention to appeal** (Exhibit A) for administrative hearing within **5 working days** of Director's decision to CPO or Director.
4. An **appeal or request** for administrative hearing must be filed within **7 calendar days**.
5. Upon receipt, the request shall be sent to the Office of the Administrative Hearings, Department of Commerce and Consumer Affairs (DCCA) within **3 business days**. (Exhibit B (§3-126-42))
6. DCCA shall assign a docket number to the request and schedule a hearing. (§3-126-42)