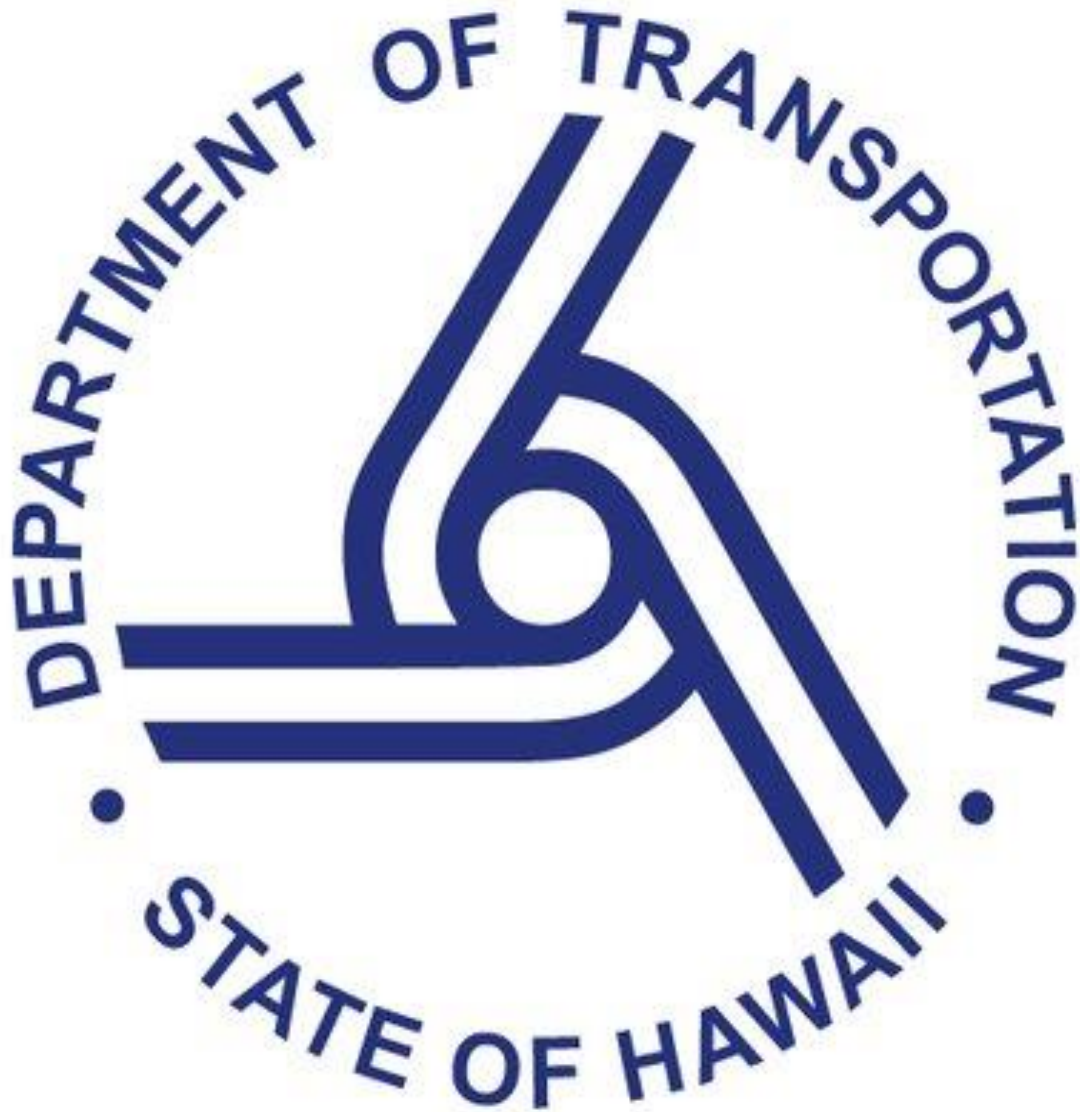


**Hawaii Department of Transportation  
Federal Aviation Administration  
Disadvantaged Business Enterprise  
Program Plan**



**December 2024**

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# POLICY STATEMENT

## Section 26.1, 26.23 - Objectives/Policy Statement

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), 49 Code of Federal Regulation (CFR) Part 26 (Attachment A). HDOT has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, HDOT has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as “Part 26”).

It is the policy of HDOT to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also HDOT’s policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Daniel Williams, DBE Program Supervisor has been delegated as the DBE Liaison Officer. In that capacity, Daniel Williams, DBE Program Supervisor is responsible for implementing all aspects of the DBE program. 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 the USDOT.

HDOT has disseminated this policy statement to its political subdivisions and all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on HDOT USDOT-assisted contracts. The distribution was accomplished by including it in all contract provisions for federal aid projects, and projects and disseminated throughout HDOT and to DBE and non-DBE business communities that perform work on USDOT-assisted contracts.



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EDWIN H. SNIFFEN  
Director of Transportation

Nov 25, 2024

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Date

# GENERAL REQUIREMENTS

## Section 26.1 - Objectives

The objectives are elaborated in the policy statement on the first page of this program.

## Section 26.3 - Applicability

HDOT is the recipient of federal airport funds authorized by 49 United States Codes (U.S.C.) 47101, et seq. As a recipient of Federal funds, HDOT is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance.

## Section 26.5 - Definitions

HDOT will use terms in this program that have their meanings defined in Part 26, § 26.5.

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
  - a. One concern controls or has the power to control the other; or
  - b. A third party or parties controls or has the power to control both; or
  - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation* (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport program.

*Days* mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Department or USDOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights (DOCR), the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA.)

*Disadvantaged Business Enterprise or DBE* means a for-profit small business concern—

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*USDOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*FTA Tier I recipient* means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds six hundred seventy thousand dollars (\$670,000.00) in FTA funds in a Federal fiscal year.

*FTA Tier II recipient* means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed six hundred seventy thousand dollars (\$670,000.00) in FTA funds in a Federal fiscal year.

*Good faith efforts (GFE)* mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

*Indian Tribe or Native American Tribe* means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

*Joint venture* means an association of 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 of the joint venture are commensurate with its ownership interest.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Notice of decision (NOD)* means determination that denies a firm's application or decertifies a DBE.

*Notice of intent (NOI)* means recipients letter informing a DBE of a suspension or proposed decertification.

*Operating Administration* means any of the following parts of USDOT: the FAA, FHWA, and FTA.

The "Administrator" of an operating administration includes his or her designees.

*Personal net worth* means the net value of an individual's reportable assets and liabilities, per the calculation rules in 49 CFR § 26.68.

*Primary industry classification* means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: [www.census.gov/naics/](http://www.census.gov/naics/).

*Primary recipient* means a recipient which receives USDOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

*Program* means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* means any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

*Secretary* means USDOT's Secretary of Transportation or the Secretary's designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) Business Development or Small Disadvantaged Business programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
  - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal or Sri Lanka;



- f. Women;
  - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer (TVM)* means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*Unsworn declaration* means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ.)

### **Section 26.7 - Non-discrimination Requirements**

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, sex, or national origin.

In administering its DBE program, 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 accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 - Data Collection and Reporting Requirements**

#### **Reporting to DOT**

HDOT will provide data about its DBE Program as directed by USDOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

HDOT will transmit to FAA annually, by or before December 1<sup>st</sup>, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. HDOT will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

### Bidders List

HDOT will collect bidders list information as described in 49 CFR § 26.11(c)(2) and enter it into the system designated by USDOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the USDOT with data for evaluating the extent to which the objectives of 49 CFR § 26.1 are being achieved.

HDOT will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm address including zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than one million dollars; one to three million dollars; three to six million dollars; six to ten million dollars; etc.) rather than requesting an exact figure from the firm.

HDOT will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

HDOT will enter this data in the USDOT's designated system no later than December 1<sup>st</sup> following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to 49 CFR § 26.53(e), HDOT will enter the data no later than December 1<sup>st</sup> following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The HDOT, Office of Civil Rights is the sole certifying agency for the state of Hawaii. A Hawaii Unified Certification Program (UCP) agreement was signed by all direct recipients and subrecipients in 2013 which outlines HDOT's role as the certifying agency and the responsibilities of the UCP's members.

HDOT will report to USDOT's Departmental Office of Civil Rights each year, the following information:

- The number and percentage of in-state and out-of-state DBE certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority)
- The number of DBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible
- The number of decertified firms:
  - Total in-state and out-of-state firms decertified

- Names of in-state and out-of-state firms decertified because Socially and Economically Disadvantaged Owner (SEDO) exceeded the personal net worth cap
- Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- The number of in-state and out-of-state firms summarily suspended
- The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantaged status
- The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status

HDOT will maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, HDOT will keep a complete application package for each certified firm and all affidavits of no-change/Declaration of Eligibility (DOE) forms, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of HDOT’s financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

**Section 26.13 - Assurances Recipients and Contractors Must Make**

HDOT has signed the following assurances, applicable to all USDOT-assisted contracts and their administration:

Assurance: Each financial assistance agreement HDOT signs with a USDOT operating administration (or a primary recipient) will include the following assurance:

HDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-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. The HDOT 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, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: HDOT will ensure that the following clause is included in each USDOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or

- 4) Disqualifying the contractor from future bidding as non-responsible.”

## **ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 - DBE Program Updates**

HDOT is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds two hundred fifty thousand dollars (\$250,000.00) in FAA funds in a federal fiscal year.

HDOT is not eligible to receive USDOT financial assistance unless USDOT has approved this DBE program and HDOT is in compliance with it and Part 26. HDOT will continue to carry out this program until all funds from USDOT financial assistance have been expended. HDOT does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

### **Section 26.23 - Policy Statement**

The Policy Statement is elaborated on the first page of this DBE Program.

### **Section 26.25 - DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for HDOT:

Daniel Williams  
DBE Program Supervisor  
Hawaii Department of Transportation, Office of Civil Rights  
200 Rodgers Boulevard  
Honolulu, Hawaii 96819  
Phone: 808-831-7914/Fax: 808- 831-7944  
TTY: 808- 808-831-7931  
Email: HDOT-DBE@hawaii.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that HDOT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the HDOT Director of Transportation concerning DBE program matters. An organizational chart displaying the DBELO’s position in the organization is included in Attachment B to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of up to four to assist in the administration of the program, in the areas of certification, outreach/networking, external contractor compliance, and concessionaire programs. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.)

5. Analyzes HDOT's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Chief Executive Officer/governing body on DBE matters and achievement.
8. Chairs the DBE Advisory Committee.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by USDOT and acts as liaison to the Uniform Certification Process in Hawaii.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the HDOT's updated directory on certified DBEs.

Civil Rights Coordinator (CRC):

HDOT's CRC serves as the chief staff officer to the Director and is responsible for overseeing and administering HDOT's civil rights programs which include, the DBE, Americans with Disabilities Act, Title VI (of the Civil Rights Act of 1964)/Environmental Justice, and Equal Employment Opportunity/Affirmative Action programs.

DBE Program Specialists:

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

1. Assists the DBELO in the development and evaluation of the DBE program;
2. Provides outreach to DBEs, non-DBE firms, and other groups to help small businesses grow and to foster DBE participation;
3. Develops and implements the DBE Supportive Services (DBE/SS) program to assist DBEs in contracting opportunities in highway-related federal projects;
4. Researches, develops, implements, and monitors 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;
5. Develops, plans, and participates in DBE training seminars and outreach that may include providing technical assistance to DBEs, and disseminating information on available business opportunities;
6. Creates and maintains a bidders list; and
7. Assist the DBELO with compliance reviews of sub-recipients.

DBE Program Certifier:

The DBE Program Certifier shall be the principal certifier for the HDOT and shall be responsible for the following:

1. Provides assistance to firms seeking DBE certification in accordance with eligibility criteria set forth by USDOT;
2. Determines initial and continued eligibility by reviewing the DBE program Uniform Certification Application, Personal Net Worth Statement and other supporting documents through the Certification Management and Contract Compliance online system, conducting on-site reviews and evaluating other available information;

3. Maintains and updates the statewide DBE Directory of certified firms;
4. Investigates DBE related complaints and challenges; and
5. Conducts training on certification criteria and procedures on an as needed basis.

### **Section 26.27 - DBE Financial Institutions**

It is the policy of HDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. Availability of such institutions will be investigated on an annual basis.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

### **Section 26.29 - Prompt Payment Mechanisms**

HDOT requires that all subcontractors performing work on USDOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, HDOT established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from HDOT.

HDOT therefore includes the following clause verbatim in each USDOT-assisted prime contract:

“The Contractor shall pay all subcontractors within 10 calendar days after receipt of any progress payments from HDOT. This clause applies to both DBE and non-DBE subcontractors, and all tiers of subcontracts.

The Contractor will verify that payment or retainage has been released to the subcontractors or its suppliers within the specified time through entries in HDOT's online tracking system during the corresponding monthly audits. Prompt payment will be monitored and enforced through the Contractor's reporting of payments to its subcontractors and suppliers in the online tracking system.

Subcontractors, including lower tier subcontractors and/or suppliers will confirm the timeliness and the payment amounts received utilizing the online tracking system. Discrepancies will be investigated by the respective DBE Coordinator and the project engineer. Payments to the subcontractors, including lower tier subcontractors, and including retainage released after the subcontractor or lower tier subcontractor's work has been accepted, will be reported by the Contractor or the subcontractor.

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 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 HDOT. The bidder must obtain the prior written 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.”

HDOT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to 49 CFR § 26.29, HDOT has selected the following method to comply with this requirement:

1. HDOT will decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor(s) within 30 days after the subcontractor's work is satisfactorily completed.

For every airport construction project funded under Federal grant assistance programs, HDOT includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to “30 days” will be revised accordingly.

#### Prompt Payment Monitoring for DBEs and Non-DBEs

HDOT clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, HDOT undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through HDOT's use of an online payment tracking system to monitor payments from prime contractors to all subcontractors and suppliers. There are older projects that are not tracked in the online payment system, and hard copy progress payments are provided to OCR via email to monitor payments and maintain a running tally to track goal attainment.

After the progress payment is approved at the district level, the project manager shall forward the progress payment to OCR and the respective divisions' fiscal office. For projects entered into the online tracking system, OCR shall ensure that the prime contractor reports payment from HDOT and reports timely payment to subcontractors and suppliers. For projects not in the online tracking system, OCR shall ensure that the DBE Participation and Prompt Payment Certification form accompanies the progress payment and shall review payment information accordingly.

For each contract tracked in the Certification and Contract Compliance Management System, DBE staff shall randomly select a payment to a subcontractor or supplier and will conduct an audit by requesting the invoice from the subcontractor or supplier and the corresponding canceled check from the prime contractor or subcontractor (if multiple tiers exist) to ensure that payment was made as reported. HDOT DBE staff shall do this for each contract and may select multiple payments and/or multiple audit months per contract if deemed appropriate. The decision to request documents for multiple payments and/or multiple audit months will depend on whether the prime contractor has a history of late payments or a track record of general noncompliance with DBE requirements.

HDOT requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three years unless otherwise provided by applicable record retention requirements for HDOT's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of HDOT or USDOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

### Prompt Payment Dispute Resolution

HDOT will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by 49 CFR § 26.29.

In the event a subcontractor has failed to satisfactorily perform work as specified in the subcontract, and there is a dispute which may result in a delay of payment to the subcontractor, the prime contractor shall notify the project manager in writing as soon as practicable. The project manager shall work with the prime contractor and subcontractor to resolve the issues related to the dispute. When the dispute is resolved to the satisfaction of both parties, the prime contractor shall pay the subcontractor within 10 days from the date the dispute is resolved.

HDOT's procedures regarding the release of retainage shall be contained within the contract provisions relating to DBE requirements. Language regarding the prompt release of retainage by prime contractors to subcontractors shall be clearly specified in all prime contracts.

HDOT's contract provisions specify that failure to comply with the DBE requirements, including prompt payment provisions, may be a material breach of contract and may result in termination of the contract or some other remedy as deemed appropriate by HDOT.

HDOT shall implement sanctions for violations of the prompt payment provision. Prime contractors will be charged with a violation when it is determined that delayed payments (i.e., more than 10 days after the prime contractor received payment) were made to subcontractors/suppliers on a contract. The violation shall be contract-specific, which means that one violation could account for multiple delayed payments on the same contract. The following sanctions shall be imposed for each violation:

1. 1<sup>st</sup> and 2<sup>nd</sup> violations – prime contractor shall be issued a letter of reprimand.
2. For 3 or more violations – prime contractor shall be suspended from all new work for 90 calendar days for each violation. "New work" means bidding on new projects. Violations shall be enforced consecutively.

### Prompt Payment Complaints

Complaints regarding the alleged failure to satisfy prompt payment requirements shall be addressed in accordance with the Complaint Procedures attached hereto in Appendix J of this Program Plan. Covered complaints received by HDOT shall be reported to the FAA Administrator within 30 days of receipt by HDOT.

Pursuant to Section 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### Enforcement Actions for Noncompliance of Participants

HDOT shall implement sanctions for violations of the prompt payment provision. Prime contractors will be charged with a violation when it is determined that delayed payments (i.e., more than 10 days after the prime contractor received payment) were made to subcontractors/suppliers on a contract. The violation shall be contract-specific, which means that one violation could account for multiple delayed payments on the same contract. The following sanctions shall be imposed for each violation:

1. 1<sup>st</sup> and 2<sup>nd</sup> violations – prime contractor shall be issued a letter of reprimand.



2. For 3 or more violations – prime contractor shall be suspended from all new work for 90 calendar days for each violation. “New work” means bidding on new projects. Violations shall be enforced consecutively.

HDOT will actively implement the enforcement actions detailed above.

### **Section 26.31 - Directory of Certified Firms**

HDOT is the certifying member of the Hawaii UCP. The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by 49 CFR § 26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm have been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to 49 CFR § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
  1. Physical location
  2. NAICS code(s)
  3. Work descriptions
  4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE’s capacity and ability to perform work.

### **Section 26.33 - Over-concentration**

HDOT has not determined that overconcentration exists in the types of work that DBEs perform. However, if the issue of overconcentration arises, the DBELO may initiate some of the following actions upon approval from USDOT:

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 overconcentration of DBE participation.

Allegations or determinations of overconcentration shall be reported to the appropriate operating administration.

### **Section 26.35 - Business Development and Mentor-Protégé Programs**

HDOT is committed to continuing its Business Development Program (BDP), entitled *HI-Way 2 Success*, to assist DBEs to grow and compete in the federal contracting arena. To achieve this, HDOT has secured DBE/SS funds from the FHWA.

The BDP's three major components include: 1) New DBE Orientation Program; 2) Networking/Outreach Program; and 3) Business Development Boot Camp.

### **Section 26.37 - Monitoring Responsibilities**

HDOT implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

HDOT actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to USDOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by OCR staff and project engineers shall track progress payments maintained by the project managers through the online payment tracking system. This mechanism to maintain a running tally of overall goal attainment will be used to inform HDOT's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

HDOT actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by HDOT's Certification and Contract Compliance Management System. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to 49 CFR § 26.53(g).

### Monitoring Contracts and Work Sites

HDOT will implement the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. HDOT will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR § 26.109;
2. HDOT will adopt a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is performed by DBEs. Bidders will sign the bid proposal that includes language which states that bidders shall utilize DBEs listed in their bid/proposal;
3. Pre-construction meetings with the prime contractor shall be required to discuss scope of work and performance expectations on contracts and subcontracts, and to confirm that work committed to DBEs shall be subcontracted to such DBEs;
4. Field inspections shall be conducted to ensure that DBEs are performing a CUF. Project Engineer (or their designee) shall monitor the worksite and shall complete the DBE Commercially Useful Function Onsite Review Form – Contractors and DBE Commercially Useful Function Onsite Review Form – Manufacturer and Regular Dealer/Supplier (hereafter referred collectively as DBE

CUF Onsite Review Forms) when interviewing DBEs on the job to ensure that they are performing a CUF. Inspectors shall do this for all DBEs on the project. The DBE CUF Onsite Review Forms serve as HDOT's written certification that DBEs are performing a commercially useful function and that work committed to DBEs are actually being performed by DBEs;

5. On an annual basis, HDOT shall review the DBE policies and practices of its sub-recipients to ensure that they are in compliance with 49 CFR Part 26; and
6. HDOT DBE program staff shall provide training to its line staff and sub-recipients when significant changes occur to the Program Plan which may affect the monitoring and enforcement mechanisms described in this section and other DBE program requirements.
7. In an effort to decrease fraud and abuse in the DBE Program, HDOT has implemented a DBE complaint procedure (Attachment J). All complaints can be anonymous; however, if an individual provides contact information, HDOT can handle the complaint more thoroughly. HDOT will not investigate vague, ambiguous, or elusive complaints. HDOT will not investigate complaints where it is the respondent of the complaint. These complaints will be forwarded to the appropriate USDOT operating administration for investigation.

### **Section 26.39 - Fostering Small Business Participation**

In accordance with 49 CFR § 26.39 of the DBE Regulations, HDOT developed a Small Business Utilization Plan to incorporate a small business element into the DBE Program Plan to facilitate participation by small businesses on federal-aid contracts. As part of this Small Business Utilization Plan, HDOT will implement the Small Business Utilization Plan in two phases. Phase I shall include identifying potential small businesses already contracted by HDOT, and surveying project managers and prime contractors to determine what types of work may be performed by small businesses. Phase II shall include reviewing procurement methods to facilitate participation by small businesses identified in Phase I. In particular, the potential to unbundle large design-build contracts will be assessed on a project-by-project basis. This second phase shall also include outreach activities, networking opportunities, and training workshops to assist small businesses to compete in HDOT and other government contracts. Also in this phase, outreach activities on the neighbor islands shall be conducted to foster small business participation on a statewide basis.

## **GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 - Set-asides or Quotas**

HDOT does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

### **Section 26.45 - Overall Goals**

HDOT will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding USDOT-funded prime contracts the cumulative total value of which exceeds two hundred fifty thousand dollars (\$250,000.00) in USDOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with 49 CFR § 26.45(f), HDOT will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR § 26.45. If HDOT does not anticipate awarding prime contracts the cumulative total value of which exceeds two hundred fifty thousand dollars (\$250,000.00) in USDOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and HDOT will seek to fulfill the objectives outlined in 49 CFR § 26.1.

Step 1 - The first step is to determine a base figure for the relative availability of DBEs in the market area. HDOT will use a Disparity Study, as a method to determine the base figure. HDOT understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR § 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2 - The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. HDOT will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the HDOT market.

In establishing the overall goal, HDOT will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by HDOT to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before HDOT is required to submit the goal methodology to the operating administration for review pursuant to § 26.45(f). The goal submission will document the consultation process in which HDOT engaged. Notwithstanding paragraph (f)(4) of 49 CFR § 26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, HDOT will publish a notice announcing the proposed overall goal before submission to the FAA on August 1<sup>st</sup>. The notice will be posted on HDOT’s official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on HDOT’s official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how HDOT considered and responded to any comments and information received before finalizing the goal.

HDOT will begin using the overall goal on October 1<sup>st</sup> of the relevant period unless other instructions from FAA have been received.

### Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire

length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

#### Prior Operating Administration Concurrence

HDOT understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by HDOT for calculating goals is inadequate, FAA may, after consulting with HDOT adjust the overall goal or require that the goal be adjusted by HDOT. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the USDOT operating administration will be guided by the goal setting principles and best practices identified by the USDOT in guidance issued pursuant to 49 CFR § 26.9.

HDOT will activity work with FAA to determine submission timeline for most recent DBE goal calculation and methodology.

#### **Section 26.47 - Failure to Meet Overall Goals**

HDOT cannot be penalized or treated by the USDOT as being in noncompliance with 49 CFR Part 26, because DBE participation falls short of an overall goal, unless HDOT fails to administer its DBE program in good faith.

HDOT understands that to comply with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

HDOT understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken to be regarded by the USDOT as implementing this DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
3. HDOT will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.
4. HDOT will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. HDOT will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

#### **Section 26.51 - Means Recipients Use to Meet Overall Goals**

##### Breakout of Estimated Race-Neutral & Race-Conscious Participation

HDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

HDOT will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

#### Contract Goals

If the approved projection under paragraph (c) of § 26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those USDOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the specific type of work).

Contract goals will be expressed as a percentage of the total amount of a USDOT-assisted contract. The following procedure describes the DBE goal setting process. HDOT shall set DBE contract goals on federal-aid construction and professional services contracts when it is determined that subcontracting opportunities may exist. HDOT shall also set contract goals on projects that HDOT believes are of the size and scope that DBEs may compete for as prime contractors.

For each federal-aid project with potential subcontracting opportunities, HDOT shall convene a goal setting committee comprised of the project engineer, DBELO, divisional DBE Coordinator, and a representative from the respective operating administration (if available.) The committee will review the engineer's estimate, nature of work on the project, and shall determine if there are qualified DBEs that may potentially perform portions of the work. Based on this review, a project goal shall be set for DBE participation. Once the contract is awarded, the project goal, which may be adjusted upwards if the winning bidder obtains more DBE participation than proposed by HDOT, becomes the contract goal.

**Contract Goals on Design-Build Projects** – HDOT shall set contract goals on design-build contracts in the following manner. First, HDOT will require the design-build contractor to submit a DBE Open Ended Performance Plan with its qualification's proposal. The Plan shall include the following elements:

1. A policy statement signed by Design-Build Contractor's Authorized Representative, which express Design-Build Contractor's commitment to utilize DBEs in all aspects of the work, outlines the various levels of responsibilities, and states the objectives of the DBE's Performance Plan. The Design-Build Contractor shall obtain the written commitment of all Design-Build Contractor entities to comply with and advance the intent of the policy statement.
2. A description of proposed activities to facilitate DBE engagement in work as Subcontractors and Subconsultants shall include, at a minimum, the following:
  - a. Participate in a HDOT sponsored networking event with prospective DBEs that may be ready, willing and able to perform work on this project;
  - b. Conduct bid item specific outreach meetings in coordination with the HDOT for DBE firms to highlight appropriate subcontracting opportunities;
  - c. Solicit statements of qualification, proposals, and/or price quotations from qualified DBE firms and arrange a time for the review of the qualifications, plans, quantities, specifications, and delivery schedules and for the preparation and presentation of proposals and/or price quotations;
  - d. Encourage eligible DBEs to apply for certification with HDOT by the Design and Price Proposal due date;
  - e. Contact minority and women business organizations, contractor associations, and city agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with HDOT; and
  - f. Develop an action plan to monitor on-going DBE participation on the project to ensure the Design-Build Contractor is on track to meet the DBE contract goal. The action plan shall include, but is not limited to, regularly scheduled meetings with HDOT to address issues that may affect committed DBEs, such as a reduction in the scope of work, and when GFE are necessary to replace a DBE for good cause.
3. The DBE Open Ended Performance Plan must include planned DBE participation, which may not identify specific DBEs, but generally describes/includes anticipated type of work/services that DBEs may be performing, anticipated time frame of the work, and anticipated dollar value of the work opportunities that will be performed.
  - a. When submitted, the DBE Open Ended Performance Plan adds up to the dollar value of the DBE goal percentage.
  - b. The DBE Open Ended Performance Plan must be submitted by all bidders as condition of a responsive proposal.
  - c. HDOT will provide ongoing monitoring to ensure every effort is made to fulfill the DBE Open Ended Performance Plan.

At the time the Design-Build Contractor submits its design and price proposal, the Contractor will be required to submit its DBE documentation, including DBE information, nature of each DBE's work, and estimated bid amounts to demonstrate that it has met the goal, or has made GFE to meet the goal. If the Design-Build Contractor meets these requirements, points shall be awarded in accordance with the evaluation criteria for the design-build project.

**Section 26.53 - Good Faith Efforts Procedures in Situations where there are Contract Goals**

Note: The provisions of the following section apply only when a contract goal is established.

**Demonstration of good faith efforts (pre-award)**

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO or designee is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

HDOT will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for USDOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - a. The names and addresses of DBE firms that will participate in the contract;
  - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - c. The dollar amount of the participation of each DBE firm participating;
  - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
  - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
3. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section, no later than 5 days after bid opening, as a matter of responsibility.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid



submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by HDOT. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor HDOT will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in § 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue.

The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, HDOT will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which HDOT solicits proposals to design and build a project with minimal project details at time of letting, HDOT may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal.

The OEPP replaces the requirement to provide the information required in paragraph (b) of 49 CFR § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, HDOT will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. HDOT and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

HDOT will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, HDOT will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

**Administrative Reconsideration of Good Faith Efforts determinations**

Within five working days of being informed by HDOT's Director or his/her designee that the bidder/offeror is has not documented sufficient GFE, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following official:

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

The Director or his designee shall not have played any role in the original determination that the bidder/offeror did not document sufficient GFE.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation concerning the issue of whether it met the goal or made adequate GFE to do so. The bidder/offeror will have the opportunity to meet in person or virtually with the reconsideration official, or his/her designee, to discuss the issue of whether it met the goal or made adequate GFE to do so.

In an administrative reconsideration, the reconsideration official will review all documentation and good faith efforts that were submitted up to five days after bid opening and the documentation shall be limited to information that further supports the bidder's original submittal. Allowing additional documentation to be submitted during an administrative reconsideration is not intended to be a method by which the bidder may circumvent the intent of the regulations and the DBE Requirements by withholding required documentation until the time of a reconsideration proceeding.

The Director of Transportation or his designee shall inform the bidder/offeror in writing of HDOT's reconsideration decision within 30 days of the proceeding. The decision will state HDOT's findings with respect to whether the bidder/offeror met the contract goal, or whether the bidder/offeror exhibited GFE to achieve the contract goal. The reconsideration decision is not administratively appealable to USDOT but is appealable under Hawaii Revised Statute § 103D-709.

**Good Faith Efforts procedural requirements (post-solicitation/award)**

HDOT will include in each prime contract the contract clause required by 49 CFR § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that HDOT deems appropriate if the prime contractor fails to comply with the requirements of this section.

HDOT will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

HDOT will require that a prime contractor not terminate a DBE, or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per 49 CFR § 26.53(g)) without our prior written consent, unless HDOT causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

HDOT will include in each prime contract a provision stating that:

1. The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains HDOT's written consent as provided in CFR 49 § 26.53(f); and
2. Unless HDOT's consent is provided under CFR 49 § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

HDOT may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of 49 CFR § 26.53(f)(3), good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law;
6. HDOT has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to HDOT written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
10. Other documented good cause that HDOT determines compels the termination of the DBE subcontractor;

Before transmitting to HDOT the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to HDOT sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five days to respond, advising HDOT and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why HDOT should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), HDOT may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs, or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in CFR 49 § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If HDOT requests documentation under this provision, the contractor shall submit the documentation within seven days, which may be extended for an additional seven days, if necessary, at the request of the

contractor. HDOT shall provide a written determination to the contractor stating whether good faith efforts have been demonstrated.

**Section 26.55 - Counting DBE Participation**

DBE participation will be counted toward overall and contract goals as provided in CFR 49 § 26.55. The participation of a DBE subcontractor will not be counted toward a contractor’s final compliance with its DBE obligations on a contract until the amount being counted has been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of Subpart D of this part at the time of the execution of the contract, the firm’s participation will not be counted toward any DBE goals, except as provided for in CFR 49 § 26.87(j).

## **CERTIFICATION STANDARDS**

**Section 26.61 - 26.73 - Certification Process**

HDOT is a certifying member of the Hawaii UCP. HDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. HDOT makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the Hawaii UCP agreement. The full UCP agreement can be found as Attachment H.

For information about the certification process or to apply for certification, firms should contact:

HDOT DBELO  
Phone: (808) 831-7914  
TTY: (808) 808-831-7931  
Email: HDOT-DBE@hawaii.gov

Our certification application form and documentation requirements are found at:

<https://hdot.dbesystem.com>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

## **CERTIFICATION PROCEDURES**

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Hawaii UCP agreement. The full Hawaii UCP agreement can be found as Attachment H.

**Section 26.81 - Unified Certification Programs**

HDOT is a member of a UCP administered by HDOT. The UCP will meet all certification standards and procedures requirements of Subparts D and E of 49 CFR Part 26.

**Section 26.83 - Procedures for Certification Decisions**

HDOT will take all required steps outlined in 49 CFR § 26.83(c) in determining whether a DBE firm meets the standards of Subpart D of 49 CFR Part 26. In the case of a denial of certification, HDOT will

make an entry in DOCR's Online Portal within five days of the denial. HDOT will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part (*i.e.*, NAICS code removal), through the procedures of 49 CFR § 26.87.

HDOT will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or any functionally equivalent requirement. However, a certification review of a certified DBE firm may be conducted at a reasonable time and/or at a regular interval of three to four years. The certification review may, at HDOT's discretion, include a new onsite review (OSR). HDOT may also make an unannounced visit to the DBE's offices and/or job site. HDOT may also rely on another certifier's report of its OSR of the DBE.

### **Notices of Change and Annual Declarations of Eligibility**

The UCP requires all DBEs to submit every year, on the anniversary of the date they were certified in their Jurisdiction of Original Certification (JOC), a new DOE along with documentation verifying the gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the UCP will generally consider the following documents to be "safe harbors," if they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed federal income tax returns as filed. The UCP will treat non-compliance, whether full or partial, as a 49 CFR § 26.109(c) failure to cooperate.

The UCP also requires all DBEs to provide written notice of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with DBEs' applications for certification. DBEs must provide the UCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice.

### **Section 26.85 - Interstate Certification**

HDOT complies with certification procedures requirements of Subpart E of 49 CFR Part 26 in all matters related to interstate certification. Any procedures included here are highlights only. Detailed interstate certification procedures are enumerated in the full HDOT UCP agreement.

When a DBE certified in any UCP applies to HDOT for certification, HDOT will accept the DBE's certification from its JOC. To obtain interstate certification, the DBE must provide:

1. A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)
2. An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
3. A new DOE.

Within 10 business days of receiving the documents required above, HDOT will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this

section and HDOT confirms the DBE's certification, HDOT will certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

HDOT will require DBEs to provide an annual DOE with documentation of gross receipts, under CFR 49 § 26.83(j), on the anniversary date of the DBE's original certification by its JOC.

If HDOT has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), HDOT will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain HDOT's reasons for believing the DBE's certification should be removed.

If HDOT receives such a notification from another UCP, within 30 days of receiving the notice HDOT will email the UCP contemplating decertification a concurrence or non-concurrence with the proposed action. HDOT's responses may provide written arguments and evidence and may propose additional reasons to remove certification. HDOT understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If HDOT finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. HDOT will email a copy of its decision to the other jurisdictions within three business days.

### **Section 26.86 - Decision Letters**

When HDOT denies a firm's request for certification or decertifies the firm, HDOT will provide the firm a NOD explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. HDOT will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date the decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. HDOT will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

If an applicant appeals this decision to USDOT pursuant to 49 CFR § 26.89, such an appeal does not extend the waiting period.

### **Section 26.87 - Decertification**

HDOT complies with all decertification procedures requirements of Subpart E of Part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Hawaii UCP agreement.

HDOT's first step in any decertification proceeding will be to email a NOI to the DBE. The NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both. The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, HDOT will issue a NOD decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

HDOT has determined that the CRC or his/her designee will serve as the hearing officer for informal hearings provided pursuant to 49 CFR § 26.87(c)-(e). The hearing is an informal proceeding with rules set by the hearing officer.

- HDOT has established an administrative "firewall" to ensure that the CRC will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding). If it is determined that the CRC was involved in discussions regarding the firm's eligibility, a neutral third-party from another state UCP will oversee the de-certification proceedings. The CRC has sufficient knowledge of the certification standards.

HDOT will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of 49 CFR § 26.87(g). HDOT will make an entry in DOCR's Online Portal within five days of the action, entering the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until HDOT issues a NOD.

Once a firm is decertified HDOT will take appropriate actions related to contract and overall goals and DBE participation as described in 49 CFR § 26.87(j).

### **Section 26.88 - Summary Suspension of Certification**

HDOT will follow procedures consistent with 49 CFR § 26.88 regarding the suspension of a DBE's certification.

HDOT will mandatorily and immediately suspend a DBE's certification when HDOT has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

HDOT may elect to suspend a DBE's certification when HDOT has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that 49 CFR § 26.83(j) requires.

HDOT will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which HDOT relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why HDOT should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, HDOT will follow all procedures required under 49 CFR § 26.88(d)(2)-(6).

### **Section 26.89 - Appeals to the USDOT**

Applicants and decertified firms may appeal adverse NODs to the USDOT. An ineligibility complainant or applicable Operating Administration (the latter by the terms of 49 CFR § 26.87(c)) may appeal to the

USDOT if HDOT does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

Appellants must email appeals as directed in HDOT's NOD within 45 days of the date of NOD. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions HDOT misapplied.

The UCP will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that the denial of its application was erroneous).

To file an appeal, you must email the USDOT at DBEAppeals@dot.gov within 45 days of the date of this decision, including a narrative that explains fully and specifically why you believe the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what 49 CFR Part 26 provisions the certifier misapplied. Include the certifier's name, date of the certifier's decision, and your contact information. If you do not have access to email, you may mail a letter to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
Disadvantaged Business Enterprise Program Division  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

### **Section 26.91 - Actions Following DOT Certification Appeal Decisions**

If HDOT is a certifier to which a DOT determination under 49 CFR § 26.89 is applicable, we will take any and all required action(s) pursuant to 49 CFR § 26.91.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 - Compliance Procedures Applicable to HDOT**

HDOT understands that if it fails to comply with any requirement of this part, HDOT may be subject to formal enforcement action under 49 CFR § 26.103 or 49 CFR § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

HDOT understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

### **Section 26.103 - Enforcement Actions Applicable to FHWA and FTA Programs**

The provisions of this section apply to enforcement actions under FHWA and FTA programs. Only paragraph (2) of this section is also applicable in FAA programs.



1. **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in 49 CFR § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
2. **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
3. **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that HDOT is in noncompliance with 49 CFR Part 26, the appropriate USDOT office will promptly send HDOT, return receipt requested, a written notice advising that there is reasonable cause to find HDOT in noncompliance. The notice states the reasons for this finding and directs HDOT to reply within 30 days concerning whether you wish to begin conciliation.
4. **Conciliation.**
  - a. If HDOT requests conciliation, the appropriate USDOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate USDOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
  - b. If HDOT and the appropriate USDOT office sign a conciliation agreement, then the matter is regarded as closed and HDOT is regarded as complying. The conciliation agreement sets forth the measures HDOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, HDOT remains eligible for FHWA or FTA financial assistance.
  - c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If HDOT fails to carry out the terms of a conciliation agreement, HDOT is in noncompliance.
  - d. If HDOT does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.
5. **Enforcement actions.**
  - a. Enforcement actions are taken as provided in this subpart.
  - b. Applicable findings in enforcement proceedings are binding on all USDOT offices.

#### **Section 26.105 - Enforcement Actions Applicable to FAA Programs**

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the U.S.C., including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of 49 CFR § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

### **Section 26.107 - Enforcement Actions Applicable to Participating Firms**

If a firm that does not meet the eligibility criteria of Subpart D of this part attempts to participate in a USDOT-assisted program as a DBE based on false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of Subpart D of this part, the USDOT may initiate suspension or debarment proceedings against you under 2 CFR Parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31.

The USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

### **Section 26.109 - Confidentiality, Cooperation, and Intimidation or Retaliation**

In responding to requests for information concerning any aspect of the DBE program, the USDOT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The USDOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under 49 CFR § 26.89 or to any other state to which the individual's firm has applied for certification under 49 CFR § 26.85.

All participants in the USDOT's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

HDOT, contractor, or any other participant in the program will not intimidate, threaten, coerce, or

discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. HDOT understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

Attachment A - Regulations: link to 49 CFR Part 26

Attachment B - Organizational Chart

Attachment C - Bidder List Collection Form

Attachment D - Link to UCP Directory of Certified Firms

Attachment E - Demonstration of Good Faith Efforts Forms

Attachment F - DBE Monitoring and Enforcement Mechanisms

Attachment G - Link to Certification Application Form and Personal Net Worth Statement

Attachment H - Hawaii UCP Agreement

Attachment I - Small Business Element Program

Attachment J - Complaint Procedures

# ATTACHMENT

A

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT

B

***STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
ADMINISTRATION***

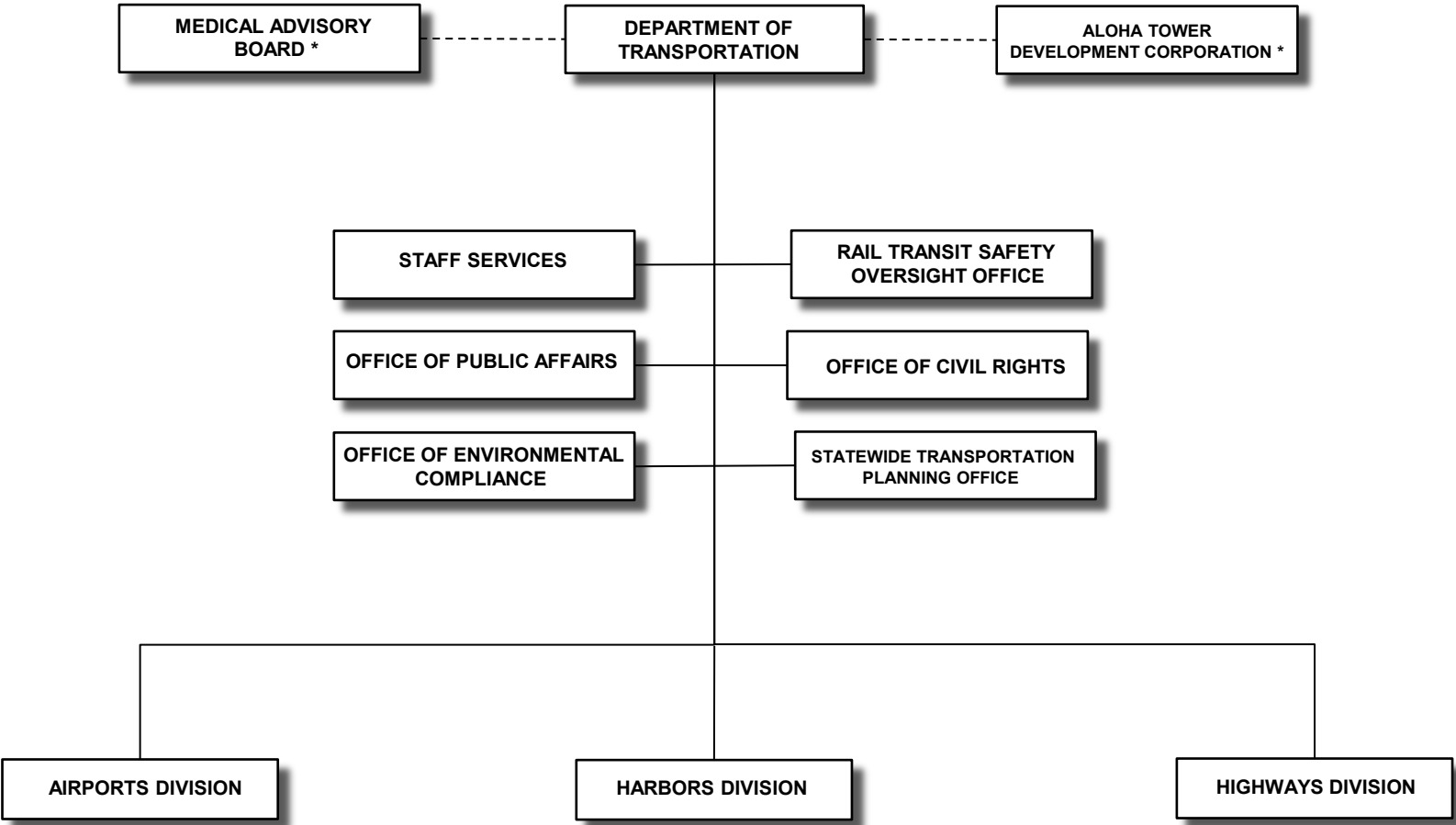
***ORGANIZATION CHARTS***

***JUNE 30, 2024***



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

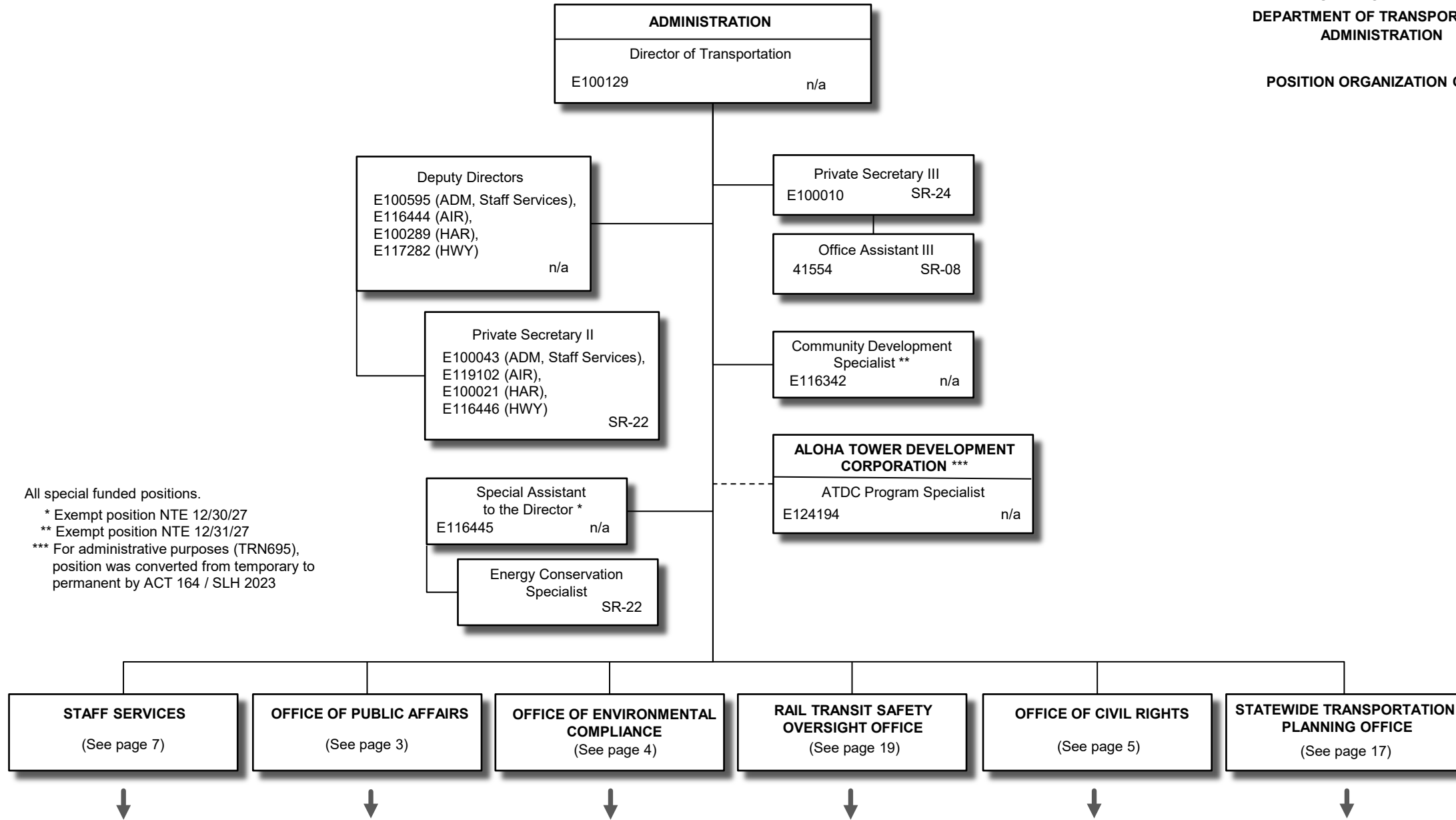
ORGANIZATION CHART



\* For administrative purposes

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
ADMINISTRATION

POSITION ORGANIZATION CHART



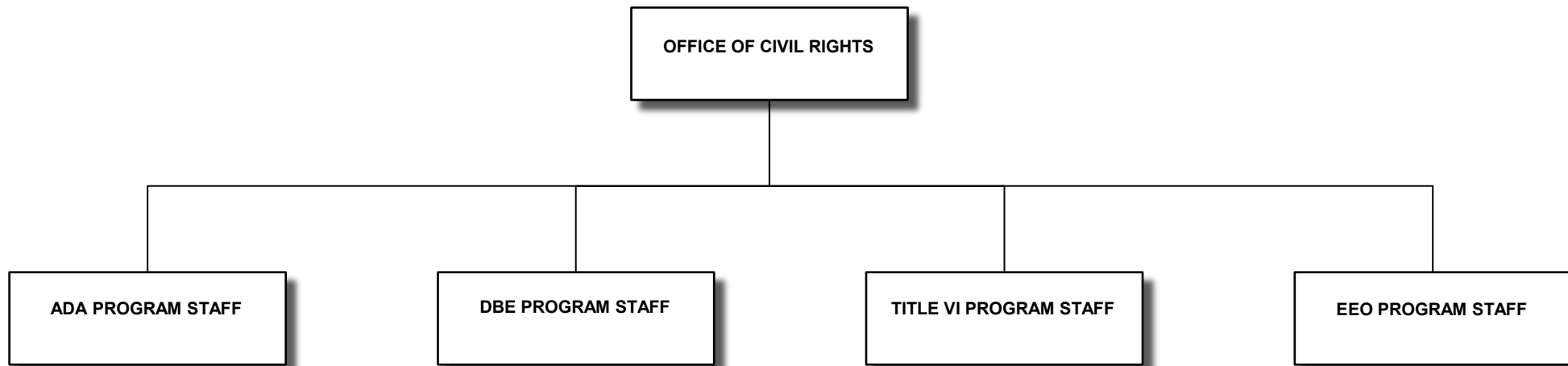
All special funded positions.

\* Exempt position NTE 12/30/27

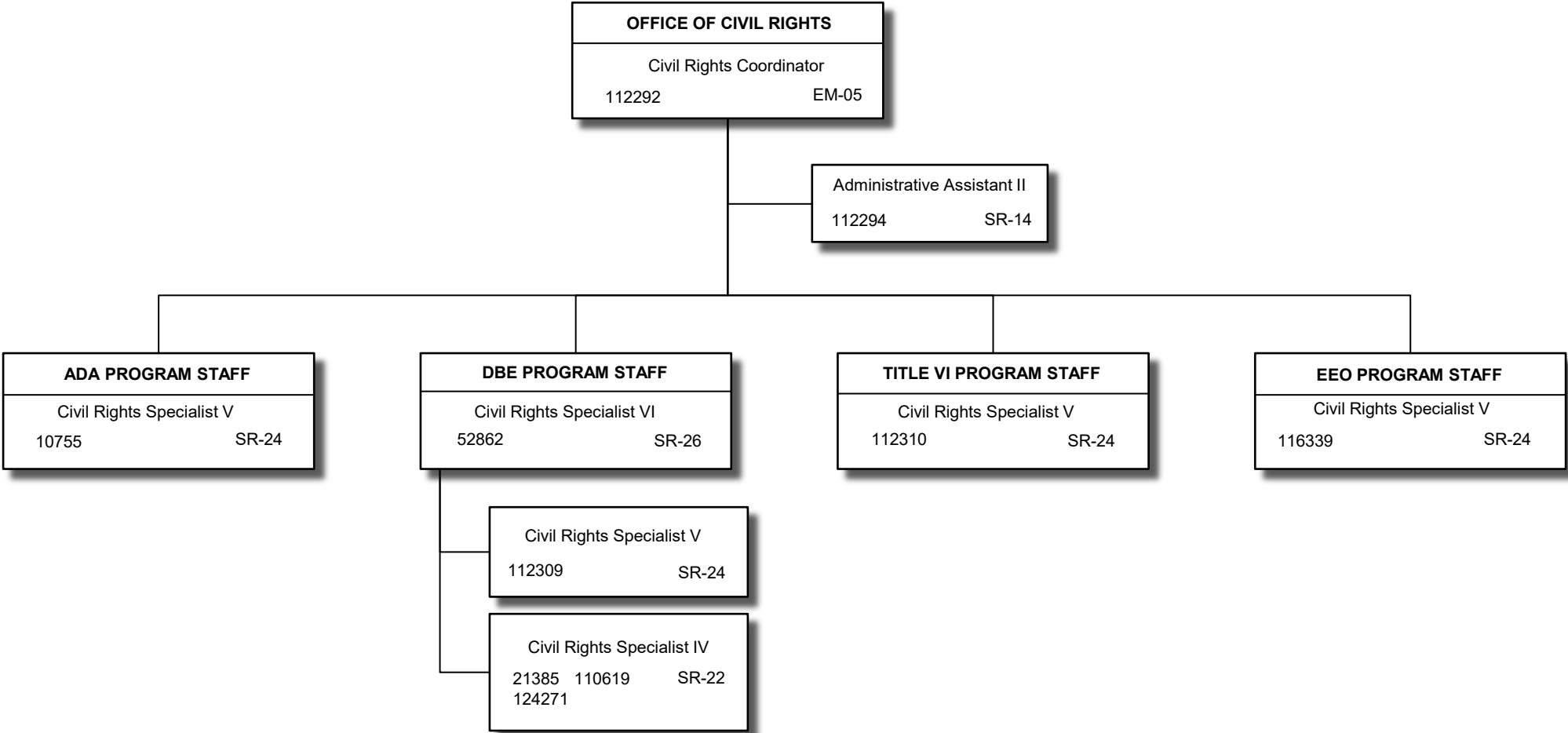
\*\* Exempt position NTE 12/31/27

\*\*\* For administrative purposes (TRN695), position was converted from temporary to permanent by ACT 164 / SLH 2023

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
ADMINISTRATION  
OFFICE OF CIVIL RIGHTS  
ORGANIZATION CHART



**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
**ADMINISTRATION**  
**OFFICE OF CIVIL RIGHTS**  
**POSITION ORGANIZATION CHART**



All special funded positions.

ATTACHMENT

C

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION OFFICE OF CIVIL RIGHTS  
200 Rodgers Blvd. Honolulu, Hawaii 96819  
Telephone: (808) 831-7901 Fax: (808) 831-7944 TTY: (808) 831-7931

**Bidder Registration Form**

Pursuant to 49 Code of Federal Regulation (CFR) § 26.11, the Hawaii Department of Transportation (HDOT) is required to create and maintain a bidders list consisting of all firms that bid on prime contracts or quoting subcontracts on federal assisted projects.

*All Prime Contractors bidding on this HDOT project shall submit this Bidder Registration Form. Additionally, non-Disadvantaged Business Enterprise subcontractors, consultants, vendors, suppliers, distributors, manufacturers, truckers, service providers, etc., bidding/quoting on this project with the prime contractor shall complete this form. All Bidder Registration Forms shall be completed in full and submitted with the proposal by the bid opening date; if not, the bid shall be considered not responsive and be rejected.*

PROJECT NAME AND NUMBER:

SOLICITATION NUMBER:

1 - Firm Information:

• ** Legal Name of Firm (dba if applicable):	
• Legal Name of Majority Owner (First, Middle, Last):	
• ** Gender of Majority Owner: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Not Specified	
• ** Ethnicity of Majority Owner: <input type="checkbox"/> Black American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Native American (includes Hawaiian) <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent-Asian American <input type="checkbox"/> Non-Minority	
• ** Mailing Address (include City/State and Zip Code):	
• Name of Contact:	
• Telephone Number:	• Fax Number:
• Email Address:	
• ** Primary NAICS Code for this project:	
• ** Secondary NAICS Code(s) for this project:	

2 - Check all that apply to the firm listed above:

Type of Firm:	Indicate Type of Work Performing on This Project:
<input type="checkbox"/> Prime Contractor	
<input type="checkbox"/> Subcontractor	
<input type="checkbox"/> Consultant	
<input type="checkbox"/> Material Supplier	
<input type="checkbox"/> Manufacturer	
<input type="checkbox"/> Other:	

\*\* 3 - Certified as a DBE in your principal place of business/home state?  Yes  No

\*\* 4 - Year firm was established:

5 - License Number:

\*\* 6 - Check which best indicates the firm's annual gross receipts:

- Less than \$1,000,000
- \$1,000,000 to \$2,999,999
- \$3,000,000 to \$5,999,999
- \$6,000,000 to \$9,999,999
- \$10,000,000 to \$16,999,999
- More than \$17,000,000

7 - Check the areas that the firm will likely bid:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Airports (FAA)<br><input type="checkbox"/> Harbors (FHWA/MARAD)<br><input type="checkbox"/> Highways (FHWA)<br><input type="checkbox"/> Dept. of Land and Natural Resources (FTA)<br><input type="checkbox"/> Oahu Metro. Planning Office (FHWA/FTA) | <input type="checkbox"/> Maui Metro. Planning Office (FHWA/FTA)<br><input type="checkbox"/> City & County of Honolulu (FHWA/FTA)<br><input type="checkbox"/> Hawaii County (FHWA/FTA)<br><input type="checkbox"/> Kauai County (FHWA/FTA)<br><input type="checkbox"/> Maui County (FHWA/FTA) | <input type="checkbox"/> Other – Specify: |
|---|--|---|

**\*\* Data required pursuant to 49 CFR § 26.11 and MUST be provided.**

Information on the status of bidders may be obtained by checking

<http://hidot.hawaii.gov/administration/bidders-registration-list-form/> or by calling (808) 831-7901.

For Official Use Only	Date received:	Initials:
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ATTACHMENT

D

HDOT DBE Directory:

<https://hdot.dbesystem.com/>



ATTACHMENT

E



## Disadvantaged Business Enterprise (DBE) Confirmation and Commitment Agreement Subcontractor, Manufacturer, or Supplier/Distributor

This commitment is subject to the award and receipt of a signed contract from the Hawaii Department of Transportation (HDOT) for the subject project. DBEs must be certified by the bid opening date. This form must be received by HDOT's Project Manager or designee by the close of business, 4:30 p.m. Hawaii Standard Time, five calendar days after bid opening – be sure to take internet and online traffic into consideration. Failure to provide required information sufficient to evaluate the bid/proposal shall be cause for bid/proposal rejection.

<b>Project #:</b>	<b>County:</b>
<b>NAICS CODE/DESCRIPTION OF WORK:</b>	<b>SECONDARY NAICS CODE:</b>

\*All quantities and units should match the bid tab item whenever possible.

The prime contractor shall inform HDOT of the dates when the subcontractor starts and completes all work under the subcontract.

<b>Estimated Beginning Date (Month/Year):</b>	<b>Estimated Completion Date (Month/Year):</b>
---	--

<b>SUBCONTRACTOR:</b>	Item No.	Item	Approx. Quantity	Unit	Unit Price	Amount
					\$	\$
					\$	\$
					\$	\$
					\$	\$
<b>TOTAL COMMITMENT AMOUNT</b>						\$

<b>MANUFACTURER:</b>	Item No.	Item	Approx. Quantity	Unit	Unit Price	Amount
					\$	\$
					\$	\$
<b>TOTAL COMMITMENT AMOUNT</b>						\$

<b>SUPPLIER/ DISTRIBUTOR:</b>	Item No.	Item	Approx. Quantity	Unit	Unit Price	Amount
					\$	\$
					\$	\$
<b>TOTAL COMMITMENT AMOUNT</b>						\$

The prime contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the contract DBE Requirements. **IMPORTANT! The signatures of the DBE, prime contractor, and subcontractor (only if the DBE will be a second-tier sub) confirms that all information on this Agreement is true and correct. Parties should sign Agreement in the order in which they are listed.**

<b>DBE NAME:</b>	Name/Title (please print):
Address:	Signature:
Phone:      Fax:	Date:
Email:	Name/Title (please print):
<b>Prime Contractor:</b>	Signature:
Address:	Date:
Phone:      Fax:	Name/Title (please print):
Email:	Signature:
<b>Subcontractor (only if the DBE will be a second tier sub):</b>	Date:
Address:	Signature:
Phone:      Fax:	Date:
Email:	Date:

HDOT retains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you.



## Disadvantaged Business Enterprise (DBE) Confirmation and Commitment Agreement Trucking Company

This commitment is subject to the award and receipt of a signed contract from the Hawaii Department of Transportation (HDOT) for the subject project. DBEs must be certified by the bid opening date. This form must be received by HDOT's Project Manager or designee by the close of business, 4:30 p.m. Hawaii Standard Time, five calendar days after bid opening – be sure to take internet and online traffic into consideration. Failure to provide required information sufficient to evaluate the bid/proposal shall be cause for bid/proposal rejection.

<b>Project #:</b>	<b>County:</b>
<b>NAICS CODE/DESCRIPTION OF WORK:</b>	<b>SECONDARY NAICS CODE:</b>

\*All quantities and units should match the bid tab item whenever possible.

The prime contractor shall inform HDOT the dates when the trucking firm starts and completes all work under the subcontract.

<b>Estimated Beginning Date (Month/Year):</b>	<b>Estimated Completion Date (Month/Year):</b>
---	--

TRUCKING COMPANY:	Item No.	Item Description	Unit	Unit Price / Rate	Amount
				\$	\$
				\$	\$
				\$	\$
<b>TOTAL COMMITMENT AMOUNT</b>					<b>\$</b>

1. Number of hours contracted or quantities to be hauled: \_\_\_\_\_
2. Number of fully operational trucks to be used: \_\_\_\_\_ Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_
3. Number of fully operational trucks owned by DBE: \_\_\_\_\_ Dump trucks: \_\_\_\_\_ Tractors/trailers: \_\_\_\_\_
4. If Owner Operators or additional trucking companies are to be used answer the following:

Name of Trucking Company	DBE Y/N	Estimated Dollar Amount to be Contracted	Number and Type of Trucks (specify)
		\$	
		\$	

The prime contractor certifies by signature on this agreement to utilize the DBE trucking company as listed on the agreement form. If a DBE trucking company is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the contract DBE requirements. **IMPORTANT! The signatures of the DBE, prime contractor, and subcontractor (only if the DBE will be a second-tier sub) confirms that all information on this Agreement is true and correct. Parties should sign Agreement in the order in which they are listed.**

<b>DBE NAME:</b>	Name/Title (please print):
Address:	Signature:
Phone:                      Fax:	
Email:	Date:
<b>Prime Contractor:</b>	Name/Title (please print):
Address:	Signature:
Phone:                      Fax:	
Email:	Date:
<b>Subcontractor (only if the DBE will be a second tier sub):</b>	Name/Title (please print):
Address:	Signature:
Phone:                      Fax:	
Email:	Date:

HDOT retains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you.



## Disadvantaged Business Enterprise (DBE) Contract Goal Verification and Good Faith Efforts (GFE) Documentation For Construction

<b>Project #:</b>	<b>County:</b>
<b>DBE Project Goal:</b>	<b>Prime Contractor:</b>

As required by the specifications "*Disadvantaged Business Enterprise Requirements*," the dollar amount of each subcontract (both DBE and non-DBE firms) for all subcontractors, manufacturers, suppliers, distributors, and trucking companies must be received by HDOT's Project Manager or designee by the close of business, 4:30 p.m. Hawaii Standard Time (HST), five calendar days after bid opening – be sure to take internet and online traffic into consideration. **Failure to provide required information sufficient to evaluate the bid/proposal shall be cause for bid/proposal rejection.**

Calculation of the DBE contract goal for this project is the proportionate contract dollar value of work performed, materials, and goods to be supplied by DBEs. DBE credit shall not be given for mobilization, force account items, and allowance items. This DBE contract goal is applicable to all the contract work performed for this project and is calculated as follows:

1. DBE contract goal percentage = Contract Dollar Value of the work to be performed by DBE subcontractors and manufacturers, plus 60 percent of the contract dollar value of DBE suppliers, plus 40 percent of the contract dollar value of DBE distributors, divided by the sum of all contract items (sum of all contract items is the total amount for comparison of bids less mobilization, force account items, and allowance items).
  
2. The Department shall adjust the bidder's/offeror's DBE contract goal to the amount of the project goal if it finds that the bidder/offeror met the goal but erroneously calculated a lower percentage. If the amount the bidder/offeror submits as its contract goal exceeds the project goal, the bidder/offeror shall be held to the higher goal.

Name of Subcontractor, Supplier, Distributor, Manufacturer, and/or Trucking Company	DBE (Y/N)	Bid Item Number and Description	Approx. Quantity/Hours	Unit	Unit Price/Rate	Dollar Amount

A. Dollar amount of the work to be performed by DBE subcontractors, manufacturers, and/or trucking companies, plus 60 percent of the dollar amount of DBE suppliers and/or 40 percent of the dollar amount of DBE distributors	
B. Sum of all work items less mobilization, force account items, allowance items	
<b>A/B = DBE contract goal</b>	

NAME and SIGNATURE of AUTHORIZED REPRESENTATIVE of PRIME CONTRACTOR: \_\_\_\_\_ DATE: \_\_\_\_\_

## Summary of Good Faith Efforts (GFE)

As required by the specifications “*Disadvantaged Business Enterprise Requirements*,” documentation of GFE shall be received by HDOT’s Project Manager or designee by the close of business, 4:30 p.m. HST five calendar days after bid opening – be sure to take internet and online traffic into consideration. **The bidder/offeror shall respond to the following questions and describe efforts to obtain DBE participation whether or not the DBE project goal is met.** Responses must be sufficient to properly evaluate the bidder’s/offeror’s good faith efforts. **Copies of correspondence return receipts, telephone logs, or other documentation will be required to support GFE.** Attach additional sheets, if necessary. Based on responses given and documents provided, HDOT shall make a determination of the bidders’ GFE. **Failure to provide required information sufficient to evaluate the bid/proposal shall be cause for bid/proposal rejection.**

1. Did you submit the required information by the close of business, 4:30 p.m. HST, five calendar days after bid opening (i.e. DBE name, address, NAICS code, description of work, project name, and number)?
2. Explain your GFE if any, to solicit through all reasonable and available means (e.g. attendance at pre-bid 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.
  - a. Explain your GFE if any, to solicit the participation of potential DBEs as early in the procurement process as practicable.
  - b. Explain your GFE if any, to allow sufficient time for the DBEs to properly inquire about the project and respond to the solicitation.
  - c. Explain your GFE if any, to take appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in this project.
3. Explain your GFE if any, to identify and break up portions of work that can be performed by DBEs in order to increase the likelihood that a DBE will be able to participate, and that the DBE goal could be achieved (e.g. breaking out contract items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation even when you might otherwise prefer to self-perform these work items).
4. Explain your GFE if any, to make available or provide interested DBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner, and assist them in responding to your solicitation.
5. Explain your GFE if any, to negotiate in good faith with interested DBEs. Evidence of such negotiations includes documenting:
  - a) the names, addresses and telephone numbers of DBEs that were contacted/considered;
  - b) a description of the information that was provided to DBEs regarding the plans and specifications selected for subcontracting; and
  - c) detailed explanation for not utilizing individual DBEs on the project.

NAME and SIGNATURE of AUTHORIZED REPRESENTATIVE of PRIME CONTRACTOR:

DATE:

6. Did you solely rely on price in determining whether to use a DBE? If yes please explain. The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for your refusal to utilize a DBE or failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire to perform a portion of the work with your own forces, that could have been undertaken by an available DBE, does not relieve you 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.
7. Did you reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities? If yes, please explain. The DBEs standing within the industry, membership in specific groups, organizations or associates, and political or social affiliation are not legitimate basis for the rejection or non-solicitation of bids from particular DBEs.
8. Explain your GFE to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
9. Explain your GFE if any, to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. If you selected a non-DBE over a DBE subcontractor, please provide the quotes of each DBE and non-DBE subcontractor submitted to you for work on the contract; and for each DBE that was contacted but not utilized for a contract, provide a detailed written explanation for each DBE detailing the reasons for not utilizing or allowing the DBE to participate in the contract.
11. Explain your GFE if any, to effectively use the services of available minority/women community organizations, minority/women business groups, contractors' groups, and local, state and federal minority/women business assistance offices or other organizations to provide assistance in recruitment and placement of DBEs.

\*\* PLEASE NOTE - At a minimum, HDOT will review the performance of other bidders in meeting the contract goal. Meeting or exceeding average DBE participation obtained by other bidders is a factor to be taken into consideration for the apparent lower bidder, despite failing to meet the contract goal.

NAME and SIGNATURE of AUTHORIZED REPRESENTATIVE of PRIME CONTRACTOR:

DATE:



U.S. Department of  
Transportation

# DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:	Total Subcontract/Purchase Order Amount: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Authorized DBE Representative (Name and Title):	NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment?  YES  NO  
**(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)**
- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?  
 YES  NO **(If "YES," Go to Question 2. If "NO" Continue.)**
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?  
 YES  NO\* **(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.**

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?  
 YES  NO<sup>1</sup>  
**(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)**

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?  YES<sup>2</sup>  NO<sup>3</sup>
- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

**Printed Name and Signature of DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

**Printed Name and Signature of Bidder's Authorized Representative:**

ATTACHMENT

F



## Administrative Enforcement Mechanisms

HDOT has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- 1) Withholding monthly progress payments
- 2) Assessing sanctions
- 3) Liquidated damages, and/or
- 4) Disqualifying the contractor from future bidding as non-responsible

ATTACHMENT

G

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT

H

**MEMORANDUM OF UNDERSTANDING**

**Between**

**STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION**

**And**

**CITY AND COUNTY OF HONOLULU, DEPARTMENT OF TRANSPORTATION SERVICES; CITY AND COUNTY OF HONOLULU, HONOLULU AUTHORITY FOR RAPID TRANSPORTATION; HAWAII COUNTY, DEPARTMENT OF PUBLIC WORKS; MAUI COUNTY, DEPARTMENT OF PUBLIC WORKS; 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, renewal of 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 Highway Administration (FHWA) and/or the Federal Transit Administration (FTA) and are located within HDOT's organizational structure.

**II. CERTIFYING AGENCY:**

Hawaii Department of Transportation

**III. PARTICIPANTS:**

HDOT; City & County of Honolulu, Department of Transportation Services (DTS); City and County of Honolulu, Honolulu Authority for Rapid transportation (HART); Hawaii County, Department of Public Works (DPW-H); Maui County, Department of Public Works (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

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 renewal of certification will be directed to the HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.
2. The DBE Program 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 renewal or decertification of an existing DBE firm.
3. The Civil Rights Coordinator shall process and hear appeals made by DBE firms that have been de-certified. As stated in the HDOT's DBE Program Plan, the Civil Rights Coordinator shall not be involved in the initial de-certification review and determination. The Civil Rights Coordinator 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 Plan was approved by the USDOT in February 2005 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 renewal of 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, 26.86, 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 make available on its website a DBE Directory consisting of all eligible DBEs. The DBE Directory will include the firm's name, address, type of work that the firm has been certified to perform, and the date of the most recent certification. The DBE Directory shall be updated weekly and posted on HDOT's website.
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, 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, 1200 New Jersey Ave., S.E. 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 Civil Rights Coordinator or a designated representative, who 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 1200 New Jersey Ave., S.E. 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 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 FHWA.

**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

  
\_\_\_\_\_  
GLENN M. OKIMOTO  
Director

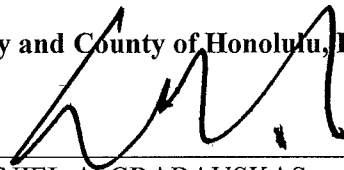
SEP 10 2013  
\_\_\_\_\_  
Date

City and County of Honolulu, Department of Transportation Services

  
\_\_\_\_\_  
MICHAEL D. FORMBY  
Director

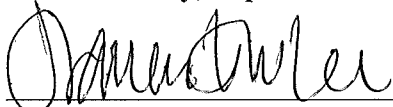
9/12/13  
\_\_\_\_\_  
Date

City and County of Honolulu, Honolulu Authority for Rapid Transportation

  
\_\_\_\_\_  
DANIEL A. GRABAUSKAS  
Executive Director and CEO

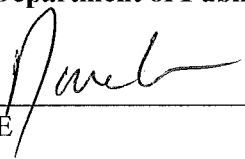
9/17/13  
\_\_\_\_\_  
Date

Hawaii County, Department of Public Works

  
\_\_\_\_\_  
WARREN H.W. LEE  
Director


30 Sep 2013  
\_\_\_\_\_  
Date

Maui County, Department of Public Works and Environmental Management

  
\_\_\_\_\_  
DAVID GOODE  
Director

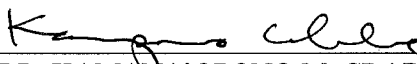
10-29-13  
\_\_\_\_\_  
Date

Kauai County, Department of Public Works

  
\_\_\_\_\_  
LARRY DILL  
County Engineer

11-18-13  
\_\_\_\_\_  
Date

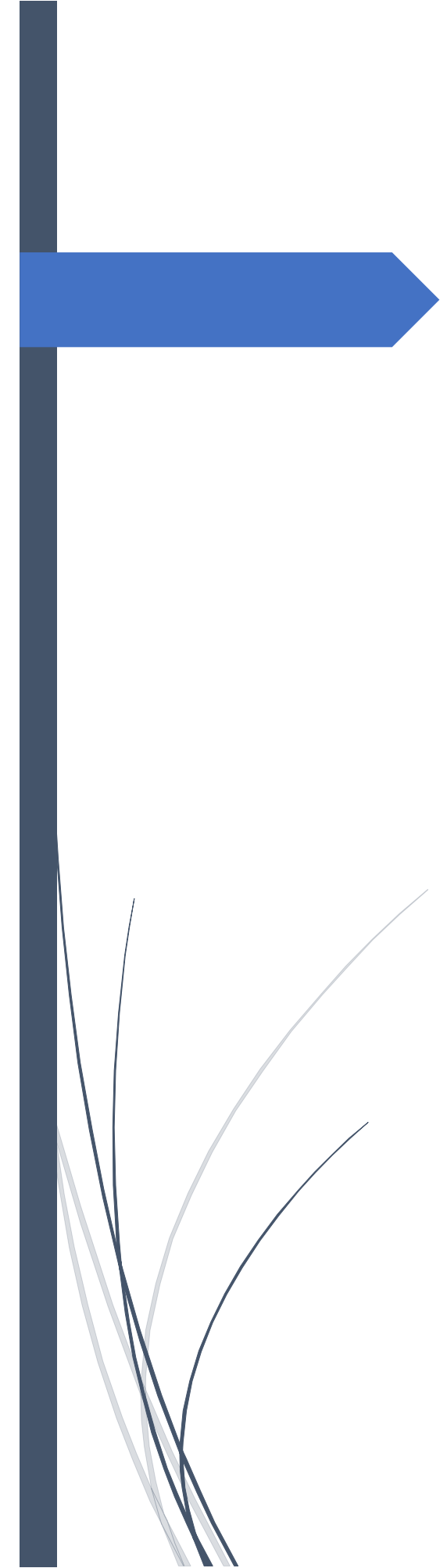
Office of Hawaiian Affairs

  
\_\_\_\_\_  
DR. KAMANANA'OPONO M. CRABBE  
Administrator

12/4/13  
\_\_\_\_\_  
Date

# ATTACHMENT

## I



# SMALL BUSINESS UTILIZATION PLAN

December 2024

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## Introduction

The Hawaii Department of Transportation (HDOT), Office of Civil Rights (OCR) administers the Disadvantaged Business Enterprise (DBE) Program pursuant to Title 49, Code of Federal Regulations (CFR), Parts 23 and 26. As such, HDOT is committed to non-discrimination based on race, color, national origin, and sex, in its implementation of the DBE Program and the award of its contracts.

In accordance with 49 CFR § 26.39 of the DBE Regulations, this Small Business Utilization Plan was developed to incorporate a small business element into the DBE Program Plan to facilitate participation by small businesses on federal-aid contracts.

## Regulatory Requirements

CFR § 26.39 of the DBE Regulations states:

“(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program. As part of this program element you may include, but are not limited to, the following strategies:

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, \$1 million).
- (2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.”

## Definition of a Small Business

A small business is defined pursuant to section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed

the cap on average annual gross receipts specified in 49 CFR § 26.65(b). The current cap is thirty million seven hundred twenty thousand dollars (\$30,720,000.00) and is adjusted periodically for inflation.

A firm participating in HDOT's small business program must provide evidence that it is a small business concern, pursuant to the SBA's business size standards. The following documentation shall be accepted:

1. Federal Tax returns listing the firm's gross revenues
2. Financial Statement
3. Proof of current SBA8(a) or DBE certification

### **Personal Net Worth**

The majority owner(s) (i.e., owns 51 percent or more) of the DBE applicant firm must have a personal net worth that does not exceed two million forty-seven thousand dollars (\$2,047,000.00). HDOT shall require the majority owner to submit a Personal Financial Statement and the United States (U.S.) Individual Tax Return for the majority owner(s) for the three most recent years.

### **Strategies to Foster Small Business Participation**

The HDOT shall implement the Small Business Utilization Plan in two phases. Phase I shall include identifying potential small businesses already contracted by HDOT, and surveying project managers and prime contractors to determine what types of work may be performed by small businesses. Phase II shall include reviewing procurement methods to facilitate participation by small businesses identified in Phase I. In particular, the potential to unbundle large design-build contracts will be assessed on a project-by-project basis. This second phase shall also include outreach activities, networking opportunities, and training workshops to assist small businesses to compete in HDOT and other government contracts. Also in this phase, outreach activities on the neighbor islands shall be conducted to foster small business participation on a statewide basis.

#### **Phase I**

HDOT believes that many of its former and existing contractors and subcontractors may qualify as a small business. As such, Phase I will include an assessment of prime contractors and subcontractors that have performed work on HDOT contracts to determine if any of the firms may be categorized as a small business. HDOT shall request that the firms identify themselves as a small business in writing and submit this information to the HDOT DBE Program Office. If the firm falls under the business size standards for their primary North American Industry Classification System code, HDOT shall request that the majority owner complete the personal financial statement to determine his/her personal net worth.

In addition to identifying contractors that may be categorized as a small business, DBE Program Staff shall disseminate surveys to general contractors associations, and HDOT project managers to determine what type of work may likely be contracted and subcontracted to small businesses.

A sample of this survey is attached as Appendix A. The survey results will assist the DBE Program Office to target outreach efforts to members of small business organizations, trade groups, and professional associations. Such outreach will foster small business participation by providing companies with information on HDOT projects, bid openings, upcoming Request for Proposals, and Request for Qualifications.

The surveys will also serve as a mechanism to identify barriers to small business participation on HDOT's federal and state projects. Once barriers are identified, HDOT shall develop a plan of action to replace these barriers with opportunities through procurement, outreach, and if necessary, policy changes.

## **Phase II**

In Phase II, HDOT shall examine the possibility of unbundling large contracts, such as design-build contracts, to foster small business participation. Contracts that can be performed in phases may be identified for prime contractors that meet the definition of a small business. HDOT DBE Program Office staff shall work with the HDOT's Contracts Officer to develop a methodology to determine which contracts can be feasibly unbundled without causing undue financial hardship to HDOT or its sub-recipients.

In addition to unbundling contracts, the HDOT DBE Program Office shall conduct extensive outreach to small businesses through networking opportunities, training workshops, and small business fairs. To this end, the DBE Program Office will enter into a co-sponsorship Agreement with the U.S. SBA (Appendix B) to conduct training workshops that help small businesses develop and grow to compete in the open marketplace. Such training workshops include a three-month Business Development Series, in which companies learn about government contracting, marketing, and financing. In addition, the DBE Program Office has scheduled small business fairs and one-on-one match-making seminars to facilitate networking between prime contractors and subcontractors. The outreach and training shall be continuous throughout the year, and shall not be limited to this phase of the Small Business Utilization Plan.

We anticipate Phase II to be implemented approximately six to eight months from the date of submittal of this plan.

## **Appendices**

Appendix A – Project Engineer and General Contractor Survey

Appendix B – Co-Sponsorship with U.S. SBA

# Strategies to Foster Small Business Participation PROEJCT ENGINEERS

October 2024 to Present

- Identifying potential small businesses already contracted by HDOT
- Surveying project managers and prime contractors
- Determine what types of work may be performed by small businesses



\* Required

\* This form will record your name, please fill your name.

1. Did you know that project engineers are responsible for assisting OCR establish the DBE contract goal? \*

Yes

No



2. Did you encounter any difficulties in providing OCR information to set a DBE project goal? \*

- Yes
- No
- Maybe

3. If you answered "Yes" or "Maybe", please indicate the difficulties you had in providing OCR information to set the DBE project goal. \*

4. On upcoming federal projects, what types of subcontracting opportunities do you foresee? \*

5. On federal aide projects with subcontracting opportunities, what types of work would you estimate to have a shortage of certified DBEs ready, willing and able to subcontract with prime contractors? \*

6. What type of DBE firms are over utilized on federal aid projects? Select ALL that apply. \*

- Trucking/hauling
- Traffic control
- Supplier/Regular dealer
- Striping/pavement markings
- Masonry/concrete
- Electrical work
- Other

7. If you answered "Other", please indicate the type of firm you are referring to. \*

8. Do you feel additional DBE training is needed? If so, in what areas? Select ALL that apply. \*

- DBE goal calculations
- Commercially Useful Function Review
- Prompt Payment
- Good Faith Efforts - after contract award
- Good Faith Efforts - prior to contract award
- Other

9. If you answered "Other", please indicate what areas you would like training in. \*

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# Strategies to Foster Small Business Participation GENERAL CONTRACTOR

October 2024 to Present

Hawaii Department of Transportation (HDOT) wishes to foster small business participation in its federal-aid contracting by developing a plan to increase the participation of disadvantaged business enterprise (DBE) and non-DBEs. We are conducting a survey to determine ways to foster participation by ALL small businesses.



\* Required

\* This form will record your name, please fill your name.

1. Are you responsible for bidding on HDOT federal-aid projects? \*

Yes

No

Maybe

2. If you answered "Yes", have you ever bid on a project with a DBE goal? Please provide the name of the name of the project(s). \*

3. Have you ever failed to meet the DBE goal on any project at the time of bid opening? \*

Yes

No

4. If you answered "Yes", what was the reason for not meeting the goal? \*

5. On federal-aid projects with subcontracting opportunities, what type of work would you estimate to have a shortage of available DBEs? \*

6. For what types of work would you say there may be an over concentration of DBEs? \*

7. Can you provide the name(s) of any firm(s) that you already work with that may be interesting in becoming a DBE? \*

Yes

No

8. If you answered "Yes", please provide the name of the firm and their contact information. \*

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This content is neither created nor endorsed by Microsoft. The data you submit will be sent to the form owner.



**COSPONSORSHIP AGREEMENT**

**between**

**U.S. Small Business Administration  
Hawaii District Office**

**and**

**State of Hawaii Department of Transportation, Office of Civil Rights  
Disadvantaged Business Enterprise**

**Authorization No: 25-2-C**

**1) Parties**

This Cosponsorship Agreement (“Agreement”) is between the U.S. Small Business Administration (“SBA”) and the following Cosponsor(s) (individually a “Cosponsor” or collectively the “Cosponsors” or “Parties”):

- a) State of Hawaii Transportation, Office of Civil Rights Disadvantaged Business Enterprise (DOT) Honolulu, Hawaii 96813  
Description of Cosponsor: State of Hawaii Department of Transportation, Office of Civil Rights Disadvantaged Business Enterprise is a State Agency that was established to ensure that firms owned by minorities, women and other socially and economically disadvantaged persons have an equal opportunity to participate in U.S. DOT-assisted projects. The goal of the program is to level the playing field on which DBEs may compete for contracts and subcontracts in the transportation industry.  
Disadvantaged Business Enterprise (DBE) is a for-profit small business concern that is at least 51% owned and controlled by one or more U. S. citizens or permanent residents who are both socially and economically disadvantaged

**2) Purpose**

The purpose of this Agreement is to describe the rights and responsibilities of each Cosponsor regarding the activity described below pursuant to SBA’s Cosponsorship Authority, section 132(a) of Division K in Public Law No. 108-447, as extended by the annual Appropriations Act, and 13 C.F.R. Part 106. The Agreement encompasses this document and all Attachments. The Cosponsor shall comply with all applicable laws and regulations in its performance under this Agreement. Except as properly amended, this Agreement is the final and complete agreement of the Cosponsors. It does not authorize the expenditure of any funds, other than by express terms of this Agreement nor does it create special consideration by SBA regarding any other matter. This Agreement shall not limit any Cosponsor from participating in similar activities or arrangements with other entities.

**3) Cosponsored Activity**

- a) Name of Activity/Event(s): Contracting, Business Matchmaking, Financing, Lender’s Conference and Small Business Outreach Events
- b) Date(s): January 1, 2025, thru September 30, 2025
- c) Place: Hawaii Statewide Locations TBD
- d) Estimated Number of Attendees: 400
- e) Budgeted Expenses of Cosponsored Activity: 0

- f) Summary of Events/Activity: SBA, and the State of Hawaii Department of Transportation, Office of Civil Rights Disadvantaged Business Enterprise will cosponsor monthly training workshops throughout the year for small businesses seeking information on starting and growing a small business. Each event may include government agencies and non-profit organizations guest speakers. These workshops will include System for Award Management (SAM.gov), Capability Statement, Subcontracting Opportunities, Business Matchmaking and other small business topics

**4) Cosponsors' Responsibilities**

The Cosponsors agree that each will do the following in support of the Cosponsored Activity:

- a) SBA will:
  - Participate in the overall planning, marketing and execution of the cosponsored event
  - Provide speakers for the workshops
  - Publicize the events through press release, SBA web calendar and email blast
  - Collect the registration and attendee sign-up sheets for all workshops
  - Assist with providing venue
  - Have a final draft approval of all cosponsored materials
- Participate in the overall planning, marketing and execution of the cosponsored event.
- b) DOT will:
  - Participate in the overall planning, marketing and execution of the cosponsored event
  - Assist with planning and marketing of the workshops
  - Assist with cosponsored material by designing flyer (if requested)
  - Collect registration for Matchmaking
  - Assist with providing venue
  - Assist with finding speakers
  - Provide speakers for the workshops

**5) Budget**

There are no anticipated expenses associated with conducting the Cosponsored Activity. Should unanticipated expenses for the cosponsored activity be incurred, the cosponsors will prepare an itemized budget to reflect such expenses and whether such expenses were met by cash or in-kind contributions.

**6) Fiscal Agent and Fees**

Section Intentionally Deleted

**7) No Profit**

Each Cosponsor agrees that it will not make a profit on this event.

**8) Appropriate Recognition**

Cosponsor will include appropriate recognition for SBA in all materials created for this activity. Each Cosponsor will be given appropriate recognition by SBA for Cosponsorship of the activity outlined in this Agreement, however such recognition does not constitute an express or implied endorsement by SBA of any of the opinions, products or services of any Cosponsor, its subsidiaries or its contractors. As such, all appropriate disclaimers and authorization numbers will be visible on all Cosponsored Materials. SBA has the right to determine what constitutes appropriate recognition, in its reasonable discretion.

**9) Cosponsored Material**



Cosponsored Material refers to all print and electronic materials used to promote the activity or material used during or as the Activity. This includes, but is not limited to, flyers, brochures, mailers, email promotions, web pages, promotional items, or any other physical, print or electronic item bearing SBA's name or logo. Cosponsors grant SBA a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license to use and to create derivative works of any material developed for the Cosponsorship outlined in this Agreement. Cosponsors agree that SBA will review and have final approval of all Cosponsored Materials to ensure compliance with Federal law, regulations, and SBA policies.

**10) Use of SBA Logo**

Each Cosponsor agrees to use its name and logo in connection with SBA's name and logo on Cosponsored Materials or in factual publicity only for the Cosponsored Activity as outlined in this Agreement. Factual publicity includes dates, times, locations, purposes, agendas, fees and speakers involved with the activity. Any materials (print or electronic) bearing SBA's logo must include the appropriate disclaimers as outlined in the "Disclaimers" paragraph and be approved in advance by SBA's Responsible Program Official. Cosponsors are not permitted to use SBA's name or logo for commercial purposes, such as advertising a product or service.

**11) Licenses**

SBA will possess an irrevocable, non-exclusive, worldwide, royalty-free license to use any materials developed for the Cosponsored Activity outlined in this Agreement. DOT will be responsible for obtaining all rights, fees and clearances, if necessary, for the purpose of SBA's license. Should SBA decide to use Cosponsored Material that contains copyrighted material after the term of this Agreement, SBA will remove DOT's logo but retain a copyright notice.

**12) Political Speech**

It is SBA's policy that public officials or candidates for public office (including their staff), whether a direct Cosponsor or invitee of a Cosponsor, be informed by the SBA that they may not include political comment as part of their participation. Political comment includes speech or remarks designed to facilitate, or be directed toward, the success or failure of a political party, candidate for public office, or political group.

**13) Website and Online Registrations**

The Cosponsors will create a website and/or online registration located using the SBA Hawaii District Office Eventbrite to assist with registration, participant communication, and feedback. Cosponsors agree there will be no commercial advertisements or commercial promotions of any kind, including its own products or services, displayed on this Cosponsored Site. All online activities will be accessible to persons with disabilities. Online registration will only include the questions necessary to attend the event. Affirmative opt-in is required for future communication to registrants/attendees.

**14) Disclaimers**

All Cosponsored Materials, print or electronic, must be approved in advance by SBA's Responsible Program Official listed in this Agreement and contain the following statement(s):

- a) Cosponsorship Authorization #25-2-C. SBA's participation in this Cosponsored Activity is not an endorsement of the views, opinions, products or services of any Cosponsor or other person or entity. All SBA programs and services are extended to the public on a nondiscriminatory basis.
- b) Reasonable arrangements for persons with disabilities will be made if requested at least two weeks in advance. Contact: Joyce Tamayose-Quinn, (808) 460-8969.
- c) This website is provided as a public service under Cosponsorship Authorization #25-2-C. It is not an official U.S. government website and may contain links to non-U.S. government information. Inclusion of such links does not constitute or imply an endorsement by SBA. SBA is not responsible for the content, accuracy, relevance, timeliness or completeness of linked information. Please use caution when considering a product, service or opinion offered by a linked website.

**15) Responsible Program Official**

The SBA Responsible Program Official for this Cosponsored Activity is Hazel Beck, Deputy District Director.

**16) Points of Contact**

The respective Points of Contact for this Cosponsorship will be Daniel Williams, [daniel.k.williams@hawaii.gov](mailto:daniel.k.williams@hawaii.gov), 808-831-7914 for Hawaii DOT and the Responsible Program Official Mary Dale, [Mary.Dale@sba.gov](mailto:Mary.Dale@sba.gov) Economic Development Specialist, 808/460-8970 The respective Points of Contact for this Cosponsored Activity will be for SBA. These individuals will facilitate contact between the Cosponsors to plan, organize and execute the Activity contemplated in this Agreement.

**17) Additional Cosponsors**



The Cosponsors agree that other entities may join this Agreement as Additional Cosponsors to help plan, market and participate in the Activity. The Cosponsors agree that Additional Cosponsors may join this Agreement upon execution of a Joinder Agreement. The Cosponsors agree that SBA may execute all Joinder Agreements with additional Cosponsors on behalf of all Cosponsors.

**18) Term, Amendment and Termination**

This Agreement will take effect upon signature of all Cosponsors and will remain in effect through September 30, 2025. This Agreement can only be amended in writing. Any Cosponsor may terminate its participation in the activity upon 30 calendar days advance written notice to the other Cosponsors. Termination by one cosponsor will not affect continued participation by remaining cosponsors. Such termination will not require changes to materials already produced and will not entitle the terminating cosponsor to a return of funds or property contributed.

**19) Signature**

Each of the persons signing this Agreement represents that he/she has the authority to enter into this Agreement on behalf of the entity involved. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

SBA:	DocuSigned by:  <small>6FB4AADC36C0440...</small>	10/29/2024
	Han Nguyen Associate Administrator, Communications and Public Liaison	Date
DOT:	Signed by:  <small>05F0897360D9446...</small>	10/29/2024
	Daniel Williams DBE Program Supervisor	Date

## **Attachment A – Proposed Workshops and Agenda**

### **Small Business Workshop Topics –**

1. Business Matchmaking
2. Access to Capital
3. Lender's Conference
4. Creating a Capability Statement
5. Department of Labor Regulations
6. Bonding
7. How to Do Business with the Government
8. Cyber Security Awareness
9. Small Business Matchmaking
10. Other contracting related activities

Speakers: A representative from DOT and SBA will serve as the primary speakers. Subject matter experts may be invited as guest speakers.

### **AGENDA OUTLINE**

- **Welcome and Introduction**
- **Topic**
- **Learning content and participant activity (if applicable)**
- **Q&A**
- **One on One Counseling**
- **Closing**

# ATTACHMENT

J

**HAWAII DEPARTMENT OF TRANSPORTATION (HDOT)  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
COMPLAINT PROCEDURES**

Purpose: The attached form is for use by any affected business or person who believes that a recipient, subrecipient, or business failed to carry out its obligations pursuant to the requirements of 49 Code of Federal Regulations (CFR) Part 23 and/or 49 CFR Part 26 (or other related statutes, contract, or subcontract). The HDOT DBE complaint process provides a means to submit allegations of noncompliance regarding matters believed to be the responsibility of a recipient, subrecipient, or business. Such allegations include, but are not limited to, procedural deficiencies, prompt payment, or other activities believed to be in violation of the DBE requirements.

Filing Instructions: All complaints must be filed no later than 180 days from the date of the alleged violation of 49 CFR Part 23 and/or 49 CFR Part 26 (or other related statute, contract, or subcontract). If you need assistance in completing the complaint form or require it in an accessible format, including any other language, please contact the HDOT Office of Civil Rights (OCR) at (808) 831-7901. Please send the signed complaint form along with the attached “COMPLAINANT CONSENT/RELEASE FORM” (pages 1-3) via email to HDOT-DBE@hawaii.gov, or regular mail to:

Hawaii State Department of Transportation  
Office of Civil Rights  
Attention: DBE Program Supervisor  
200 Rodgers Boulevard  
Honolulu, HI 96819

These procedures do not deny or limit the right of a complainant to file a formal complaint with the United States Department of Transportation (USDOT).

Disposition of Complaints: Complaints should contain specific information to support each allegation. Any complaint that, on its face, lacks evidence supporting the allegations may be dismissed or held until additional information is obtained from the Complainant. Upon review of each complaint received by the HDOT OCR, the following actions will be taken, as appropriate:

- Notify Complainant of acceptance, dismissal, or make request for additional information;
- Notify Complainant of lack of jurisdiction and transfer the complaint to another government agency;
- Notify the Complainant of referral to the appropriate operating administration; and
- Where the HDOT OCR has completed an investigation, the Complainant and Respondent will be notified by letter.

Confidentiality: HDOT OCR will protect the identity of Complainants to the maximum extent possible by law. Any individual filing a complaint may request to remain anonymous by indicating so in the attached “COMPLAINANT CONSENT/RELEASE FORM”; however, doing so may impede the completion of an investigation and resolution of any matters in which the Complainant or the Federal Aviation Administration hold interest.

## HDOT DBE PROGRAM COMPLAINT FORM

1. Name of recipient, subrecipient, or business:

---

2. State or Federal Project number and description of project on which alleged violation(s) occurred:

---

3. **Complaint Description**

Check one or more boxes, indicating the area(s) of concern:

- Good Faith Effort Determinations (pre-award/post-award)
- Goal-setting
- Monitoring and Enforcement of Commercially Useful Function
- Counting/Crediting of DBE Participation
- Termination (including substitution or modification of work under commitment)
- Prompt Payment/Return of Retainage
- Eligibility
- Suspected Fraud or Criminal Activity
- Other (e.g. Discriminatory action based on race, sex, color, or national origin)

Please list below each allegation, including essential elements of information (who, what, where, when). Provide the date of each occurrence and describe how it violates the requirement(s). Attach any evidence or documentation supporting your claim(s). If you need additional space, you may do so on a separate page (attach to this document).

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## HDOT COMPLAINANT CONSENT/RELEASE FORM

Complainant (Name and Title/Company Name):

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Address:

---

State or Federal Project number and description of project:

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Please read the information below, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information. As a complainant, I understand that in the course of an investigation it may become necessary for HDOT to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of HDOT to honor requests under the Freedom of Information Act. I understand that it may be necessary for HDOT to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by USDOT's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by the USDOT.

### CONSENT/RELEASE

- CONSENT - I have read and understand the above information and authorize HDOT to reveal my identity to persons at the organization or institution under investigation. I hereby authorize HDOT to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.
  
- CONSENT DENIED - I have read and understand the above information and do not want HDOT to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## **NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION**

### **NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES**

Complainants and individuals who cooperate in an investigation, proceeding, or hearing conducted by HDOT are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce, or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.
- The laws and regulations provide that no recipient, contractor, or any other participant in the DBE program shall intimidate, threaten, coerce, or discriminate against any individual or firm because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.
- Information obtained from the complainant or other individual which is maintained in HDOT's investigative files may be exempt from disclosure under the Freedom of Information Act, the Uniform Information Practices Act, or the Hawaii Privacy Law if release of such information would constitute an unwarranted invasion of personal privacy.

There are three laws governing personal information submitted to HDOT: the Freedom of Information Act (5 United States Code § 552), the Uniform Information Practices Act (Hawaii Revised Statutes (HRS) Chapter 92F), and the Hawaii Privacy Law (HRS § 711-1111).

The Freedom of Information Act gives the public access to certain files and records of HDOT. Individuals can obtain items from many categories of records of HDOT -- not just materials that apply to them personally. HDOT must honor requests under the Freedom of Information Act, and also Disclosure of Personal Records under HRS § 92F, with some exceptions. HDOT generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, HDOT may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual.

Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."

The Uniform Information Practices Act is intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible, while balancing personal privacy rights guaranteed under the Hawaii State Constitution.

The Hawaii Privacy Law is intended to protect an individual's right to privacy, except in the execution of public duty or as authorized by law.

Persons who submit information to HDOT should know that:

- HDOT is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients, contractors, or any other participants in the DBE program. HDOT also is authorized to conduct reviews of recipients, contractors, or any other participants in the DBE program to assess their compliance with civil rights laws.
- Information that HDOT collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. HDOT staff may need to reveal certain information to persons outside HDOT in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. HDOT also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act.
- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. HDOT will not release the information to any other agency or individual unless the person who supplied the information submits a written consent, with some exceptions. One of these exceptions is when release is required under the Freedom of Information Act.
- No law requires a complainant to give personal information to HDOT, and no sanctions will be imposed on complainants or other individuals who deny HDOT's request. However, if HDOT fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.
- HDOT does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under the Freedom of Information Act. HDOT will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the Freedom of Information Act or otherwise required by law.