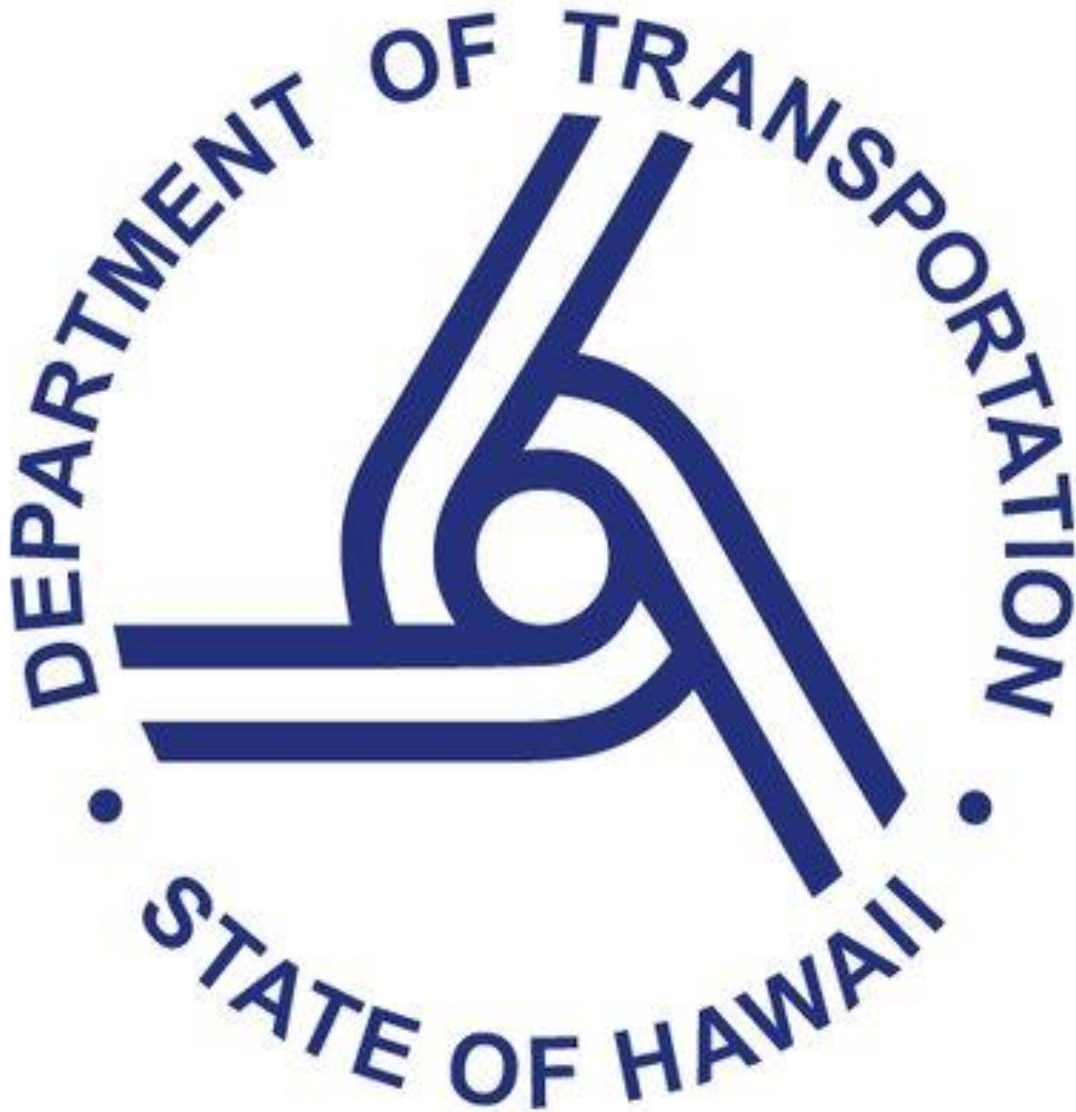


**Hawaii Department of Transportation
Federal Transit Administration
Disadvantaged Business Enterprise
Program Plan**



January 2025

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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.

It is the policy of HDOT to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in USDOT-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 USDOT-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 marketplace 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.



EDWIN H. SNIFFEN
Director of Transportation

Jan 22, 2025

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 - Objectives

The objectives are found 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.

HDOT is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

HDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S.C., or Titles I, II, and V of the TEA-21, Pub. L. 105-178.

Section 26.5 - Definitions

HDOT will use terms in this program that have their meanings defined in Section 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/.

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 - Record Keeping Requirements/Reporting to USDOT

As FTA recipients, HDOT will report DBE participation for the Oahu Metropolitan Planning Organization (OMPO), Maui Metropolitan Planning Organization (MMPO), Maui County

Department of Transportation, Kauai County Department of Transportation, and Hawaii County Mass Transit Agency semi-annually on the Uniform Report of DBE Awards or Commitments and Payments to the FTA. Reports will be submitted by June 1st for the period covering October 1st to March 31st and by December 1st for the period covering April 1st to September 30th. These reports will reflect federal share payments made to DBEs after invoices are submitted by prime contractors and subcontractors on USDOT-assisted contracts.

The HDOT DBELO should work with the STP program managers to confirm procurements subject to DBE reporting, both directly procured by STP as well as those procured by subrecipients.

No more than two weeks after the end of the reporting period, the HDOT DBELO should coordinate with STP program managers to reach out to subrecipients for information related to DBE reporting. The information should be submitted by the subrecipients no more than three weeks after the initial information request.

The HDOT DBELO should coordinate with STP program managers to confirm the data submitted by the subrecipients aligns with data logs submitted at least quarterly by the subrecipients as a part of the Milestone Progress Reports, or when procurements are executed.

HDOT will provide training regarding the data needed to be gathered and reported to help facilitate accurate data submission.

Section 26.11(c) - Bidders List

HDOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. Bidders list information is used to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on HDOT federally-assisted contracts for use in helping HDOT set overall goals, and to provide the USDOT with data for evaluating the extent to which the objectives of § 26.1 are being achieved. The bidder list will include the name, address, DBE/non-DBE status, 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 firm, and annual gross receipts of firm.

We will collect this information in the following ways:

1. A bidder's registration requirement will be included in bid documents.
2. The Bidder Registration Form shall be completed and submitted, as a separate document from the proposal itself.

Section 26.11(d) - Retention of Records

HDOT shall retain the complete certification package, affidavits of no-change, change notices, and on-site reviews indefinitely. HDOT will retain other documents related to the certification file for a period of five years.

Section 26.11(e) - Unified Certification Program (UCP) Information

The HDOT, Office of Civil Rights (OCR) is the sole certifying agency for the state of Hawaii. A Hawaii 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.

By January 1st of each year, HDOT shall report to the USDOT Office of Civil Rights, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by women, socially and economically disadvantaged individuals other than women, and individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 - Federal Financial Assistance Agreement

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

Section 26.13(a) - Assurance

HDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient 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 recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the HDOT of its failure to carry out its approved program, the USDOT may impose sanction 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.).

This language will appear in financial assistance agreements with subrecipients.

Section 26.13(b) - Contract Assurance

HDOT will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

“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.”

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21- DBE Program Updates

HDOT will continue to carry out this program until all funds from USDOT financial assistance have been expended. HDOT lets USDOT-assisted contracts and have political subdivisions that fall within the following USDOT categories:

1. All FHWA recipients receiving funds authorized by a statute to which this part applies;
2. FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding two hundred fifty thousand dollars (\$250,000.00) in FTA funds in a Federal fiscal year; and

3. FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding two hundred fifty thousand dollars (\$250,000.00) in FAA funds in a Federal fiscal year.

All HDOT's sub-recipients and local public agencies (LPA) that award Federal funds must comply with HDOT's DBE program and may not have a plan independent of HDOT. HDOT will provide to USDOT updates when there are significant changes in the program.

Section 26.23 - Policy Statement

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

Section 26.25 - DBE Liaison Officer (DBELO)

The DBELO contact information is provided below:

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

The HDOT Statewide Transportation Planning Office (STPO) and HDOT's subrecipients (i.e., LPAs) each have a DBE Coordinator assigned to manage, monitor, and provide technical assistance on DBE program activities. The duties and responsibilities of the DBE Coordinators include, but are not limited to the following:

1. Coordinates the day-to-day DBE compliance activities in their respective divisions/offices.
2. Establishes overall goals, and submits them to the respective operating administration upon review and approval by the DBELO;
3. Assists with setting contract goals on federal-aid projects, as appropriate, based on bid estimates made by project engineer;
4. Prepares and submits reports via the DBELO to their respective operating administrations which include:

- DBE goals, raw data utilized in the goal calculation, and a narrative description of the methodology used in establishing goals, shortfall analysis and corrective action plan when an overall goal is not met; and
 - Semi-annual (FHWA/FTA) and annual (FAA) Uniform Report of DBE Awards or Commitments and Payments.
5. Assists the DBELO with ensuring that work committed to DBEs are performed by DBEs by:
 - Reviewing all federal-aid contracts and subcontracts to ensure that work committed to DBEs is specified in the contract and that DBEs are performing a Commercially Useful Function (CUF);
 - Analyzes HDOT's and its sub-recipients' progress toward attaining DBE goals by maintaining a running tally of payments to DBE and non-DBE subcontractors;
 - Disseminating information from the DBELO regarding changes in the DBE regulations to project managers, construction managers, and other HDOT staff; and
 - Providing training with the assistance of the DBELO to project managers, and field personnel on DBE compliance requirements such as, but not limited to, GFE, prompt payment provisions, retainage, and CUF.
 6. Establishes and maintains a record-keeping system that:
 - Documents DBE affirmative action efforts of the division;
 - Identifies and implements procedures adopted by the division in compliance with the requirements of the DBE program, compares projected DBE goals with actual accomplishments, and lists efforts to identify and locate DBEs; and
 - Contains all DBE-related correspondence, reports, materials, publications, etc.
 7. Assists with evaluating GFE of low bidders that do not meet the project goal, and makes recommendations to the division administrator regarding the award of the contract based on GFE;
 8. Provides information and other assistance to DBEs;
 9. Attends pre-bid meetings;
 10. Develops affirmative action programs and procedures to facilitate DBE participation in federal-aid projects; and
 11. Monitors on-going projects to ensure that the contract provisions for DBE participation and prompt payment are in compliance with applicable laws, rules, and regulations, and to ensure actual participation of DBEs on awarded contracts. Tracks on-going payments to subcontractors by prime contractors through the Certification and Contract Compliance Management System (online tracking system.) Informs project engineers/managers if there are any delays in payment as noted in the online tracking system.

Project Managers:

The duties and responsibilities of project managers shall include, but shall not be limited to the following:

1. Assists with calculating project goals in collaboration with a goal setting committee by reviewing scope of project, type of work to be performed by the prime contractor and subcontractors, and estimating value of subcontracts that may potentially be performed by DBEs;
2. Attends pre-bid meetings to inform contractors of subcontracting opportunities for DBEs, if any;
3. Attends pre-construction meetings to discuss terms and conditions of contract;
4. Reviews contracts and subcontracts using the Subcontract Verification Log to ensure that DBE assurances and other required documents are included;
5. Review contracts and subcontracts to ensure that DBEs are performing work as specified in the subcontract, and that they are serving a CUF;
6. Assists the DBELO through the DBE Coordinators by arranging for inspections by field personnel

to monitor CUF of DBEs;

7. Ensures that prime contractors comply with HDOT's prompt payment provisions, by requiring prime contractors to timely report payments to subcontractors via the online tracking system if contract was awarded after November 2017, or via the DBE Participation and Prompt Payment Certification form for contracts awarded prior to November 2017;
8. Assists OCR with notifying prime contractors of noncompliance of prompt payment provision and documents noncompliance in project diary and weekly construction meeting minutes;
9. Reviews all written requests by prime contractors to replace or substitute DBEs on a project and approves such actions only for good cause;
10. Prior to project closeout, works with OCR to determine if DBE contract goal was met, and if not, work with OCR to gather evidence of good faith efforts prior to final payment; and
11. Monitors the use of joint checks in accordance with the aforementioned procedure manuals to ensure that the use of such checks do not compromise the independence of the DBE.

Contracts Officer:

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

1. Arranges for solicitations, time for presentation of bids, quantities, specifications, and delivery schedules to facilitate the participation of DBEs;
2. Disseminates information on contracting procedures and specific contracting opportunities in a timely manner;
3. Works closely with the DBELO to ensure that all DBE requirements are contained in all federal-aid contracts, and that project goals are specified when applicable; and
4. Communicates with the project managers, construction management consultants, and other HDOT staff regarding updates on DBE-related forms.

Legal Counsel:

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

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 contract to make use of these institutions.

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 utilizes 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 from district offices and LPAs 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 or LPA 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.

With respect to retainage, HDOT elected to utilize the second method of 49 CFR Part 26, § 26.29(b)(2) which states, "You may 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 within 30 days after the subcontractor's work is satisfactorily completed."

Although the DBE regulations requires full payment of retainage within 30 days after satisfactory completion of work, Hawaii Revised Statutes (HRS) § 103.10-5 requires payment to a contractor, including retainage, within 10 days. 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 Contactor 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."

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. 1st and 2nd violations – prime contractor shall be issued a letter of reprimand.
2. Three 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.

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. For FTA-funded contracts, covered complaints received by HDOT shall be reported to the FTA Administrator within 30 days of receipt by HDOT.

Section 26.31 - Directory of Certified Firms

HDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. HDOT revises the Directory, at least quarterly. HDOT make the Directory available at: <https://hdot.dbesystem.com/>. Other means by which interested persons can obtain access to the Directory, would be to email HDOT-DBE@hawaii.gov or call (808) 831-7901. The Directory may be found in Attachment D to this program document.

Section 26.33 - Overconcentration

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 Programs

HDOT is committed to continuing its Business Development Program, 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 and Enforcement Mechanisms

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 actually 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.

HDOT shall maintain a running tally of payments to DBEs to track contract goal attainment on projects with project goals. DBE Coordinators within each division shall track progress payments maintained by the project managers through the online payment tracking system. For HDOT and LPA projects not in

the online payment tracking system, DBE staff shall request progress payment information via email or other acceptable communication from project and/or construction managers.

HDOT shall report to FTA a running tally of payments on federal-aid highway projects on a monthly basis. DBE staff shall submit the running tally report within 60 days after the report month. For example, the running tally for the month of August shall be submitted by October 31st. Additionally, to comply with the requirements set forth in the semi-annual DBE Uniform Report of Awards or Commitments and Payments, OCR staff shall search the Highways Division project database, Socrata, to ensure all projects in which payments were made during the reporting period are recorded.

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.

Section 26.43 - Set-asides or Quotas

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

Section 26.45 - Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found at: <https://hidot.hawaii.gov/administration/files/2024/03/OCR-D-1.9167-FTA-Letter-Proposed-Methodology-FFY2024-2026.rev5-part-2-signed.pdf>. This section of the program may be updated annually.

In accordance with 49 CFR § 26.45(f) HDOT will submit its overall goal to USDOT on August 1st of each year. Before establishing the overall goal each year, HDOT will consult with certified DBEs from the HDOT DBE Directory, local trade organizations, unions, chambers of commerce, small businesses to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and HDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and USDOT will accept comments on the goals for 45 days from the date of the notice. Notice will be posted online and direct emails to unions, trade organization and chambers of

commerce will occur. To the extent practicable, we will issue this notice by June 1st of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

HDOT’s overall goal submission to USDOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1st of each year unless we have received other instructions from USDOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Operating Administration	Triennial Period	Goal Due Date
FTA	FFY 2027-2029	August 1, 2026
FTA	FFY 2030-2032	August 1, 2029
FTA	FFY 2033-2035	August 1, 2032
FTA	FFY 2036-2038	August 1, 2035

Section 26.47(c) - Shortfall Analysis

If HDOT does not meet its overall goal at the end of any federal fiscal year, HDOT shall conduct an analysis to determine the reasons for the shortfall, take corrective steps, and will identify milestones to improve and increase DBE participation in the following Federal fiscal year.

The analysis will include reviewing the DBE awards and commitments for the year to determine if appropriate race-neutral and race-conscious measures were taken to foster DBE participation. The analysis shall also include identifying the types of work that were contracted or subcontracted during the review period, to determine if there is a sufficient number of ready, willing and able DBEs to perform the identified work. If there are insufficient amounts of DBEs available for a certain type of work, HDOT shall actively recruit small, disadvantaged businesses to become certified DBEs. This will be done by reviewing the bid proposal’s Subcontractor Listing of bidders to determine if non-DBE subcontractors are potentially certifiable DBEs.

HDOT shall also provide training to its staff and DBE stakeholders (i.e., prime contractors, subcontractors, DBEs, and potential DBEs) on contract goals, GFE, and other areas of the DBE program, with the intent of increasing DBE participation in the next fiscal year.

Section 26.49 - Transit Vehicle Manufacturers Goals

HDOT shall require each TVM to certify that it has complied with the requirements of 49 CFR § 26.49 and all applicable DBE requirements, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements. Such procurements shall not be counted in HDOT’s overall FTA DBE goal.

Only those TVMs listed on FTA’s certified list of Transit Vehicle Manufacturers or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid.

All transit vehicle purchases and remanufacture work shall be from an FTA certified TVM. If non-TVM vehicles are purchased, or DBE TVMs are not available, HDOT shall include such contracts in the triennial FTA overall goal, or as a project-specific goal.

HDOT shall submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

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 49 CFR § 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.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment K to this program.

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 CFR 49 § 26.39.

Contract Goals

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 (OEPP) 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 OEPP. 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 OEPP 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 OEPP adds up to the dollar value of the DBE goal percentage.
 - b. The DBE OEPP 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 OEPP.

At the time the Design-Build Contractor submits its design and price proposal, the Contractor will be required to submit its DBE OEPP, 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 and Demonstration of Good Faith Efforts (26.53(a) & (c))

The good faith efforts requirement as set forth in 49 CFR § 26.53 of the DBE Regulations shall apply to DBE contract goals. The HDOT shall include these procedures and any subsequent updates to these provisions, in the contract provisions relating to DBE requirements.

When a project goal is not met, a GFE review committee comprised of the affected division's DBE Coordinator, operating administration representative (if available) and the DBELO, shall conduct the initial review of GFE submitted by the bidder/offeror. The GFE review committee shall determine whether the bidder/offeror has performed the quality, quantity, and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the contract goal in accordance with 49 CFR Part 26, Appendix A.

The bidder/offeror bears the responsibility of demonstrating that it met the contract goal, or if the contract goal was not met, by documenting the GFE it made in an attempt to meet the goal. HDOT requires bidders/offerors to submit GFE documents with the Contract Goal Verification and Good Faith Efforts Documentation form irrespective of whether the bidder believes it met the DBE goal. Failure to provide required information sufficient to evaluate the bid/proposal shall be cause for bid/proposal rejection.

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

1. Whether the bidder/offeror solicited through all reasonable and available means (e.g., attendance at meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform part or all of the work to be included under the contract. HDOT will also consider whether the bidder/offeror solicited the participation of potential DBEs in sufficient time to allow the DBEs to properly inquire about the project and respond to the solicitation, and will also review whether the bidder/offeror took appropriate steps to follow up with interested DBEs in a timely manner to facilitate participation by DBEs in the project;
2. Whether the bidder/offeror identified and broke up portions of work that can be performed by DBEs in order to increase the likelihood that DBEs would be able to participate, and the DBE goal could be achieved (e.g., breaking out contract items into economically feasible units to facilitate DBE participation, even when the bidder/offeror might otherwise prefer to perform these work items with its own forces);
3. Whether the bidder/offeror made available or provided interested DBEs with adequate

information about the plans, specifications, and requirements of the project in a timely manner, and assisted them in responding to the bidder's/offeror's solicitation;

4. Whether the bidder/offeror negotiated in good faith with interested DBEs. Evidence of such negotiations includes documenting: a) the names, addresses, and telephone numbers of DBEs that were contacted by the bidder/offeror; b) a description of the information that was provided to DBEs regarding the plans and specifications; and c) detailed explanations for not utilizing individual DBEs on the project. The fact that there may be additional or higher costs associated with finding and utilizing DBEs are not, by themselves, sufficient reasons for a bidder's/offeror's refusal to utilize a DBE, or the failure to meet the DBE goal, provided that such additional costs are not unreasonable. Also, the ability or desire of a bidder/offeror to perform a portion of the work with its own forces, that could have been undertaken by an available DBE, does not relieve the bidder/offeror of the responsibility to make GFE to meet the DBE goal, and to make available and solicit DBE participation in other areas of the project to meet the DBE goal;
5. Whether the bidder/offeror rejected DBEs as being unqualified without sound reasons or based on a thorough investigation of their capabilities. The DBE's standing within the industry, membership in specific groups, organizations, or associations, and political or social affiliation, are not legitimate bases for the rejection or non-solicitation of bids from particular DBEs;
6. Whether the bidder/offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance;
7. Whether the bidder/offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
8. Whether the bidder/offeror effectively used the services of available minority/women community organizations, minority/women/small business groups, contractors' groups, local, state, and federal minority/women/small business assistance offices, or other organizations to provide assistance in recruitment and placement of DBEs.

It is the sole responsibility of the bidder/offeror to submit any and all documents, logs, correspondence, and any other records or information to HDOT that will demonstrate that the bidder/offeror made GFE to meet the DBE goal. Additionally, for each DBE that was contacted but not utilized by the bidder/offeror for a contract, the bidder/offeror shall submit a detailed written explanation for each DBE detailing the reasons for the bidder's/offeror's failure or inability to utilize, or to allow the DBE to participate in the contract. Further, when a bidder selects a non-DBE over a DBE subcontractor, documentation of GFE must include quotes of each DBE and non-DBE subcontractor submitted to the bidder for work on the contract. In its GFE evaluation, HDOT shall also consider the following as part of its evaluation:

1. Compare the bidder's/offeror's bid against the bids of other bidders/offerors on the same project, and compare the DBEs and DBEs' work areas utilized by the bidder/offeror with the DBEs listed in other bids submitted for the contract. If other bidders obtained DBE participation in a particular work area in which the low bidder did not, the committee shall take this into consideration in its evaluation;
2. Verify contacts by bidders/offerors with DBEs; and
3. Compare the DBE and the categories of DBE work targeted by the bidder/offeror for participation in the contract, with the total pool of DBEs available for each particular subcontract targeted by the bidder.

Section 26.53(d) - Administrative Reconsideration

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 or not the bidder/offeror met the contract goal, or whether or not the bidder/offeror exhibited GFE to achieve the contract goal. The reconsideration decision is not administratively appealable to USDOT but is appealable under HRS § 103D-709.

Section 26.53(f) and (g) - Good Faith Efforts when a DBE is Replaced on a Contract

HDOT will require a contractor to make GFE to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. HDOT will require the prime contractor to promptly provide written notice to the project manager of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The written notice by the contractor must include the following:

1. The date the contractor determined that the certified DBE is unwilling, unable or ineligible to perform work on the contract;
2. The projected date that the contractor shall require a substitution or replacement DBE to commence work if consent is granted by HDOT;
3. Documentation of facts that cite specific actions or inactions on the part of the affected DBE that led to the contractor's conclusion that the DBE is unwilling, unable, or ineligible to perform work on the contract;
4. A brief statement of the affected DBE's capacity and ability or inability to perform the work as determined by the contractor;
5. Documentation of contractor's GFE to enable the affected DBE to perform the work;
6. The current percentage of work completed on each bid item by the affected DBE;
7. The total dollar amount currently paid per bid item for work performed by the affected DBE;
8. The total dollar amount per bid item remaining to be paid to the DBE for work completed but for which the DBE has not received payment, and with which the contractor has no dispute; and

9. The total dollar amount per bid item remaining to be paid to the DBE for work completed for which the DBE has not received payment, and with which the contractor and DBE have a dispute.

The prime contractor shall send a copy of the written notice to replace a certified DBE on a contract to the affected DBE. The affected DBE may submit a written response to the prime contractor's notice within five calendar days to HDOT and shall explain to the prime contractor and HDOT the reasons, if any, it objects to the termination. HDOT's project managers shall consult the DBELO and obtain approval from the respective Division Administrator or designee before terminating or substituting a DBE.

No substitution or termination of a DBE shall be made at any time without the prior written consent of HDOT. Written consent shall be provided only if the prime contractor has demonstrated good cause, as determined by HDOT, to terminate the DBE. Good cause may include, but is not limited to the following circumstances:

1. The DBE fails or refuses to execute a written contract;
2. The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards;
3. The listed DBE fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE 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 is not a responsible contractor, trucking company or service provider;
7. The listed DBE 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; and
9. A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract.

Section 26.53(f) - Proposed Substitution of a Certified DBE

Upon termination of the certified DBE, the prime contractor shall make GFE to replace the terminated DBE. The termination of the DBE does not relieve the prime contractor of meeting the DBE contract goal, and the unpaid portion of the terminated DBE's contract shall not be credited towards the DBE contract goal.

When a DBE substitution is necessary, the prime contractor shall submit to HDOT in writing the name of another certified DBE firm, the proposed work to be performed and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The prime contractor shall furnish information such as the contract number, project number, bid item, item description, bid unit and quantity, unit price, and total price.

If the prime contractor is unable to commit the remaining required dollar value to the substitute DBE, the prime contractor shall provide written evidence of GFE made to obtain the remaining required dollar value. HDOT's project managers, in coordination with the DBELO shall review the GFE made by the prime contractor for sufficiency in accordance with HDOT's GFE Procedures.

If the contractor fails or refuses to comply in the time specified, HDOT's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination or a default proceeding.

Section 26.53(i) - Determining Good Faith Efforts of DBE Prime Contractors

HDOT shall allow credit for DBE contractors for work performed with its own forces plus all DBE subcontractors, trucking companies, and service providers at every tier. DBE prime contractors shall not receive credit for work subcontracted to non-DBEs. If DBE prime contractors that are DBEs do not meet the goal, the GFE procedures described above shall be applied.

Section 25.53(j) - Review of DBE Subcontracts

HDOT shall require prime contractors to make available all subcontracts and agreements to ensure compliance with DBE's requirements. A Subcontract Verification Log shall be utilized to document reviews of subcontracts by project management staff.

Change Orders

When there is a significant change order to a contract, HDOT shall, on a case-by-case basis, analyze the GFE of the contractor to maintain the existing DBE contract goal. However, there may be circumstances when the goal may be altered, such as when the change order significantly impacts the scope of work on the contract.

Section 26.53 - Evaluation of GFE Prior to Project Closeout

The above GFE procedures also apply when determining whether or not the prime contractor met the DBE goal at the end of the project. If the prime contractor did not meet the DBE goal, then the prime contractor must demonstrate that it made GFE to meet the goal prior to the issuance of final payment. Further, if the prime contractor did not obtain sufficient DBE participation to meet the goal and did not demonstrate GFE, sanctions relative to GFE shall be imposed.

Non-Compliance With GFE Procedures

HDOT shall implement sanctions for violations of the GFE procedures. Bidders will be charged with a violation when it is determined that GFE were not made to secure participation of DBEs when actively bidding on a project. Additionally, sanctions shall be imposed when prime contractors fail to comply with GFE procedures after execution of the contract. Bidders or prime contractors shall be assessed one violation per project, irrespective of the number of incidents that occur on a specific project. The following sanctions shall be imposed per violation:

1. 1st and 2nd violations –bidder or prime contractor shall be issued a letter of reprimand.
2. For 3 or more violations – bidder or 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.

Section 26.55 - Counting DBE Participation

DBE participation on contract goals shall be counted as follows:

1. The entire amount of work actually performed by DBEs on all tiers of a contract to include the cost of materials and supplies obtained or equipment leased by DBEs (except from the prime contractor or its affiliate);
2. 100 percent of the cost of materials that are obtained from DBE manufacturers;
3. 60 percent of the cost of materials that are purchased from DBE regular dealers;
4. 40 percent of the cost of material that are purchased from a DBE distributor; and

5. The commissions or fees for transactions with DBE suppliers who are not manufacturers or regular dealers.

Credit towards contract goals shall not be allowed until payment is made to DBE firms. CUF shall be reviewed on a project-by-project basis.

Section 26.55(b) - Joint Ventures

HDOT shall assess the clearly defined, distinct portion of work performed by the DBE in the joint venture. Credit shall be granted to DBEs participating in a joint venture for their portion of work on the contract.

Section 26.55(c)(1) - Commercially Useful Function (CUF)

HDOT shall include provisions relating to the CUF of DBE firms, and any subsequent updates to these provisions, in the contract provisions relating to DBE requirements.

HDOT shall monitor CUF of all DBE firms on federal-aid projects by taking the following steps:

1. Review prime contracts and subcontracts to determine the scope of work that the DBE firms are contracted to provide;
2. Perform site inspections on the job site using the DBE CUF Onsite Review Form;
3. Review documents such as payroll, invoices, and delivery tickets; and
4. Provide written certification that CUF requirements have been met.

Review of Scope of Work

HDOT shall review all prime contracts, including prime contracts between LPAs and prime contractors, and all subcontracts. HDOT shall evaluate the amount of work subcontracted to the DBE, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors. The DBE must perform at least 30 percent of the work with its own forces.

HDOT OCR staff shall attend all pre-construction meetings and will review the CUF process with prime contractors, subcontractors, and project management staff. Within 30 days of contract award, OCR shall communicate in writing to prime contractors regarding their responsibility to ensure all DBEs perform a CUF.

Site Inspections

A CUF review shall be conducted for each DBE on federal-aid projects utilizing the DBE CUF Onsite Review Form. CUF reviews shall be conducted by the construction engineer or her/his designee when the DBE is actively engaged in their scope of work. The CUF review should be conducted when the DBE begins work on the project or as soon as records/documents are available to conduct a thorough CUF review (e.g., at least two payrolls.) Additional reviews may be necessary depending on the size, duration, and complexity of the project. Project managers or his/her designee shall utilize the HDOT CUF Onsite Review Forms to perform the review and shall provide a copy of the completed CUF Onsite Review Forms to OCR within 14 days of completion.

Document Review

HDOT shall review documents such as certified payroll, invoices, and delivery tickets associated with the work performed by the DBE to ensure that CUF and payment requirements have been met.

Written Certification

HDOT project manager, or his/her designee shall sign the appropriate DBE CUF Onsite Review Forms to certify that the DBE has performed a CUF. The certified CUF review is required in order for the prime contractor to receive credit towards the contract goal. HDOT may not report payments on the semi-annual Uniform Report of Awards, Commitments and Payments unless CUF reviews are completed for the project.

CUF Compliance Reviews

To prevent fraud and misuse of DBEs, OCR shall select federal-aid projects to conduct compliance reviews using a risk-based approach. In determining which projects to be reviewed, OCR shall examine the size and scope of the project, whether the prime contractor has a history of non-compliance with CUF and/or prompt payment requirements, and the frequency in which DBEs have been terminated or replaced by the prime contractor in comparison to other prime contractors on similar projects.

Non-Compliance

Prime contractors are responsible to ensure that DBEs perform a CUF. When it is determined that a DBE did not perform a CUF, the prime contractor shall be found in non-compliance. Each violation shall represent the sum of one or more incidents of CUF non-compliance on any given contract. The following sanctions shall be imposed per violation:

1. 1st and 2nd 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.

When a DBE is presumed not to be performing a CUF, the DBE may present evidence to rebut this presumption. Decisions regarding CUF determinations are subject to review by concerned operating administrations, such as the FTA. However, CUF decisions are not appealable to USDOT, they are contract administration issues.

Section 26.55(d) - Trucking Firms

DBE trucking firms shall be counted as follows:

1. The total value of the transportation services of a certified DBE trucker if the DBE trucker uses trucks it owns, insures, and operates using drivers it employs;
2. The total value of the transportation services if a DBE trucker leases trucks from another DBE firm;
3. The value of the fees, commission or mark up from a lease arrangement if a DBE trucker leases trucks from a non-DBE firm and credit is not allowed for the lease amount;
4. The total value of the transportation services provided by a non-DBE lessee, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, credit will be awarded only for the fee or commission the DBE firm receives as a result of the lease arrangement.

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

5. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is

entitled to credit for the total value of these hauling services.

EXAMPLE: DBE Firm X uses two of its own trucks on a contract.

It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the leased trucks. DBE credit would be awarded for the total value of the transportation services provided by all four trucks; and

6. For purposes of determining whether a trucking firm performs a CUF, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Section 26.55(e)(2)(i) - Regular Dealers

For materials and supplies purchased from a regular dealer, 60 percent of the cost of such materials and supplies shall be counted towards the DBE goal. A regular dealer is a firm that owns (or leases) and operates, a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.

To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. The DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

The DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.

The DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.

Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers.

If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs.) The DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. The DBE

distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. The DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, count the entire amount of fees or commissions charged that you deem to be reasonable, including transportation charges for the delivery of materials or supplies. Do not count any portion of the cost of the materials and supplies themselves.

You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.

Section 26.55(f) and (g) - Decertified DBEs

If a prime contractor makes a commitment to using an ineligible DBE or HDOT committed to using an ineligible DBE prime contractor prior to issuance of a subcontract or contract, credit may not be applied to either the overall or contract goal. The prime contractor must find an eligible DBE to meet the contract goal or demonstrate that it has made GFE to meet the goal.

If the replacement DBE is a non-listed subcontractor subject to the listing requirement of HRS § 103D.302, the DBE special provisions shall prevail, such that HDOT shall allow the non-listed subcontractor to perform work on the contract of the size and scope sufficient to meet the DBE contract goal.

If a prime contractor has executed a subcontract with the firm before the notice of ineligibility, the prime contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE contract goal for the firm's work but the remaining portion of work by the ineligible DBE subcontractor subsequent to the notice of ineligibility may not count towards the overall goal.

When HDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the issuance of the notice shall not count toward the DBE overall goal but may count toward the DBE contract goal.

If a DBE firm becomes ineligible solely because it has exceeded the business size standard during the performance of the contract, HDOT shall continue to count its participation on that contract towards HDOT's overall goal, as well as the contract goal.

The HDOT shall provide written notice of a decertification to:

1. HDOT Contracts Officer;
2. HDOT Highways Division DBE Coordinator;
3. City & County of Honolulu, Department of Transportation Services Planner;
4. City & County of Honolulu, Honolulu Authority for Rapid Transportation Staff;

5. STPO, OMPO and MMPO DBE Coordinators; and
6. Hawaii County, Maui County and Kauai County DBE Coordinators.

SUBPART C - CERTIFICATION PROCEDURES

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 the DOCR 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 Declaration of Eligibility (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," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a Certified Public Accountant'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 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 49 CFR § 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 response 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 DOCR 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 49 CFR 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 5 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 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 in 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 49 CFR 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

SUBPART D - COMPLIANCE AND ENFORCEMENT

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.
 - a. Applicable findings in enforcement proceedings are binding on all USDOT offices.

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 on the basis of 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 USDOT 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 USDOT 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 49 CFR Part 26 if it violates this prohibition.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of HDOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

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 K - Race-Neutral and Race-Conscious Participation

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

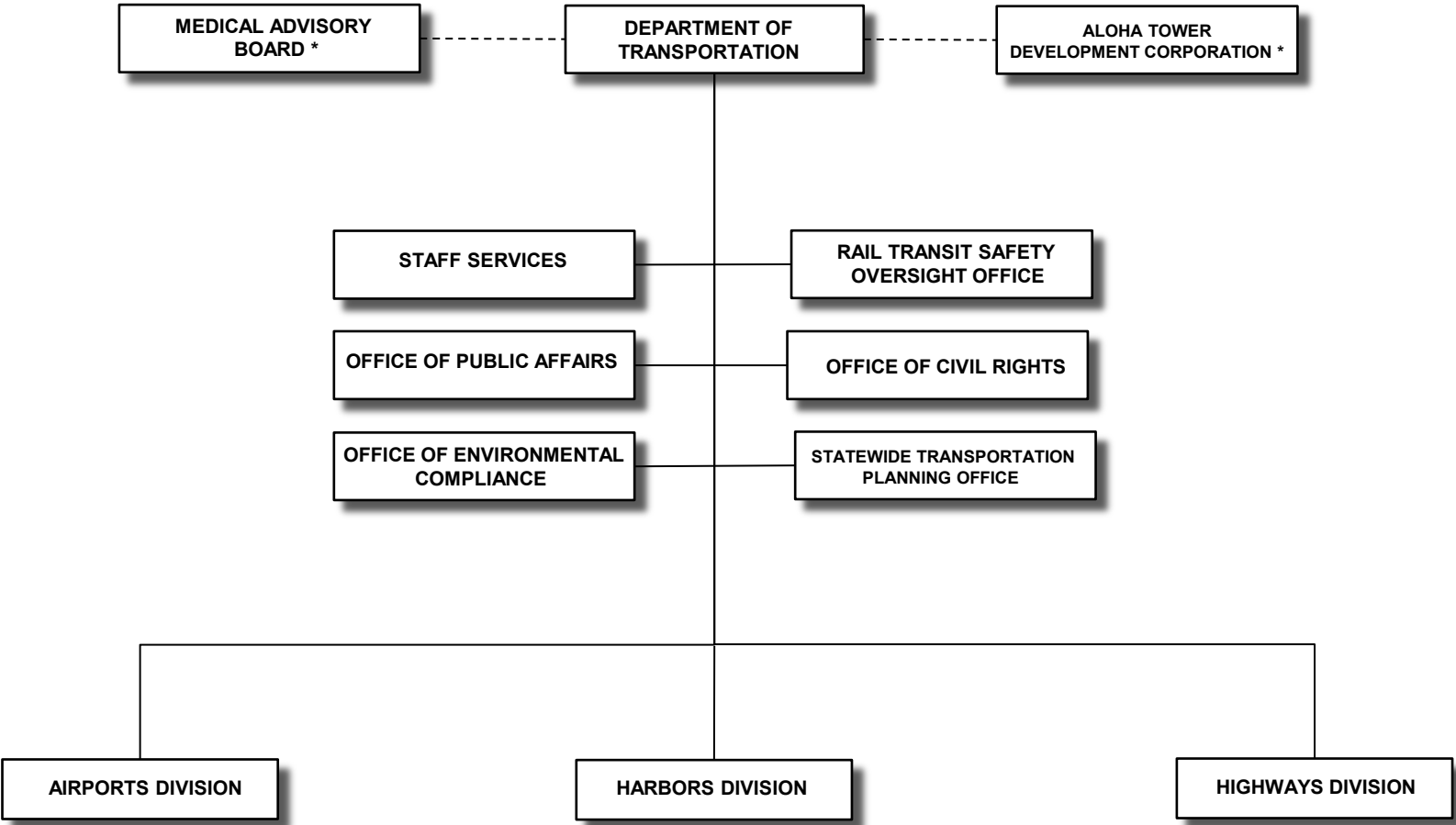
***STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
ADMINISTRATION***

ORGANIZATION CHARTS

JUNE 30, 2024

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

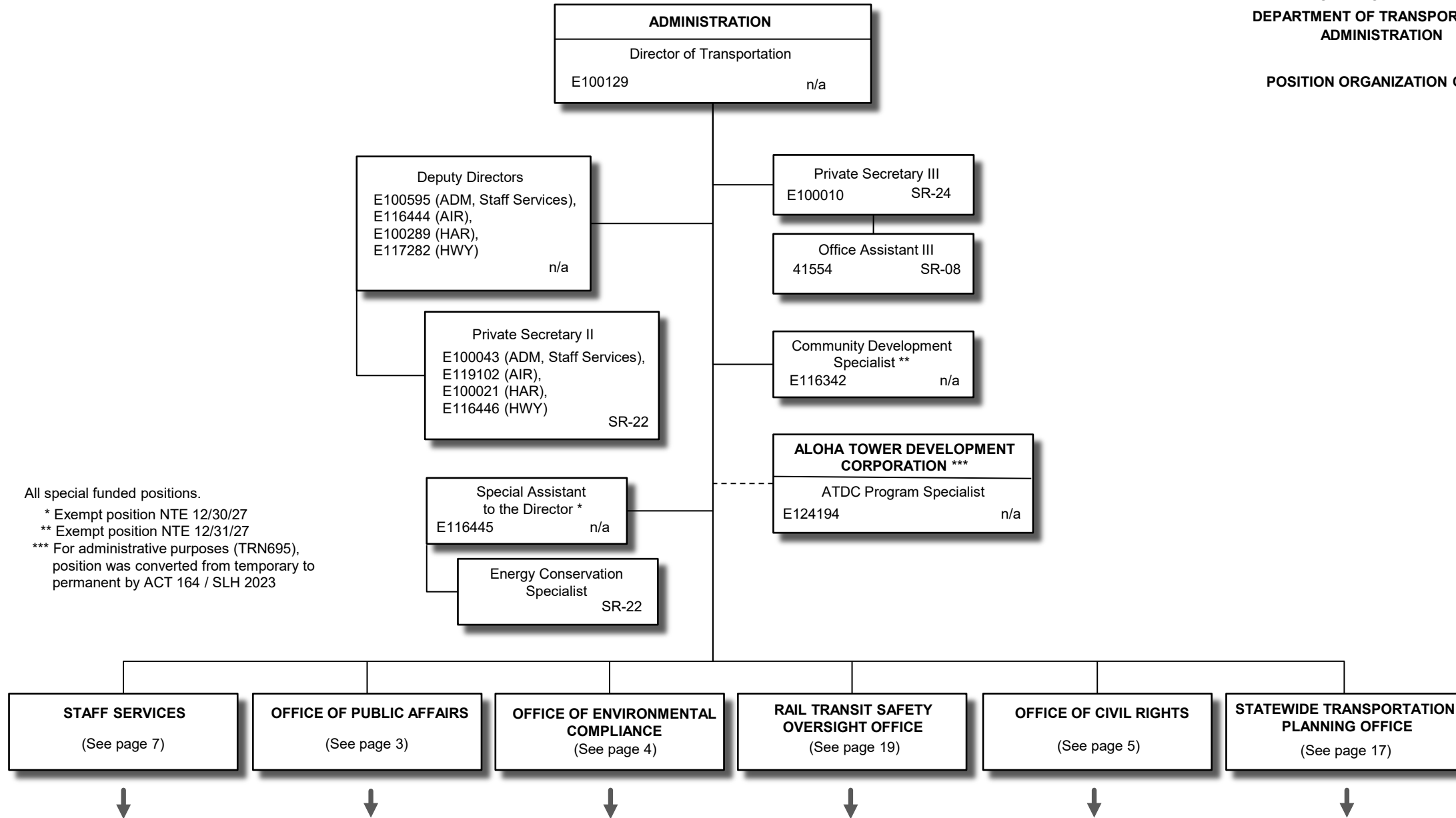
ORGANIZATION CHART



* For administrative purposes

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

POSITION ORGANIZATION CHART



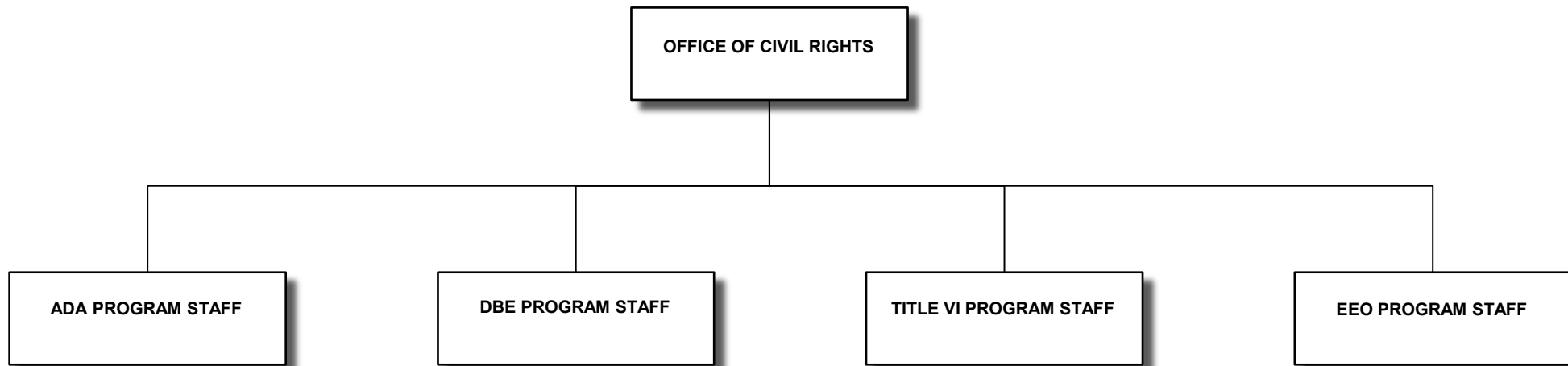
All special funded positions.

* Exempt position NTE 12/30/27

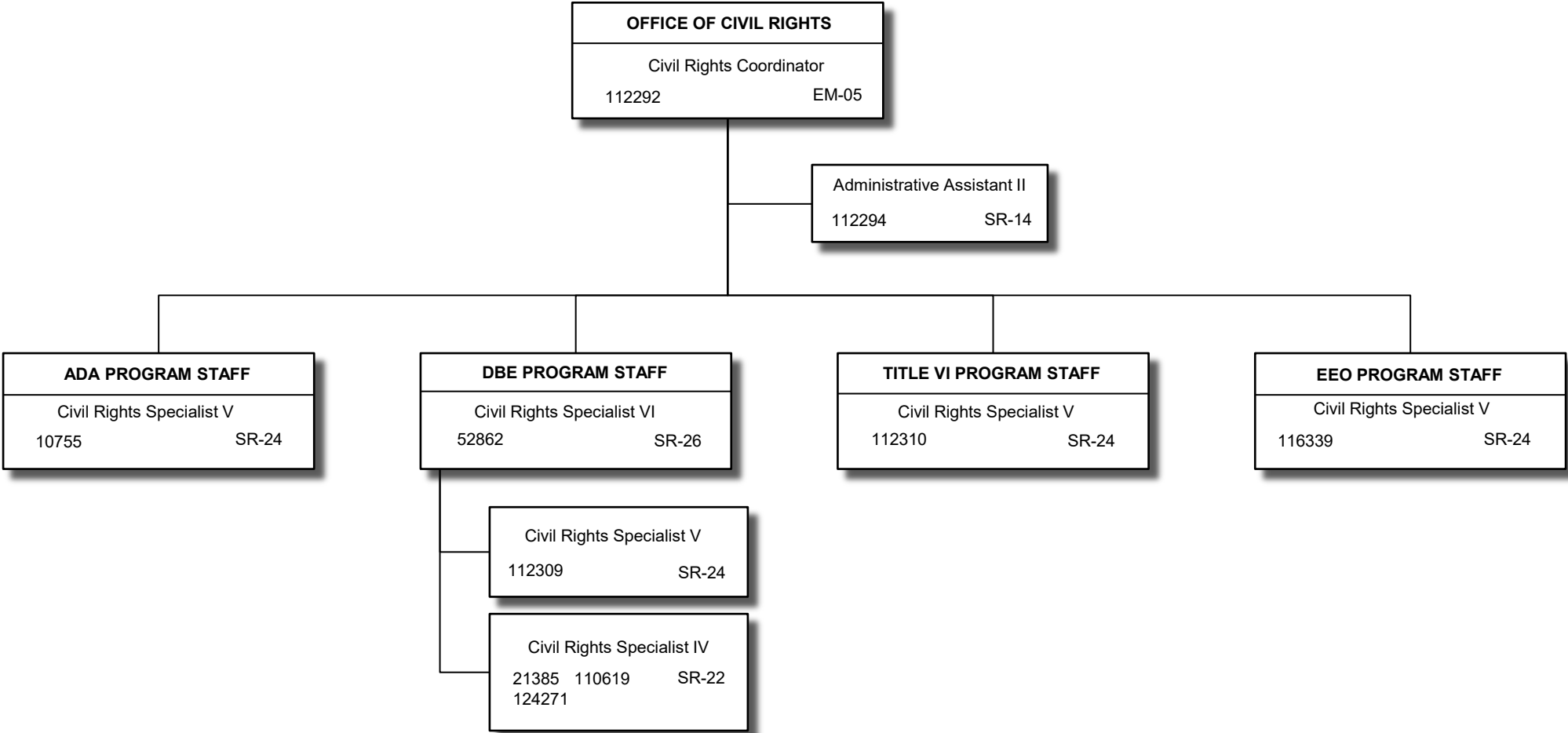
** Exempt position NTE 12/31/27

*** 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

Bidder's List Collection Form

Bidders list information is used to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on HDOT federally assisted contracts for use in helping HDOT set overall goals, and to provide the USDOT with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

Project Name and Number	Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Race and gender information for the firm's majority owner	NAICS Code Applicable to Bid	Year Firm was Established	Annual Gross Receipts
							<input type="checkbox"/> Less than \$1,000,000 <input type="checkbox"/> \$1,000,000 to \$2,999,999 <input type="checkbox"/> \$3,000,000 to \$5,999,999 <input type="checkbox"/> \$6,000,000 to \$9,999,999 <input type="checkbox"/> \$10,000,000 to \$16,999,999 <input type="checkbox"/> More than \$17,000,000
							<input type="checkbox"/> Less than \$1,000,000 <input type="checkbox"/> \$1,000,000 to \$2,999,999 <input type="checkbox"/> \$3,000,000 to \$5,999,999 <input type="checkbox"/> \$6,000,000 to \$9,999,999 <input type="checkbox"/> \$10,000,000 to \$16,999,999 <input type="checkbox"/> More than \$17,000,000
							<input type="checkbox"/> Less than \$1,000,000 <input type="checkbox"/> \$1,000,000 to \$2,999,999 <input type="checkbox"/> \$3,000,000 to \$5,999,999 <input type="checkbox"/> \$6,000,000 to \$9,999,999 <input type="checkbox"/> \$10,000,000 to \$16,999,999 <input type="checkbox"/> More than \$17,000,000

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.

Project #:	County:
NAICS CODE/DESCRIPTION OF WORK:	SECONDARY NAICS CODE:

*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.

Estimated Beginning Date (Month/Year):	Estimated Completion Date (Month/Year):
---	--

SUBCONTRACTOR:	Item No.	Item	Approx. Quantity	Unit	Unit Price	Amount
					\$	\$
					\$	\$
					\$	\$
					\$	\$
TOTAL COMMITMENT AMOUNT						\$

MANUFACTURER:	Item No.	Item	Approx. Quantity	Unit	Unit Price	Amount
					\$	\$
					\$	\$
TOTAL COMMITMENT AMOUNT						\$

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

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.**

DBE NAME:	Name/Title (please print):
Address:	Signature:
Phone: Fax:	Date:
Email:	Name/Title (please print):
Prime Contractor:	Signature:
Address:	Date:
Phone: Fax:	Name/Title (please print):
Email:	Signature:
Subcontractor (only if the DBE will be a second tier sub):	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 Subcontractor, Manufacturer, or Supplier/Distributor INSTRUCTIONS

The purpose of this agreement is to secure the commitment of the bidder/offeror to utilize the listed DBE, and the DBE's confirmation that it will perform work for the bidder/offeror on this project. The information on this form shall be provided by the DBE.

Project #	Self-explanatory
County	County where project is located
NAICS Code/Description of Work	Primary North American Industry Classification System code under which DBE is certified to perform and description of work to be done
Secondary NAICS Code	List other NAICS codes firm is certified to perform
Estimated Beginning Date (Month/Year)	Date DBE shall begin work on the project
Estimated Completion Date (Month/Year)	Date DBE's work will be completed
Subcontractor	Name of DBE subcontractor (company name)
Item No.	List pay item number
Item	Description of item
Approx. Quantity	Self-explanatory
Unit	List unit of measure
Unit Price	Cost per unit
Amount	Total amount per pay item
Total Commitment Amount	Sum of all pay items and total commitment of bidder/offeror to DBE
Manufacturer	Name of DBE manufacturer
Supplier/Distributor	Name of DBE supplier (aka regular dealer)/distributor
DBE NAME	DBE Company name
Name/Title	Name and title of DBE's representative
Address	Self-explanatory
Phone	Self-explanatory
Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of DBE's representative
Date	Date agreement is signed
Prime Contractor	Company name
Name/Title	Name and title of prime contractor's representative
Address	Self-explanatory
Phone	Self-explanatory
Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of prime contractor's representative
Date	Date agreement is signed
Subcontractor (only if the DBE will be a second-tier sub):	Name of subcontractor only if the listed DBE will be performing work under this subcontractor as a second-tier subcontractor/supplier/distributor/manufacturer
Name/Title	Name and title of the subcontractor's representative that the listed DBE will work under as a second-tier subcontractor/supplier/distributor/manufacturer
Address	Self-explanatory
Phone	Self-explanatory
Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of subcontractor's representative
Date	Date agreement is signed



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.

Project #:	County:
NAICS CODE/DESCRIPTION OF WORK:	SECONDARY NAICS CODE:

*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.

Estimated Beginning Date (Month/Year):	Estimated Completion Date (Month/Year):
---	--

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

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.**

DBE NAME:	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
Email:	Date:
Prime Contractor:	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
Email:	Date:
Subcontractor (only if the DBE will be a second tier sub):	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) Confirmation and Commitment Agreement Trucking Company INSTRUCTIONS

The purpose of this agreement is to secure the commitment of the bidder/offeror to utilize the listed DBE trucking company, and the DBE's confirmation that it will perform work for the bidder/offeror on this project. The information on this form shall be provided by the DBE.

Project #	Self-explanatory
County	County where project is located
NAICS Code/Description of Work	Primary North American Industry Classification System code under which DBE is certified to perform and description of work to be done
Secondary NAICS Code	List other NAICS codes firm is certified to perform
Estimated Beginning Date (Month/Year)	Date DBE shall begin work on the project
Estimated Completion Date (Month/Year)	Date DBE's work will be completed
Trucking Company	Name of DBE trucking company
Item No.	List pay item number
Item Description	Description of item
Unit	Unit of measure – e.g. weight or hours
Unit Price/Rate	Cost per unit or hourly rate
Amount	Total amount per pay item
Total Commitment Amount	Sum of all pay items and total commitment of bidder/offeror to DBE
Number of hours contracted or quantities to be hauled	Approximate number of hours or tonnage to be hauled
Number of fully operational trucks to be used:	Total number of trucks to be used for the project
Tractor/Trailers	Number of tractor trailers to be used
Dump Trucks	Number of dump trucks to be used
Number of fully operational trucks owned by DBE	Number of listed DBE's trucks to be used on this project
Name of Trucking Company	If other trucking companies (DBE or non-DBE) are to be leased, list name and information about type of trucks in this section
Estimated Dollar Amount to be Contracted	Provide information about estimated cost to lease trucks
Number of Dump Trucks, Tractor/Trailer	Self-explanatory
DBE NAME	DBE Company name
Name/Title	Name and title of DBE's representative
Address	Self-explanatory
Phone	Self-explanatory
Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of DBE's representative
Date	Date agreement is signed
Prime Contractor	Company name
Name/Title	Name and title of prime contractor's representative
Address	Self-explanatory
Phone	Self-explanatory

Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of prime contractor's representative
Date	Date agreement is signed
Subcontractor (only if the DBE will be a second-tier sub):	Name of subcontractor only if the listed DBE trucking company will be performing work under this subcontractor
Name/Title	Name and title of the subcontractor's representative
Address	Self-explanatory
Phone	Self-explanatory
Fax	Self-explanatory
Email	Self-explanatory
Signature	Signature of subcontractor
Date	Date agreement is signed



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

Project #:	County:
DBE Project Goal:	Prime Contractor:

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	
A/B = DBE contract goal	

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:



**Disadvantaged Business Enterprise (DBE)
Contract Goal Verification and Good Faith Efforts (GFE)
Documentation for Construction
INSTRUCTIONS**

Project #	Self-explanatory
County	County where project is located
DBE Project Goal	Indicate DBE goal listed in the proposal on P-1
Prime Contractor	Name of prime contractor
Name of Subcontractor, Supplier, Distributor, Manufacturer, and/or Trucking Company	Company name of subcontractor, supplier, distributor, manufacturer, and/or trucking company
DBE (Y/N)	Y for yes and N for no
Bid Item Number and Description	Pay item and description
Approx. Quantity/ Hours	Self-explanatory
Unit	Unit of measure
Unit Price/ Rate	Self-explanatory
Dollar Amount	Total dollar amount committed to subcontractor, supplier, distributor, manufacturer, or trucking firm
A. Dollar amount of the work to be performed by DBE subcontractors, manufacturers, and trucking companies, plus 60 percent of the dollar amount of DBE suppliers, plus 40 percent of the dollar amount of DBE distributors	Total amount of DBE participation
B. Sum of all work items less mobilization, force account items, allowance items	List total of work items minus mobilization, force accounts and allowances. DBE credit shall not be given for mobilization, force account items, and allowance items.
A/B = DBE contract goal	Self-explanatory
Name and Signature of Authorized Representative of Prime Contractor	Self-explanatory (Note: bidder must sign and date every page of form.)
Date	Date form is signed
Summary of Good Faith Efforts (GFE)	Complete by answering questions in detail and providing documentation to support how bidder demonstrated good faith efforts to meet the goal, irrespective of whether or not the goal was met.



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 NO¹
(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.)

¹ 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)? YES² NO³
- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? YES² NO³

² 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%.

³ 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

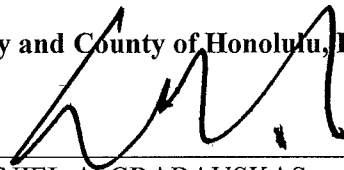


MICHAEL D. FORMBY
Director

9/12/13

Date

City and County of Honolulu, Honolulu Authority for Rapid Transportation

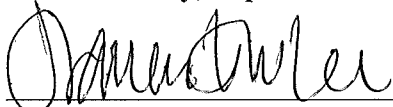


DANIEL A. GRABAUSKAS
Executive Director and CEO

9/17/13

Date

Hawaii County, Department of Public Works

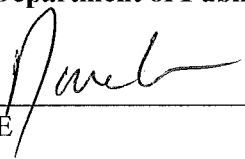


WARREN H.W. LEE
Director

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

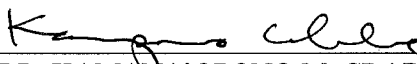


LARRY DILL
County Engineer

11-18-13

Date

Office of Hawaiian Affairs



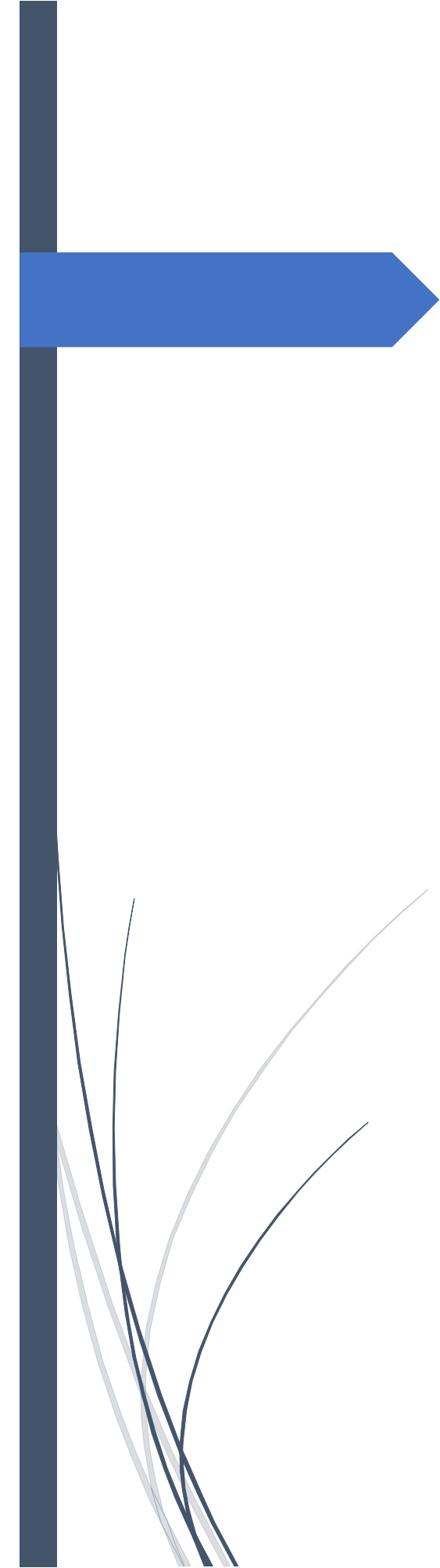
DR. KAMANANA'OPONO M. CRABBE
Administrator

12/4/13

Date

ATTACHMENT

I



SMALL BUSINESS UTILIZATION PLAN

January 2025

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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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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, 808-831-7914 for Hawaii DOT and the Responsible Program Official Mary Dale, 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 Transit 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).

Complainant (Name and Title/Company Name):

Address:

City: State: Zip:

Telephone: Fax: E-Mail:

By: (Signature) (Date)

Office Use Only

Date received by HDOT: _____

Complaint Number: _____

Date Received and Initials: _____

Action Taken

- Complaint Accepted
- Complaint Incomplete/Requested additional information
- No Jurisdiction
- No Jurisdiction with referral to another government agency
- Referred to appropriate operating administration
- Other: _____

HDOT COMPLAINANT CONSENT/RELEASE FORM

Complainant (Name and Title/Company Name):

Address:

State or Federal Project number and description of project:

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.

ATTACHMENT

K

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

The current Federal Transit Administration DBE goal for Federal Fiscal Year 2024-2026 has been narrowly tailored and illustrates the following:

- Overall goal: 2.92 percent
- Race Neutral goal: 2.92 percent
- Race Conscious goal: 0.00 percent

The proposed Federal Transit Administration DBE goal for Federal Fiscal Year 2024-2026 is narrowly tailored and illustrates the following:

- Overall goal: 2.92 percent
- Race Neutral goal: 1.71 percent
- Race Conscious goal: 1.21 percent

HDOT may refine this goal and the race-neutral and race-conscious projections, if necessary.

Should HDOT determine that refinements are warranted, the revised DBE goal will be posted on HDOT's Office of Civil Rights website at <http://www.hidot.hawaii.gov/administration/ocr/dbe/>.