
HOUSTON- GALVESTON AREA COUNCIL

Disadvantaged Business Enterprise Program

For the Department of Transportation Assisted
Projects (Pursuant to 49 CFR Part 26)

Houston-Galveston Area Council (H-GAC) Disadvantaged Business Enterprise (DBE) Program

Introduction

The Houston-Galveston Area Council (H-GAC) has established a Disadvantaged Business Enterprise (DBE) Program in compliance with federal regulations since the inception of the program in November 1990. With the announcement of a new Part 26 (Title 49 in the Code of Federal Regulations) in the February 2, 1999 edition of the Federal Register, recipients of federal transportation funds are required to modify their DBE program to be consistent with the requirements stipulated in the new regulation. H-GAC DBE program has been updated to comply with the requirement in 49 CFR 26.

Section 26.1, 26.23 Objectives/Policy Statement

H-GAC has established a Disadvantage Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. H-GAC, as a condition to receiving Federal financial assistance from the USDOT, has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the Houston-Galveston Area Council to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in the USDOT-assisted contracts. The following are H-GAC policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the USDOT's highway, transit and airport financial assistance programs.
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts.
3. To ensure that the USDOT's DBE program is narrowly tailored in accordance with applicable laws.
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in the USDOT assisted contracts
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The designated H-GAC DBE Liaison Officer is responsible for implementing all aspects of the DBE program. The Liaison Officer will be assisted by other H-GAC staff as needed with the DBE requirements and compliance. Implementation of the DBE program is accordance the same priority as the compliance with all other legal obligations incurred by H-GAC in its financial assistance agreements with the USDOT.

The Houston-Galveston Area Council will disseminate this policy statement to the Area Council and all the employees of our organization. H-GAC will notify DBE and non-DBE business communities that perform work on USDOT assisted contracts, about H-GAC's DBE policy by placing it on our website at <http://www.h-gac.com/transportation> and making it available in the H-GAC office.



Jack Steele, Executive Director

Date: 11/4/08

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

H-GAC is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

H-GAC 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.

H-GAC 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. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definition of Terms

The terms used in this program have the same meanings as defined in the CFR Title 49 Part 26.5

Section 26.7 Nondiscrimination

H-GAC 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 on the basis of race, color, sex, or national origin.

In administering its DBE program, H-GAC 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: 26.11(b)

H-GAC will report DBE participation to USDOT as follows:

Federal Aviation Administration – H-GAC will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for the use by FAA recipients

Federal Transit Administration – H-GAC will report DBE participation on a semi-annual basis, using Uniform Report of DBE Awards or Commitments and Payment Form.

Federal Highway Administration – H-GAC will report DBE participation on a semi-annual basis, using Uniform Report of DBE Awards or Commitments and Payment Form.

These reports will reflect payments actually made to DBEs on USDOT assisted contracts for the respective modes.

Bidders List: 26.11(c)

H-GAC will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The bidders list will be updated and maintained under the direction of the H-GAC DBELO (DBE Liaison Officer). H-GAC will create a web-based tool for contractors and subcontractors to update their information.

Section 26.13 Federal Financial Assistance Agreement

H-GAC has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

H-GAC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. H-GAC's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, 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 H-GAC of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13(b)

H-GAC 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

H-GAC will continue to carry out this program until all funds from DOT financial assistance have been expended. HGAC will provide to DOT updated representing significant changes in the program. H-GAC will submit an updated goal annually on August 1.

Section 26.23 Policy Statement

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

Section 26.25 Liaison Officer (DBELO)

H-GAC has designated a DBE Liaison Officer (DBELO):

Ms. Lydia Abebe
Houston-Galveston Area Council
P.O. Box 22777
Houston, TX 77227-2777
713-627-3200
dbelo@h-gac.com

In that capacity, the H-GAC DBELO is responsible for implementing all aspects of the DBE program and ensuring that H-GAC complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the chief executive officer (CEO) of H-GAC concerning DEB program matters. An organization chart displaying in the DBELO's position in the organization is in **Attachment 1**.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO will be assisted by one other employee(s) who will devote a portion of his or her time in the administration of the program. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third-party contracts for compliance with this program.
3. Works with all relevant parties to set H-GAC's overall annual DBE goals.
4. Ensures that proposal notices and requisitions for proposals/qualifications (RFP/RFQ) are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in the solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes H-GAC's progress toward goal attainment and identifies ways to improve progress.
7. Advises the Executive Director/governing body on DBE matters and achievement
8. Participates with H-GAC's legal council and project managers to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in submitting proposals.
10. Oversees the maintenance of H-GAC's DBE directory.

Section 26.27 DBE Financial Institutions

It is the policy of H-GAC 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 DOT-assisted contracts to make use of these institutions.

H-GAC obtained a list of Minority Owned Banks through the Federal Reserve website (See <http://federalreserve.gov/releases/mob/current/default.htm>). There are 96 minority-owned financial institutions in Texas, 15 located in the H-GAC region. H-GAC will update this list annually and make it available for each DOT-assisted RFP/RFQ on www.h-gac.com/rfp. The list is found at **Attachment 6**.

Section 26.29 Prompt Payment Mechanisms

H-GAC will include the following clause in each DOT-assisted prime contract:

The prime contractor will pay each subcontractor for satisfactory performance of contracts no later than fourteen (14) calendar day from the date that contractor receives payment from H-GAC. The prime contractor will also return retainage payments to each subcontractor within fourteen (14) calendar days from the date of satisfactory completion of work. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of H-GAC. This clause applies to both DBE and non-DBE subcontractors.

The Prime Contractors will also be requested to include the above language in the contracts with the subcontractors.

To comply with the intent of this provision:

Prime contractors must:

- Provide the name of the prime contractor and the address and phone number of its contact person to whom all invoice/billing statements must be sent.
- Pay subcontractors and suppliers within fourteen (14) days of receipt of payment from H-GAC.
- Stipulate the reason(s) in writing to the subcontractor or supplier and to H-GAC for not paying the invoice. Some possible reasons can be:
 1. Failure to provide all required documentation
 2. Unsatisfactory job performance
 3. Disputed work
 4. Failure to comply with other material provisions of the contract.
 5. Third-party claims filed or reasonable evidence that a claim will be filed.
 6. Reasonable evidence that the contract cannot be completed for the unpaid balance of the contract sum or a reasonable amount of retainage.

Subcontractor must:

- Submit invoices or billing statements to the Prime Contractor's designated contact person in an appropriate format and in a timely manner. The format and the timing of billing statements must be specified in the contract(s) between the Prime and the subcontractor(s).

H-GAC will:

- Investigate allegations of nonpayment by the contractor (i.e. may be the Prime Contractor or a Subcontractor).
- Provide a written statement of the finding to the complainant within 15 days of receipt the complaint(s).
- In circumstances where there is not a valid reason for nonpayment, H-GAC may withhold payments in the amount of the unpaid portion of the Prime Contractor's invoice.

Section 26.31 Directory

H-GAC maintains a directory identifying all firms eligible to participate as DBEs. The database 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. H-GAC will revise the directory annually and upon request by a firm. H-GAC will make the directory available for each DOT-assisted RFP/RFQ on h-gac.com/rfp. The list may also be obtained by contacting the H-GAC DBELO at dbelo@h-gac.com or 713-627-3200. The directory may be found in Attachment 3 to this program document.

Section 26.33 Over Concentration

When H-GAC determines DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in the highway, transit or aviation planning program, it will develop written procedures to address this situation. The procedures will be submitted to the appropriate DOT operating administration(s) (such as FHWA, FTA and FAA) for review and approval prior to implementation.

Section 26.35 Business Development or Mentor-Protégé Programs

H-GAC has not established a business development program.

Section 26.37 Program Monitoring

H-GAC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. H-GAC will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 6 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. H-GAC will implement appropriate mechanisms to ensure compliance with the party's requirements by all program participants. The mechanisms H-GAC may use include, but are not limited to:
 - H-GAC will notify subcontractors (DBE and non-DBEs) of the Prime Contractor's responsibility for prompt payment and encourage subcontractors to notify H-GAC in writing with any possible violations to the prompt payment mechanism.
 - Withholding payment from Prime Contractors that do not comply with the prompt payment provision noted above, where it has been determined by the H-GAC DBELO that delay of payment to the subcontractor is not justified.
 - Stopping work on the contract unit until compliance issues are resolved.
 - Terminating the contract.

H-GAC will verify that the work committed to DBE at contract award is actually performed by DBEs. This will be accomplished by:

- Requiring Prime Contractors to report DBE work performed in each monthly progress report along with an indication of number hours worked, any costs incurred and the amounts paid to DBE(s).
 - Ensuring that DBE participation is credited toward the overall goal or contract goals only when payments are actually made to DBE firms
4. In our reports of DBE participation to DOT, H-GAC will show both commitments and attainments, as required by the DOT reporting form.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Quotas

H-GAC does not use quotas in any way in the administration of the DBE program.

Section 26.45 Calculating the overall DBE Program Goal

H-GAC will annually establish overall goals if prime contracts exceeding \$250,000 in USDOT-assisted contracts may be awarded in a Federal fiscal year in accordance with the 2-step process as specified in 49 CFR Part 26.45. If H-GAC does not anticipate awarding more than \$250,000 in USDOT-assisted contracts within the Federal fiscal year, H-GAC will not develop an overall goal; however the existing DBE program will remain in effect and H-GAC will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

H-GAC will annually establish overall goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations is found in **Attachment 2** to this program.

In accordance with Section 26.45(f) H-GAC will submit its overall goal to DOT on **August 1** of each year. In establishing the overall goal each year, H-GAC will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the H-GAC efforts to establish a level playing field for the participation of DBEs.

Following this consultation, H-GAC 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 the H-GAC offices for 30 days following the date of the notice, and informing the public that H-GAC and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. Normally, H-GAC will issue this notice by **June 1** of each year. The notice will include addresses to which

comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

H-GAC will begin using the overall goal on October 1 of each year, unless DOT has issued other instructions. If H-GAC establish a goal on a project basis, H-GAC will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 2** to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

H-GAC will use contract goals to meet any portion of the overall goal H-GAC does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

H-GAC will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. H-GAC need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

H-GAC will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

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

The DBELO will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before H-GAC commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

H-GAC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness – all bidders submit DBE information at the time of bid.

Responsiveness - Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within (7) business days of being informed by H-GAC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Mr. Ashby Johnson, Deputy Director of Transportation, Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777, 713-627-3200, ashby.johnson@h-gac.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. H-GAC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

H-GAC will require a contractor to make good faith efforts 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. H-GAC will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, H-GAC will require the Prime Contractor to obtain H-GAC's prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the H-GAC Executive Director may issue an order stopping all or part of payment/work until satisfactory action has been taken by the contractor. If the contractor still fails to comply, the Executive Director may terminate the contract.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the H-GAC to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of XX%, as

determined in the Attachment 2, has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

H-GAC will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. H-GAC will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

H-GAC will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. H-GAC will make our certification decisions based on the facts as a whole.

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

1. City of Houston Affirmative Action
611 Walker, 7th Floor
Houston, TX 77002
Tel: 713-837-9015
Fax: 713-837-9055
Email: mail@cityofhouston.net
2. Texas Department of Transportation (TXDOT)
Business Opportunity Programs Office (BOP)
125 E. 11th Street
Austin, TX 78212
Tel: 866-480-2518
Fax: 512-486-5539
Email: tucpdata@dot.state.tx.us

The Texas Unified Certification DBE Program application forms and documentation requirements are found in Attachment 5 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

H-GAC is a member of a Unified Certification Program (UCP) administered by the Texas Department of Transportation. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

H-GAC will ensure the UCP reviews the eligibility of DBEs that we certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. H-GAC will complete this review no later than three years from the most recent certification date of each firm.

For firms that we ensure UCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility every two years during the month when the DBE directory is being updated. These reviews will include the following components: the completion of a new application, and site visit as deemed necessary by H-GAC.

“No Change” Affidavits and Notices of Change (26.83(j))

The UCP requires all DBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its 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 [*Recipient’s*] application for certification.

The UCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to the [*Recipient*] under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$20.41 million.

The UCP requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

The UCP will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth, (26.67(b))

All disadvantaged owners of applicant firms and currently certified DBE firms whose eligibility under Part 26 is reviewed are required to submit a statement of personal net worth. Attachment 5 sets forth our personal net worth form and the documentation respondents must submit with it.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until (12) months have passed from our action.

Section 26.87 Removal of a DBE’s Eligibility

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with 26.87. **Attachment 5** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the UCP have determined that City of Houston, Affirmative Action will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative “firewall” to ensure that City of Houston, Affirmative Action will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 5414
Washington, D.C. 20590

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

H-GAC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, H-GAC will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

H-GAC 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 H-GAC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

H-GAC 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 stated in the schedule of DBE participation.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race-Conscious Participation, Public Participation, and Contract Goal)
- Attachment 3 H-GAC DBE Directory
- Attachment 4 H-GAC Consultant Survey Form
- Attachment 5 Texas Unified Certification Program
- Attachment 6 List of Minority-owned Financial Institutions in Texas
- Attachment 7 Regulations: 49 CFR Part 26