

**CITY OF MCKINNEY
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
TRANSIT SERVICES**

POLICY STATEMENT

The City of McKinney, Texas, (City) has established a Disadvantaged Business Enterprise (DBE) Program for Transit Services in accordance with regulations of each cognizant State or Federal agency from which it receives financial assistance.

DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. For purposes of the DBE program, African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.

The DBE program provides a “level playing field” for small, minority-owned and women-owned companies interested in business interaction with the City.

It is the policy of the City of McKinney to ensure that DBEs have an equal opportunity to receive and participate in Federally-assisted contracts for Transit Services. It is also the City’s policy with regard to Transit Services:

- To ensure nondiscrimination in the award and administration of contracts, including Federally-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for awards and Federally- assisted contracts;
- To ensure that the DBE Program adheres in accordance with applicable law;
- To ensure only firms that fully meet the eligibility standards for each cognizant agency are permitted to participate as DBEs;
- To help remove barriers toward the participation of DBEs in contracts, including Federally-assisted contracts; and
- To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The City of McKinney Purchasing Manager is delegated as the DBE Liaison Officer (DBELO). In that capacity, this individual is responsible for implementing all aspects of the DBE program applicable to Transit Services. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of McKinney in its financial assistance agreements with the cognizant state and federal agencies for Transit Services.

The City of McKinney has disseminated this policy statement to the City of McKinney Mayor and City Council and all of the components of our organization. The City will distribute this

statement to DBE and non-DBE business communities that perform work on state and federally-assisted contracts for Transit Services. Distribution will be accomplished through email correspondence sent via the City of McKinney's eBid system and by posts on the City of McKinney's website.

Lisa Littrell
Purchasing Manager/DBE Liaison Officer

Date

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SUBPART A – GENERAL REQUIREMENTS

Objectives

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

Applicability

This policy will apply to all funding received from any federal agency for Transit Services.

Definitions

The City of McKinney will use terms in this program that have the meanings defined by the cognizant federal agencies.

Non-discrimination Requirements

The City of McKinney 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 for Transit Services covered on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of McKinney 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 for Transit Services with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements

Reporting

In accordance with regulations of each cognizant state or federal agency from which it receives financial assistance for Transit Services, the City will report DBE participation to the cognizant agencies annually. Should the City procure any transit vehicles using FTA funds, the Transit Program Administrator will report the federally-funded procurement by submitting the required Transit Vehicle Manufacturer (“TVM”) form, or such other documentation as may then be required, to the FTA Office of Civil Rights within thirty days of making the award.

Bidders List

The City of McKinney 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 state or federally-assisted contracts for Transit Services for use in helping to achieve 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 is not an endorsement of DBE or non-DBE firms. Reporting may be annually, however, inclusion to participation is ongoing during the program year.

Federal Financial Assistance Agreement

The City of McKinney agrees to the following assurances, applicable to all federally-assisted contracts for Transit Services and their administration unless other assurances, requirements or regulations are mandated by rule or law.

The City of McKinney shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federally- assisted contracts for Transit Services or in the administration of its DBE program or the requirements of 2 CFR 200.321. The City shall take all necessary and reasonable steps under 2 CFR 200.321 to ensure nondiscrimination in the award and administration of federally assisted contracts for Transit Services. Implementation of the City's DBE program for Transit Services is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of McKinney of its failure to carry out its approved program for Transit Services, the Department may impose sanctions as provided for under Part 200 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.).

Assurance:

Each agreement for Transit Services signed that is funded with a federal operating assistance (as a primary or sub-recipient) must include the following assurance:

1. Compliance with Regulations – The Contractor shall comply with regulations relative to non-discrimination in federally-assisted programs under Title VI, as amended, (hereinafter referred to as “Regulations”), which are incorporated by reference and made a part of this contract.
2. Nondiscrimination – The Contractor, with regard to the work performed during the contract for Transit Services, shall not discriminate on the grounds of race, color, sex, or national origin in the selections, retention, and treatment of subcontractors, including procurements of materials in the discrimination prohibited by Title VI, including employment in covered programs. Contractor will, in all solicitations and advertisements for employees placed by or on behalf of Contractor for Transit Services, state that it is an Equal Opportunity or Affirmative Action employer.
3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment – In all solicitations, for Transit Services whether by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the contract and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin. Contractor will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract for Transit Services.

4. Information and Reports – The Contractor shall provide all information and reports required by the Regulations, or directives issues pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Federal agency to be pertinent to ascertain compliance such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor shall so certify and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance – In the event the Contractor’s noncompliance with the nondiscrimination provisions of this contract for Transit Services, the City of McKinney shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - Withholding payments to the Contractor under the Contract for Transit Services until the Contractor complies and/or;
 - Cancellation, termination or suspension of the Contract for Transit Services, in whole or in part.
6. Incorporation of Provisions – the Contractor shall include provisions of paragraphs (1) – (5) of this Subpart A labeled “Assurance” in every subcontract for Transit Services, including procurement of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement for Transit Services as the City of McKinney may direct as a means of enforcing such provisions including sanctions for noncompliance.

SUBPART B- ADMINISTRATIVE REQUIREMENTS

DBE Program Updates

The City of McKinney will continue to carry out this DBE program until all funds from federal financial assistance for Transit Services have been expended. The City of McKinney will provide to the cognizant federal agencies updates representing significant changes in the program for Transit Services for approval.

Policy Statement

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

DBE Liaison Officer (DBELO)

We have designated the following as the primary DBE Liaison Officer (DEBLO) for Transit Services:

Purchasing Manager
City of McKinney
1550 S. College St
McKinney, TX
75069
(972) 547-7582

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program for Transit Services and ensuring that the City of McKinney complies with the requirements of each cognizant agency. The DBELO has direct, independent access to the City of McKinney Mayor and City Council concerning DBE program matters related to Transit Services. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program. The DBELO shall delegate responsibilities as appropriate for program management related to Transit Services, but will maintain responsibility for ensuring compliance.

The DBELO is responsible for developing, implementing and monitoring the DBE program for Transit Services, in coordination with other appropriate officials. The duties and responsibilities related to Transit Services include the following:

1. Gathers and reports statistical data and other information as required by each cognizant agency;
2. Reviews third party contracts and purchase requisitions for compliance with this program;
3. Works with all departments to set overall annual goal;
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results;
6. Analyzes City of McKinney's progress toward attainment and identifies ways to improve progress;
7. Participates in pre-bid meetings;
8. Advises the CEO/governing body on DBE matters and achievement;
9. Chairs the DBE Advisory Committee;
10. Determines contractor compliance with good faith efforts;
11. Provides DBEs with information in preparing bids, obtaining bonding and insurance;
12. Plans and participates in DBE training seminars;
13. Acts as liaison to the Uniform Certification Process in the State of Texas;
14. Provides outreach to DBEs and community organizations to advise them of opportunities; and,
15. Maintains the City of McKinney's updated directory on certified DBEs.

DBE Financial Institutions

It is the policy of the City of McKinney 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 federally-assisted contracts for Transit Services to make use of these institutions. The City of McKinney will make the following efforts to identify and use such institutions, not limited to:

1. McKinney Chamber of Commerce;
2. Collin County Black Chamber of Commerce;
3. Tri-County Hispanic Chamber of Commerce;
4. Dallas-Fort Worth Minority Supplier Council;
5. Asian Dallas Chamber of Commerce;
6. Arlington Black Chamber of Commerce;
7. Fort Worth Metropolitan Black Chamber of Commerce;
8. Women In Construction – DFW Chapter;
9. State of Texas – HUB organizations; and,
10. Regional Hispanic Contractors Association – Dallas.

Prompt Payment Mechanisms

The Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, which Act applies to City of McKinney Contracts for Transit Services, requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from receipt of each payment made to the prime contractor by the City. *See* Tex. Gov't Code §§ 2251.022 and 2251.023.

The Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, also requires the prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. *See* Tex. Gov't Code §§ 2251.022 and 2251.023. The City of McKinney will also use the following method to encourage prompt payment by prime contractors to subcontractors on contracts related to Transit Services:

- Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

The City of McKinney will consider a subcontractor's work satisfactorily completed when all the tasks called for in the subcontract for Transit Services have been accomplished and documented as required. When the City of McKinney has made an incremental acceptance of a portion of a prime contract for Transit Services, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily complete.

The City of McKinney will provide appropriate means to enforce the requirements of this section in addition to the provisions set forth in the Texas Prompt Payment Act in those contracts related

to Transit Services. In the event of the contractor's noncompliance with these prompt payment provisions, the City may impose such additional sanctions and penalties as it or the cognizant agencies may determine to be appropriate for Transit Services, including, but not limited to:

1. Withholding of payments to the contractor under the contract until the contractor complies; and/or
2. Deduction from a contract funds due or to become due to the contractor; and/or
3. Disqualification of the contractor as a non-responsible contractor; and/or
4. Cancellation, termination or suspension of the contract in whole or in part; and/or
5. Any other remedy as the cognizant agency deems appropriate.

In addition, the City of McKinney will also require that the prime contractor provide a Payment Bond for the benefit of subcontractors and product suppliers in accordance with Chapter 2253 of the Texas Government Code to ensure payment to such beneficiaries.

The City of McKinney will include the following clause in each federally-assisted prime contract for Transit Services:

1. In accordance with the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the City of McKinney. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed in accordance with the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251. Any delay or postponement of payment from the above references timeframe may occur only for good cause following written approval of the City of McKinney. This clause applies to both DBE and non-DBE subcontractors for Transit Services:
 - A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
 - A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
 - Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully promptly paid.

Directory

The City of McKinney uses the State of Texas DBE directory, maintained by the State. 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. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most appropriate NIGP code available to describe each type of work.

The State of Texas revises the Directory on a continual basis. A State of Texas DBE search may be found at:

<https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>

Business Development

The City of McKinney has not established a business development program. The City will re-evaluate the need for such a program as part of the DBE Goal Update Process for Transit Services every three years.

Over-concentration

The City of McKinney has identified that over-concentration does not exist in the types of work that DBEs perform for Transit Services.

Monitoring and Enforcement Mechanisms

The City of McKinney will take the following monitoring and enforcement mechanisms to ensure compliance with the requirements of the cognizant agencies for Transit Services.

1. Bring to attention of the cognizant agencies any false, fraudulent, or dishonest conduct in connection with the Transit Services program, so that they can take appropriate steps (e.g., referral to the U.S. Department of Justice for criminal prosecution, referral to the Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).
2. Implement similar action under our own legal authorities, including responsibility determinations in future contracts for Transit Services per Tex. Loc. Gov't Code. In the event of non-compliance with the DBE regulations by a participant in our DBE Program, the City of McKinney will first advise violators in writing that if any non-compliance issues are not resolved within 30 days they may be determined to not be responsible in considering future contract awards for Transit Services. At the end of the 30 day period, if non-compliance issues have not been resolved to the satisfaction of the DBELO, the violator will be noted as not being responsible on future bid submissions for Transit Services. The City of McKinney will also suspend any payment owed to the violator for work on any existing contracts for Transit Services until non-compliance issues are resolved to the satisfaction of the DBELO.
3. Implement a monitoring and enforcement mechanism to ensure that work committed to DBEs for Transit Services at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. Implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by monitoring monthly pay requests for payments to

DBEs for Transit Services. The City will also require all DBEs to certify that such payments were made.

5. Implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms) for Transit Services, including a means of comparing these attainments to commitments. In our reports of DBE participation, we will show both commitments and attainments, as required by the cognizant agencies.

Fostering Small Business Participation

The City of McKinney has created a Small Business element to structure contracting requirements for Transit Services 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.

The City of McKinney's small business program element is incorporated as Attachment J to this DBE Program for Transit Services. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of the City's DBE program.

SUBPART C—GOALS, AFFIRMATIVE STEPS, AND COUNTING

Set-asides or Quotas

The City of McKinney does not use quotas in any way in the administration of this DBE program for Transit Services.

Overall Goals

The City of McKinney will establish an overall DBE goal for the award of federally-funded prime or subcontracts for Transit Services, as required by the agency.

In establishing the overall goal, the City of McKinney 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 City of McKinney efforts to establish a level playing field for the participation of DBEs for Transit Services.

The goals of each agency providing federal funding for the award of prime or subcontracts for Transit Services, may be adopted or individual goals, as set forth by the City of McKinney may be adopted. At no time will the goals of the City of McKinney for Transit Services be less stringent than those of the awarding agency.

The City will establish goals on a per contract basis and, the City will begin using that goal at the time of the first solicitation for a federally assisted contract for the project related to Transit Services.

A description of the methodology to calculate the overall goal and the goal calculations, when needed, can be found in Attachment E of this program for Transit Services.

Failure to Meet Overall Goals

The City of McKinney will maintain an approved DBE program for Transit Services and overall DBE goal and administer our DBE program for Transit Services in good faith to be considered to be in compliance with this part.

Contract Goals

The City of McKinney will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBE's and other small businesses and by making contracts for Transit Services more accessible to small businesses, by means such as those listed in Section B of this policy.

The City of McKinney may establish contract goals on those federally-assisted contracts for Transit Services that have subcontracting possibilities as determined by the City department and/or consultant developing and administering the scope of the work being performed. The City does not need to establish a contract goal on every such contract for Transit Services, and the size of contract goals will be adapted to the circumstance of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

The City will express its contract goals as a percentage of the total amount of a federally-assisted contract for Transit Services.

Affirmative Steps

Demonstration of Affirmative Steps

Per 2 CFR § 200.321, the bidder entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible for Transit Services. These efforts regarding Transit Services include:

1. Placing qualified small and minority businesses and women's businesses enterprises on solicitation lists;
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and,
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 1. – 5. in this section.

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

The Purchasing Department will ensure that all information is complete, accurate, and adequately documents the bidder's/offeror's good faith efforts before the City commits to the performance of the contract for Transit Services by the bidder/offeror.

Information to be Submitted

The City of McKinney treats bidders'/offerors' compliance with "responsive steps" as a matter of transparency, meaning that all bidders submit DBE information at the time of bid.

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 for Transit Services:

1. The names and addresses of DBE firms that have been identified to participate in the contract;
2. A description of the work that each DBE may 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 contractor's commitment; and
6. If the contract goal is not met, evidence of affirmative steps taken by the prime contractor.

Administrative Reconsideration

Within 10 business days of being informed by the City of McKinney that a bidder/offeror is not responsive because it has not documented sufficient affirmative steps, a bidder/offeror may request administrative reconsideration. A bidder/offeror should make this request in writing to the following reconsideration official:

City Manager or Designee
City of McKinney
222 N. Tennessee St.
McKinney, Texas 75069
(972) 547-7580

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient affirmative steps for Transit Services.

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 affirmative steps to do so regarding Transit Services. The bidder/offeror will have the opportunity to meet in person with our consideration official to discuss the issue of whether it met the goal or made adequate affirmative steps to do so. We 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 take affirmative steps. The result of the consideration process is not administratively appealable.

Good Faith Efforts When a DBE is replaced on a Contract

The City of McKinney will require a contractor to make a good faith effort to replace a DBE that is terminated or has otherwise failed to complete its work on a contract for Transit Services with another certified DBE, to the extent needed to meet the contract goal. The City 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, the City will require the prime contractor to obtain City's prior approval of the substitute DBE and to provide copies of new or amended subcontracts for Transit Services, or documentation of good faith efforts. The City of McKinney will provide such written consent only if the City agrees, for reasons stated in the City's concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause may include one or more of the following circumstances, which circumstances are provided for illustrative purposes and not restriction:

1. The listed DBE subcontractor fails or refuses to execute a written contract for Transit Services;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract for Transit Services in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract for Transit Services results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to Federal regulations or applicable state law;
6. It has been determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project for Transit Services and provided a written notice of the withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract for Transit Services;
10. Other documented causes the City determines compels the termination of the DBE subcontractor. Provided, that cause does not exist if the prime contractor seeks to terminate a DBE is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contract for Transit Services was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the City its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE 5 days after notification to the DBE to respond to the prime contractor's notice and advise the City of McKinney and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract for Transit Services and why the City should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety) the City may provide a response period shorter than 5 days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, the City of McKinney's purchasing office will issue an order to stop all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Purchasing Manager may issue a termination for default notice.

Sample Bid Specifications:

It is the policy of the City of McKinney to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract for Transit Services. All firms qualifying under this solicitation are encouraged to submit bids/proposals for Transit Services. Award of this contract for Transit Services 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. The bidder/offeror shall take affirmative steps, as defined by each cognizant agency, to meet the contract goal for DBE participation in the performance of this contract for Transit Services.

The bidder/offeror will be required to submit the following information:

1. The names and addresses of DBE firm that will participate in the contract for Transit Services;
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's/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 for Transit Services as provided in the commitment made under 4.; and
6. If the contract goal is not met, evidence of the bidder's/contractor's good faith efforts.

Counting DBE Participation

We will count DBE participation toward overall and contract goals as required by each cognizant agency for Transit Services. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract for Transit Services until the amount being counted has actually been paid to the DBE.

SUBPART D—CERTIFICATION STANDARDS

The City of McKinney will use the certification standards of Subpart D of Part 26 of the Texas Unified Certification Program (TUCP) to determine the eligibility and will rely upon it for all certification determinations for Transit Services. To be certified as a DBE, a firm must meet all certification eligibility standards outlined in Subpart D. Only DBE firms certified by a TUCP participating agency at the time the Qualification Statement or Proposal is submitted will count toward this DBE goal.

For information about the Certification process or to apply for certification for Transit Services, firms should contact one of the follow:

1. City of Houston at: <http://www.houstontx.gov/obo/index.html>
2. City of Austin at: <http://www.ci.austin.tx.us/smbr/>
3. Corpus Christi Regional Transportation Authority at:
<http://ccrta.org/about/dbe/>
4. North Central Texas Certification Agency at: <http://www.nctrca.org/>
5. South Central Texas Certification Agency at: <http://www.sctrca.org/>
6. Texas Department of Transportation at:
<http://www.txdot.gov/business/partnerships/dbe.html>

Please contact each of the above agencies for their certification packets.

SUBPART E—CERTIFICATION PROCEDURES

Unified Certification Programs

The City of McKinney participates in the Texas Unified Certification Program (TUCP). The City of McKinney will meet all of the requirements of this section for Transit Services.

SUBPART F—COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation

The City of McKinney will attempt to safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information, consistent with federal, state and local law. All requests for public information related to Transit Services will, to the extent a viable objection exists thereto, be submitted to the Texas Attorney General's office in accordance with the Texas Public Information Act ("PIA"), Tex. Gov't Code Chapter 552. Relevant third parties will be notified of the submission and be given an opportunity to claim an exception to disclosure found under the PIA.

Notwithstanding any provision of federal or state law, the City of McKinney will not release any information related to Transit Services that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the City will transmit this information to the cognizant agencies in any certification appeal proceedings or to any other state to which the individual's firm has applied for certification for Transit Services. The City may also transmit information that may reasonably be construed as confidential business information regarding Transit Services to the extent required through any mandatory legal process such as a court order, subpoena, subpoena duces tecum, or other formal discovery request following notice to the firm that submitted the information to the City so it may assert and pursue any protections to such disclosure.

Monitoring Payments to DBEs

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

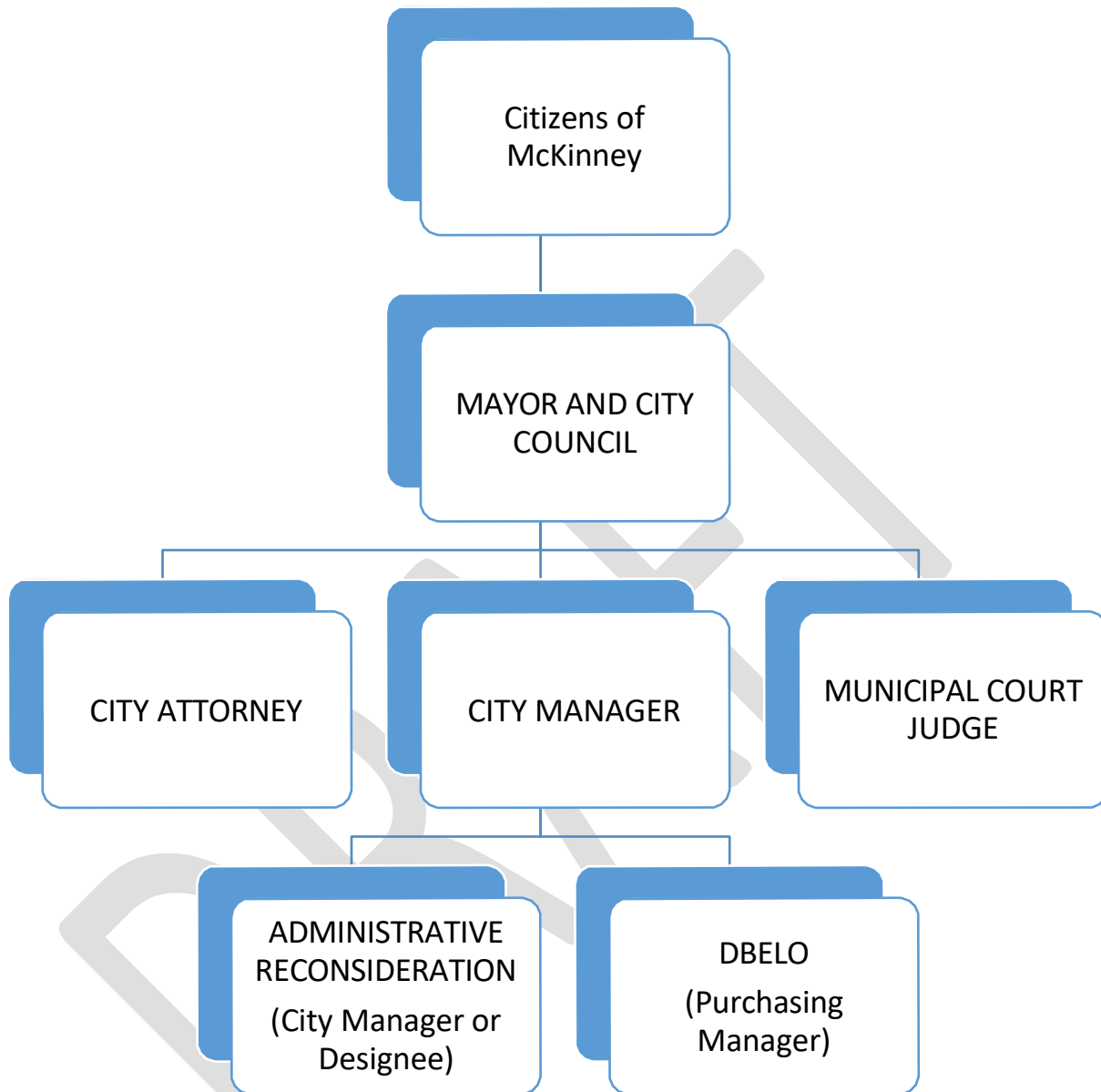
The City of McKinney will perform interim audits of contract payments to DBEs for Transit Services. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation for Transit Services.

ATTACHMENTS

Attachment A	Organizational chart
Attachment B	City of McKinney Goal Methodology
Attachment C	Texas Unified Certification Program (TUCP) Letter of Agreement
Attachment D	Sample Bidders Report
Attachment E	Bid Forms
Attachment F	City of McKinney Small Business Participation Plan (SBPP)

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Attachment A
Organizational Chart



Attachment B
Overall Three-Year DBE Goal Setting Methodology Report

The City of McKinney, submits its Disadvantaged Business Enterprise (DBE) Overall Goal Setting Methodology Report to the Federal agencies listed in the DBE Program for review and approval for Transit Services. The report must be prepared in compliance with 49 CFR Part 26.45, Participation by Disadvantaged Business Enterprises.

These regulations require that the overall goal for Transit Services be prepared using a two-step process whereby the recipient must first determine a base figure for the relative availability of certified and non-certified minority and woman-owned business enterprises in the relevant market area.

Next, the recipient must examine all relevant evidence to determine what adjustment to the base figure, if any, is needed in order to arrive at an overall goal for Transit Services. The final adjusted figure is the recipient's overall goal, and represents the proportion of federal funding the recipient is expected to allocate to DBEs during the subsequent three federal fiscal years for Transit Services.

Once the adjusted overall goal for Transit Services is determined, the recipient is required to determine what portion of the goal will be met by race and gender-neutral measures, those measures must be utilized. In contract, if the recipient determines it cannot achieve the entire overall goal using only race and gender-neutral measures, it must establish a race and gender-conscious portion of the overall goal for Transit Services.

Attachment C
Texas Unified Certification Program (TUCP) Letter of Agreement

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Attachment D
City of McKinney
Bidders List

Name	Contact	Address	Telephone	Age of Firm	Annual Gross Receipts	DBE Y or N	Specialty	Date Certified
ABC Truck Services	JaneDoe	123 Smith Street McKinney, Tx 75069	972-123-6789	10	\$0	Y	Trucking, Hauling, Demolition	8-Sep-14
QRS Hauling	John Doe	369 16th Street McKinney, Tx 75069	972-789-1234	10	\$0	Y	Trucking, Hauling, Demolition	9-Jan-15

Attachment E- Bid Forms

**RESPONDENT'S OR PROPOSER'S DBE PARTICIPATION
ASSURANCE FORM FOR TRANSIT SERVICES**

Name of Project: _____

City Project No.: _____ State Project No.: _____

Name of Respondent or Proposer: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

Respondent or Proposer has contracted and is committed to utilizing the follow TxDOT certified DBE Firms for Transit Services

NAME & Address of DBE Firms that will participate in the contract	Description of work that each DBE will perform	Dollar amount of the participation of each DBE (N/A for Statement of Qualifications)	DBE's participation percentage
		\$	%
		\$	%
		\$	%
		\$	%
TOTAL		\$	%

The undersigned will enter into a formal written agreement with the DBE firm identified herein for work and/or goods and services related to Transit Services as shown above, conditioned upon the execution of a contract with the City of McKinney. The undersigned agrees to be contractually bound to maintain the level of DBE participation set forth above. Failure to comply with this agreement constitutes breach of contract.

Name: _____ Title: _____

Signature: _____

Phone No.: _____ Date: _____

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Attachment E –Bid Forms (cont'd)

**DBE FIRM' S PARTICIPATION
ASSURANCE FORM FOR TRANSIT SERVICES**

(All DBEs, including Respondents or Proposers who are DBEs, that are planning to engage in work on this project for Transit Services must submit this form.)

Name of Project: _____

City Project No.: _____ State Project No.: _____

Name of Respondent or Proposer: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

I hereby declare and affirm that this firm is currently certified by the Texas Department of Transportation as a Disadvantaged Business Enterprise (DBE) as defined by 49 CFR Part 26 and that I will provide requested information to document this fact. (Current Letter of Certification must be attached and submitted with this form).

The undersigned is prepared to perform or provide the following work, services and/or goods in connection with the above referenced project for Transit Services:

_____ For a price of \$ _____

_____ (Not applicable on Qualification Statement Submittals) This will be

_____ % of the Prime Contractor's or Consultant's contract with the City

READ CAREFULLY: The undersigned (the DBE) will further subcontract or award _____ % of the dollar value of this subcontract to NON DBE FIRMS.

The undersigned agrees to enter into a contract with the Respondent or Proposer if the Respondent or Proposer is awarded the contract. If the Respondent or Proposer does not receive award of the prime contract, any and all representation in this Assurance Form shall be null and void.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized on behalf of this firm to make this affidavit.

DBE Firm Representative: _____ Title: _____

Signature: _____

Phone No.: _____ Date: _____

(Current letter of DBE Certification shall be attached to and submitted with this form)

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Attachment E –Bid Forms (cont’d)

DBE UNAVAILABILITY CERTIFICATION

If the Respondent of Proposer cannot fully meet the DBE goal of this Contract for Transit Services, the Respondent or Proposer shall complete and attach documentation demonstrating affirmative actions have been taken. *See* 2 CFR § 200.321. It is up to the City of McKinney to make a fair and reasonable judgment as to whether a Respondent or Proposer, which did not meet the contract goal, made adequate good faith efforts.

I, CERTIFY THAT ON THE DATE BELOW I INVITED THE FOLLOWING PROPOSED DBE SUBCONTRACTOR(S) OR SUBCONSULTANT(S) TO RESPOND OR PROPOSE WORK ITEMS TO BE PERFORMED ON THE FOLLOWING TRANSIT SERVICES PROJECT:

Name of Project: _____

City Project No.: _____ State Project No.: _____

Date of Request	Name and address of Firm	Work items sought

The following Firms did NOT respond to the invitation(s):

The following Firms submitted Proposals which were NOT the low Responsible Bid:

Name: _____ Title: _____

Signature: _____

Phone No.: _____ Date: _____

Attachment E –Bid Forms (cont'd)

**CONTRACTOR' S OR CONSULTANT'S
MONTHLY REPORT**

Name of Project: _____

City Project No.: _____ State Project No.: _____

Contractor or Consultant: _____

Contract Amount: _____

_____ Estimate No.: _____

Report Period From: _____ To: _____

This report covers the previous estimate period and shall be submitted to the Project Engineer with the current month's pay estimate.

Subcontract(s) or Subconsultant(s)	Item number or description of work performed	Amount paid this period	Amount paid to date	DBE signature

Authorized Signature: _____ Date: _____

Name: _____ Title: _____

Phone No.: _____

The City of McKinney DBELO has reviewed this form.

City of McKinney DBELO's Signature _____ Date: _____

ATTACHMENT E—Small Business Participation Plan

Purpose and Objective

This element is included as an attachment to the DBE program for Transit Services for the City of McKinney, Texas (the City), and is herein referenced as the Small Business Participation Plan for Transit Services (SBPP). This attachment calls for the inclusion of an element to:

“Structure contracting requirements to facilitate competition by Small Business Concerns (SBCs), Taking all reasonable steps to eliminate obstacles to their participation.”

The City of McKinney hereby sets forth its plan to implement these requirements for Transit Services. The SBPP is also regarded as a substantial effort toward fulfilling the overall intent of the regulations of each cognizant federal agency from which it receives financial assistance, which is to meet the maximum feasible portion of its overall goal by using race-neutral means to obtain Small Business participation for Transit Services.

Therefore, implementation of the City’s SBPP will be based on the standard of business size, without regard to race or gender of the business owner.

The element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements for Transit Services as either prime or subcontractors.

Further, the City of McKinney perceives the objectives of this section to be consistent with its DBE Program Policy Statement for Transit Services, which includes the following:

1. To ensure nondiscrimination in the award and administration of federally-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for federally-assisted contracts;
3. To ensure that the DBE Program narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the eligibility standards for each cognizant agency are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in federally-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.”

Our policy statement and this SBPP are consistent with the City’s long history of creating and encouraging business opportunities at all levels.

Small Business Participation Plan (SBPP) Strategy

The City of McKinney intends to carry out the objectives of this attachment by employing the following strategy and supporting activities for Transit Services:

1. Establishment of a Race-Neutral Subcontracting “Goal” - The City proposes, where feasible, on certain prime contracts for Transit Services that do not have a DBE contract goal, that prime contractors will be required to provide subcontracting opportunities to qualified Small Business Concerns (SBCs), as defined herein. And without regard to race or gender of the business owner. Verified business size and subcontracting opportunities will be the basis of this subcontracting goal for Transit Services. The opportunities must be of a size that SBCs, including some which may also happen to be DBEs, can reasonably perform. The City will assess the feasibility for race-neutral subcontracting goals on projects for Transit Services. The City will assist the potential prime contractors by reviewing the project(s) for Transit Services, in advance of the solicitation and by suggesting potential subcontracting opportunities in the solicitation documents. This process will help to establish a reasonable race-neutral Subcontract Goal.
2. Consideration of “Unbundling” of Large Contracts - When and if feasible, the City may “unbundle”, or bid separately, large projects for Transit Services into smaller projects to assist Small Business participation. The City will review contracts with each federal agency from which it receives financial assistance for Transit Services to determine if portions of a project can be unbundled. This will be based, in part at least, upon a consideration of the availability of costs associated with unbundling the project. The City will assist prime contractors in identifying portions of the work for Transit Services which may be unbundled and performed by a Small Business concern.
3. Use of Set-Asides - The City of McKinney will allow for, when needed, the use of set asides in order to facilitate Small Business participation for Transit Services.
4. Mega Projects - Projects that involve multiple year design-build or other large contracts for Transit Services can be considered as “mega” projects. Prime contract bidders will specify elements of the contract or subcontract for Transit Services that are of a size the Small Businesses, including DBEs, can reasonably be expected to perform.
5. Good Faith Implementation - There will be no geographic or local preferences or limitations imposed on federally-assisted contracts for Transit Services and this program will be open to Small Business concerns regardless of location. There will be no limits on the number of contracts for Transit Services awarded to a firm participating in the program. Reasonable effort will be made to avoid creating barriers for new or untried businesses.

Definitions

- Small Business - For purposes of this program element, which is part of our approved DBE program for Transit Services, "Small Business" shall have the same definition as "Small Business Concerns" contained in 49 CFR 26.5:

"Small Business Concern means, with respect to firms seeking to participate as DBEs in federally-assisted contracts for Transit Services, a Small Business Concerns as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that a/so does not exceed the cap on average annual gross receipts specified in 26.65(b)."

It is understood that in the implementation of this element, all of the "Small Business Concerns" may not necessarily be DBE firms. However, Small Businesses which are also owned and controlled by individuals who meet the DBE standard will be encouraged to seek DBE certification.

Supportive Services

Although not a direct provider of supportive services, the City of McKinney is aware of several important resources for Small Business Concerns in the general market area for Transit Services providers. The City will make referrals to these services and provide links to them on the City's web site. Some of these services include those provided through the Texas District office of the Small Business Administration (“SBA”), such as information on small business loans, grants and bonds and other financial assistance. There is also a local Small Business Development Center located in Plano at:

Small Business Development Center

4800 Preston Park Boulevard

Plano, TX 75093

Phone: (972) 985-3770

Web: <https://www.sba.gov/tools/local-assistance>

Small Businesses seeking opportunities at the City of McKinney will be referred to this center.

Implementation Plan and Time-Table - City of McKinney, Texas Small Business Participation Plan (SBPP)

The City of McKinney proposes to have its SBPP for Transit Services fully implemented within 180 days of the adoption of the final plan. The City will utilize the timeframe to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

Review all upcoming projects to determine which projects for Transit Services, if any, will be conducive for application of the SBPP strategy described above, i.e., the use of a race-neutral subcontracting goal.

Review compliance and necessary revisions and modifications to bid solicitation language etc., for Transit Services prior to implementation.

Coordinate with other entities currently providing relevant supportive services and/or business development for referrals to their programs, appropriate for the Small Business Concerns which may contact the City to increase their competitive opportunities related to Transit Services.

The City, during the pre-implementation period, may also seek consultation with the representative Small Business community.

Assurances

The City agrees to the following assurances regarding the DBE Program for Transit Services:

1. Assurance that the program is authorized under state law;

2. Assurance that certified SBCs that meet the size criteria established under the program are presumptively eligible to participate in the Small Business Participation Program;
3. Assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. Assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
5. Assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for SBC certification to become certified; and
6. Assurance that the program is open to Small Businesses regardless of their location (i.e., that there is no local or other geographic preference).

Principal Responsible Person

The principal responsible person for overseeing and implementing the City's SBPP for Transit Services will be the currently designated Disadvantaged Business Enterprise Liaison Officer (DBELO).