



University Of New
Hampshire
Transportation Services
Disadvantaged Business
Enterprises

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University Transportation Services

UTS Disadvantaged Business Enterprise Program Objectives /Procedure Statement

University Transportation Services (herein referred to as "UTS") has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23 and 26. UTS has received financial assistance from the Department of Transportation, and as a condition of receiving this assistance, UTS assures that it will comply with 49 CFR Part 23 and 26.

It is the procedure of UTS to ensure that DBEs, as defined in Part 23 and 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is UTS procedure:

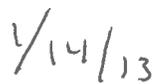
1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 23 and 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Program Manager is the DBE Liaison Officer for UTS. In that capacity the Program Manager 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 UTS in its financial assistance agreements with the Department of Transportation.

UTS has disseminated this procedure statement to the University System of New Hampshire and University of New Hampshire executive management and components of its organizations.



Dirk S. Timmons, Director, UNH Transportation Services



Date

Nondiscrimination

UTS 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 23 and 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, UTS 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.

Record Keeping Requirements

UTS will report DBE participation on a semi-annual basis using the electronic reporting methods in TEAM. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

DBE Program Updates

UTS will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer: Beverly Cray, Manager of University Transportation Services, (603) 862-1689, beverly.cray@unh.edu. In that capacity, Ms. Cray is responsible for implementing all aspects of the DBE program and ensuring that UTS complies with all provisions of 49 CFR Part 23 and 26. Ms. Cray has direct, independent access to Dirk Timmons, the Director of Transportation Services, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment "A" to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchases for compliance with this program.

3. Works to set overall annual goals.
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 and monitors results.
6. Analyzes UTS progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Assistant Vice President on DBE matters and achievement.
9. Participates with legal counsel to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains UTS updated directory on certified DBEs as provided by the New Hampshire DOT.

Federal Financial Assistance Agreement Assurance

University Transportation Services makes the following assurance applicable to all DOT-assisted contracts and their administration.

UTS 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 23 and 26. The recipient shall take all necessary and reasonable action under 49 CFR Part 23 and 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 23 and 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 UTS of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 23 and 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.).

DBE Financial Institutions

UTS encourages contractors and vendors to utilize the services of banks and other financial institutions owned and controlled by socially and economically disadvantaged individuals when such institutions are available. This issue will be discussed at pre-bid/pre-proposal conferences.

DBE Directory

UTS utilizes, and adopts as if its own directory of DBEs, the New Hampshire Department of Transportation's complete listing of all approved DBE contractors, consultants, manufacturers, and suppliers including the products and/or services they offer.

Required Contract Clauses

Contract Assurance (Nondiscrimination Assurance)

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

"The contractor 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 23 and 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

Prompt Payment

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

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from UTS. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of UTS. This clause applies to both DBE and non-DBE subcontractors."

Disputes regarding payment for goods and/or services shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. UTS shall make every effort to limit the negotiating period for a time not to exceed 30 days. Failure to come to a negotiated settlement will allow the aggrieved party to seek recourse in the courts of law.

Fostering Small Business Participation

UTS will foster small business participation in our contracting opportunities by taking all reasonable steps to eliminate obstacles to their participation. This will be accomplished using the following methods:

1. Not permitting unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or sub-contractors.
2. Establishing a race-neutral small business set-aside for prime contracts under \$1 million.
3. 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.
4. 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.
5. 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.
6. To meet the portion of our overall goal we 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.
7. Bidders using DBE’s as sub-contractors are required to seek approval prior to making any changes from the DBE specified in their bid.

Monitoring and Enforcement Mechanisms

We 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). UTS will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall Goals

UTS overall goal is to provide DBEs no less than 10% participation in all DOT assisted contracts.

Transit Vehicle Manufacturers (TVM)

UTS will require each TVM, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

Alternatively, UTS may, at its discretion and with DOT approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Process

UTS submits its overall goal to DOT on August 1 of each year, except where we submit a project goal.

Before establishing the overall goal each year, UTS will consult with the State of New Hampshire Department of Transportation to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and UTS efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the UTS office for 30 days following the date of the notice, and informing the public that UTS and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be advertised in Foster's Daily Democrat, the New Hampshire Business Review, the Portsmouth Herald, and the UTS website, <http://www.unh.edu/transportation>. Normally, we will issue this notice by June 1 of each year. The notice will include UTS's address to which comments may be sent and the address where the proposal may be reviewed.

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

UTS will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

UTS will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. UTS uses the following race-neutral means to increase DBE participation:

1. Providing Technical assistance and other services to bidders upon request;
2. Making available by reference and promotion of the NH DOT website the DBE Directory to potential prime contractors.

Contract Goals

UTS will use contract goals to meet any portion of the overall goal UTS 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.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Good Faith Efforts

UTS treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information at the time the bid/proposal is due.

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 participation
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 good faith efforts.

7. If the DBE goal is not met, UTS will do a short fall analysis to find out why we did not meet our goal and to make any changes to our processes for better inclusion in future projects and contracting opportunities.

Demonstration of good faith efforts

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.

For contracts where DBE contract goals are established, contracts will only be awarded to the bidder/proposer who makes good faith efforts to meet the goal.

UTS will determine that the bidder/proposer made good faith efforts by examining the following:

1. Whether the contractor solicited, through all reasonable and available means, the interest of all certified DBEs who have the capability to perform the work of the contract.
2. Whether the contractor solicited interest within sufficient time to allow the DBEs to respond and if appropriate steps were taken to follow up with interested DBEs.
3. Whether the contractor negotiated in good faith with interested DBEs. Evidence of such negotiations should include the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached.
4. Whether the contractor effectively used the services of available minority/women community organizations, contractors' groups and other organizations to provide assistance in the recruitment and placement of DBEs.
5. Whether other bidders on the procurement met the DBE goal.

The following personnel are 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: Program Manager, Director of USNH Purchasing and Contract Services or her designees.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before we commit to the performance of the contract by the bidder/offeree.

Administrative reconsideration

Within five (5) business days of being informed by UTS that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeree may request administrative reconsideration. Bidder/offerees should make this request in writing to the following reconsideration official: Mr. Dirk Timmons, Director, Transportation Services, 295 Mast Road, Durham, New Hampshire 03824; (603) 862-2630. The reconsideration official will not have played any role in the original determination that the bidder/offeree did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeree 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/offeree 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. We will send the bidder/offeree 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

We 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. We 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, we will require the prime contractor to obtain our prior 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, our 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 for default proceeding.

Counting DBE Participation

The value of the work actually performed by the DBE is the only work counted toward the DBE goals. UTS will count the entire amount of a construction contract that is performed by the DBE's own forces.

This includes the cost of supplies and materials purchased by the DBE for the work of the contract. The entire amount of fees or commissions charged by the DBE firm for services rendered such as professional, technical, consultant, or for providing bonds or insurance will be counted. DBE achievement will only be counted toward the overall goal after the DBE has been paid.

DBE Certification

UTS adopts as if its own the New Hampshire Department of Transportation's Uniform Disadvantaged Business Enterprise Application and certification process presently administered by Mr. Jay Ankenbrock, DBE Coordinator Bureau of Human Resources, New Hampshire Department of Transportation, 7 Hazen Drive, Concord, NH 03302. UTS accepts and acts on, as if it made such judgments and determinations, all said judgments and determinations made by NH DOT on eligibility, qualification, and certification of DBE status and subsequent inclusion in the NH DOT DBE directory.

Certification Appeals

Any firm or complainant may appeal decisions in a certification matter to DOT. Such appeals may be sent to: Department of Transportation Office of Civil Rights Certification Appeals Branch 400 7th St., SW, Room 2104 Washington, DC 20590.

We 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).

"No Change" Affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its DBE certification.

Information Collection and Reporting

Bidders List

UTS will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts; or, a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.

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 UTS or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Interim audits of contract payments to DBEs will be performed. 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.

Reporting to DOT

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Confidentiality

UTS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. The New Hampshire Revised Statutes provides for disclosure of "public records" pursuant to RSA 91-A:4. Under New Hampshire law, information submitted pursuant to UTS DBE program would likely be considered a "public record" and would be disclosed unless an exception to disclosure applies, as defined in RSA 91-A:5. In response to any request for information under RSA 91-A:4, UTS will review federal, state and local law and then produce or withhold the information according to the requirements of all applicable law. Information that a DBE identifies as a trade secret will be specifically analyzed by UTS to determine whether federal, state and local law requires such information to be withheld from disclosure as a trade secret. If a DBE feels the information is a trade secret, they will be instructed to mark this on each page of the information submitted.

UNIVERSITY OF NEW HAMPSHIRE

Department of Transportation Services

Disadvantaged Business Enterprise Program 2013

