



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512)832-7000

January 8, 2007

Honorable Dan A. Gattis, SR
Williamson County Judge
301 S.E. Interloop
Suite 109
Georgetown TX 78626

Dear Judge Gattis:

Attached is an executed Memorandum of Understanding with TxDOT adopting the department's Federally Approved Disadvantaged Business Enterprise Program.

If you have any questions, please call me at 832-7050.

Sincerely,



Patricia L. Crews-Weight, P.E.
Director of Design

Attachments

cc: Mark Jones, PE

Memorandum of Understanding
Regarding the
Adoption by Williamson County
of the Texas Department of Transportation
Federally-Approved Disadvantaged Business Enterprise Program

 **ORIGINAL**

This Memorandum of Understanding is by ad between the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas; and Williamson County ("the County"), a local government of the State of Texas.

Whereas, from time to time the County receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the County with the construction of roadway projects; and

Whereas, the County has entered into a pass-through toll agreement with TxDOT for the purpose of improving the state highway system, authorizing the County to construct improvements to US 79, FM 1660, IH 35/SH 29, US 183 and FM 2338; and

Whereas, the County, as a sub-recipient of federal funds, is required by 49 CFR, to implement a program for disadvantaged business enterprises ("DBE"), as defined by 49 CFR 26.5 ("DBE Program"); and

Whereas, TxDOT has implemented a DBE program that is approved by FHWA pursuant to 49 CFR part 26; and

Whereas, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the County's procurement of construction services are subject to review and/or concurrence by TxDOT; and

Whereas, the County and TxDOT undertake substantially similar roadway construction projects and construct their respective projects using substantially the same pool of contractors; and

Whereas, the County desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the County find it appropriate to enter into this Memorandum of Understanding to memorialize the obligation, expectations and rights of each as related to the County's adoption of the TxDOT DBE program to meet the federal requirements;

Now, therefore, TxDOT and the County, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

- (1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

- (2) The County is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 CFR § 26.21, must implement a federally approved DBE Program. The County receives its federal assistance through TxDOT. As a sub-recipient, the County has the option of developing its own program or adopting and operating under TxDOT's approved DBE Program. For a variety of reasons, the FHWA recommends that sub-recipients, such as the County, adopt TxDOT's DBE program administered through TxDOT.
- (3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the County to achieve its DBE participation in the County's federally assisted roadway construction projects. This MOU represents the intentions of both parties and is not intended to be a binding contract.
- (4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the County and for TxDOT.
- (5) The County and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the County:
 - (a) The County will be responsible for project monitoring and data reporting to TxDOT. The County will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the County.
 - (b) The County will furnish to the Business Opportunity Program Section of TxDOT, at least three (3) months before letting, or as agreed upon between TxDOT and the County, the specific work items (bid items) and engineers' estimates for the construction project to be let in order for TxDOT to accurately determine the appropriate DBE goal, if any, for the County's federally-assisted construction project.
 - (c) The County may recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The County's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The County and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on the issues.
 - (d) TxDOT will cooperate with the County in an effort to meet the timing and other requirements of County projects.
 - (e) The County will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its roadway construction projects and will be responsible for all costs and expenses incurred in its procurements.

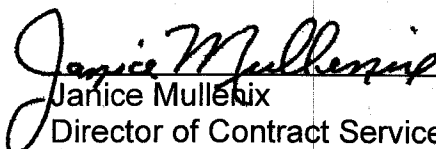
- (f) The DBEs eligible to participate on TxDOT roadway construction projects will also be eligible to participate on County roadway construction projects subject to the DBE Program, unless otherwise prohibited from bidding on a County project under applicable law or the County's Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.
 - (g) The County will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort, Commercially Useful Function, etc. The County and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues.
 - (h) The County will designate a liaison officer to coordinate efforts with TxDOT DBE Program administrators and to respond to questions from the public and private sector regarding the County's administration of the DE Program through TxDOT.
 - (i) TxDOT will be responsible for providing the County with DBE project awards and expense reports, quarterly DBE summary reports, DBE shortfall reports, and annual and updated goal analyses and reports.
 - (j) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The County and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the North Central Texas area.
 - (k) The County will submit DBE quarterly progress reports to FHWA through the division administration of the Texas Division of FHWA.
 - (l) The County will participate in TxDOT sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance, TxDOT will include DBE contractors performing work on the County projects in the DBE Education and Outreach Programs.
- (6) In the event there is a disagreement between TxDOT and the County about the implementation of the TxDOT DBE Program by the County, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, any party may terminate this Memorandum of Understanding by written notice to all other parties.
- (7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

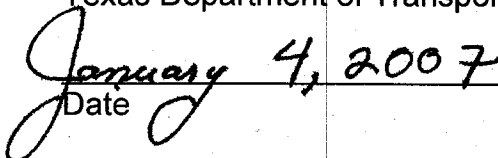
- (8) If this Memorandum of Understanding is terminated for any reason, the County will be allowed reasonable time in which to seek approval for a DBE Program without being deemed not to be in compliance with 46 CFR Part 26 or with an approved DBE program.
- (9) This Memorandum of Understanding applies only to projects for which the County is a sub-recipient of federal funds. The County may also implement a Minority and Women-Owned Small Business Enterprise (M/WSBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program. The County may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

TEXAS DEPARTMENT OF TRANSPORTATION


Executed for the Executive Director and approved for the Texas Department Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.


Janice Mullerix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation


Date January 4, 2007

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT


John C. Doerfler
Williamson County Judge


Date 12-11-06