



ANNUAL REPORT

Executive Summary

Minority and Women Business Enterprise Advisory Committee (M/WBE-AC)



The City's Office of Business Diversity (BDE) strives to increase access to economic opportunities in the public and private sector for minority, women, and small business enterprises.

October 4, 2017

City of Fort Worth's Disadvantaged Business Enterprise (DBE) Program

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- Appendix B: DBE Certification Application
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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Fort Worth ("City") owner of Alliance, Meacham, and Spinks Airport(s)] has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Business Development Manager, Office of Business Development Division, Economic Development Department has been delegated as the DBE Liaison Officer. In that capacity, the Business Development 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 the City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the Mayor and City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by:

1. Public Notice posted on the City's Calendar and bulletin board
2. FAA DBE Public Informational Forum meeting held August 15, 2017
3. City 's Monthly Informational Vendor Forum
4. Posting distributed through North Central Texas Regional Certification Agency to 3,300 DBE, M/WBE and SBE member businesses,
5. Interviews with small businesses at US Pan Asian American Chamber of Commerce Business Networker held on August 11, 2017 and distribution of Posting.
6. DBE Program Goals and Methodology posted on the Office of Business Diversity website www.fortworthtexas.gov/businessdiversity



David C. Cooke, City Manager

10/2/2017
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

Refer to the objectives found in the policy statement on the first page of this program.

Section 26.3 Applicability

The *City* is the Recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The *City* will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The *City* will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the *City* 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 DOT: 26.11

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting due December 1, 2015.

Bidders List: 26.11(c)

The *City* 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 – Attachment 3.

Section 26.13 Federal Financial Assistance Agreement

The *City* has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement the *City* signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The *City* 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 *City* shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The *City'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 the *City* of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b – The *City* will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub City 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 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 [*City*] deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing

sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The *City* is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Name: **Gwen Wilson**
Title: Business Development Manager, Office of Business Diversity,
Economic Development Department
Address: 1150 South Freeway, Fort Worth, TX 76104
Telephone Number: 817-392-2674
Fax Number: 817-392-2681
E-mail Address: gwen.wilson@fortworthtexas.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the *City* complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the *City Manager, David C. Cooke*, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of five (5) *direct employees in coordination with the Aviation Department, City Attorney's Office and several consultant engineers* to assist in the administration of the program. The duties and responsibilities include the following:

Include only those responsibilities that the DBELO actually performs. Add additional responsibilities if appropriate.

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments 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 (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes *City'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. Liaison to the City's M/WBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the *City* 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.

The *City's* good faith effort to identify financial institutions owned and controlled by socially and economically disadvantaged individuals in the community are as follows:

The *City* has a directory of Minority-owned Depository Institutions and their branches as of December 31, 2016 sorted by State. The list is available to all contractors.

Section 26.29 Prompt Payment to Subcontractors

The *City* has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their

contracts no later than 10 [calendar] days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 10 [calendar] days after the subcontractor's work is satisfactorily completed. We will use one of the following methods to comply with this requirement:

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 10 [calendar] days after your payment to the prime contractor.

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

The City will provide appropriate means to enforce the requirements of this section. These means include:

The City 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 ten (10) [calendar] days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) [calendar] days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

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

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

Section 26.31 Directory

The *City* uses the State of Texas DOT DBE directory, maintained by the State.

The directory lists the firm's name, address, phone number, 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 specific NAICS code available to describe each type of work.

The state UCP revises the Directory *at least annually*. We make the Directory available as follows: A link to the directory may be found on the Office of Business Diversity web-page: www.fortworthtexas.gov/businessdiversity or the Directory may be found at www.TxDOT.txdotcms.com or the *City*, upon request, will provide the DBE listings.

Section 26.33 Over-concentration

The City has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Office of Business Diversity is here to help certified small, minority-owned and women-owned businesses gain access to the direct contracting and sub-contracting opportunities offered by city procurement in compliance with the City Council-approved Business Diversity Enterprise (BDE) Ordinance No. 20020-12-2011.

Qualified businesses must be located within the market areas applicable to the six county areas where the city spends 80 percent or "*substantial majority*" of its tax dollars. Those counties are **Tarrant, Dallas, Denton, Johnson, Parker and Wise**. Only firms with a principal office in the market area will be counted towards the city's BDE goals.

As of June 1, 2012, the City of Fort Worth has been implementing the Business Diversity Enterprise (BDE) Ordinance to reflect the City's availability and disparity study findings conducted in 2009 and approved by City Council on December 12, 2011.

All City projects over \$50,000.00 are applicable to the BDE Ordinance so as long as there **are two or more certified contractors available under specific supplies and services**.

Per the BDE Ordinance, the Office of Business Diversity is required to assign applicable subcontracting goals **based on availability** for the below categories:

Category	Certification Type	Groups	Annual Aspirational Goals
Construction	MBE	African American, Asian, Hispanic, and Native American Indians	25%
Professional Services	MBE (AA) ONLY	African Americans ONLY	15%
Professional Services (Architectural and Engineering Services)	SBE	Race and Gender Neutral	15%
Goods and Non-Professional Services	M/WBE	Minorities and Women	25%

Section 26.37 Monitoring and Enforcement Mechanisms

The *City* will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. 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) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 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 DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs 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. We will 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 DBE administrators/compliance specialist conforming to the City Council-approved BDE Ordinance 20020-12-2011 (Refer to Attachment 7)*
5. We will implement a mechanism that 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. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Section 26.39 Fostering small business participation.

The *City* has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The *City's* small business element is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The *City* does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The *City* will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the *City* will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1, 2015 (2016/2017/2018)	August 1, 2018 (2019/2020/2021)
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The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the *City* does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the *City* will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use *(enter the items you will use, you may select DBE Directories and Census Bureau Data, a Bidders List, a Disparity Study, the goal of another DOT City or other alternative method, see notes below)* as a method to determine our 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 *City* 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 Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the *City* will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the *City's* efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the *City's* goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the *City* will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site and may be posted in any other sources (e.g.,

minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the *City* and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1st deadline.**

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The *City* understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals.

The *City* will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the *City* awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) *City* will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

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

(a) The *City* will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from

bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on City mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(6) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

The *City* will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

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 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 Office of Business Diversity, Senior Compliance Specialist 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*.

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

Information to be submitted (26.53(b))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the City, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City.

Administrative reconsideration (26.53(d))

Within five (5) business days of being informed by the City 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: *Office of Business Diversity, 1150 South Freeway, Fort Worth, TX. 76104, 817-392-2674, mwbeoffice@fortworthtexas.gov.* 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 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 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 procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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.

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract 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 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 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its 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;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

The *City* 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the contractor, and the *City* shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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.

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 *City* 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 ___ percent 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (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; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We 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.

If the firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

City 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. We 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:

Name: North Central Texas Regional Certification Agency (NCTRCA)

Title: Agency Certification Director or Certification Specialist

Address: 624 Six Flags Drive, Arlington, Texas 76011

Telephone Number: 817-640-0606
Fax Number: 817-640-6315
E-mail Address: mail@nctrca.org

Name: Texas Department of Transportation (TxDOT)
Online Support
Telephone Number: 1-866-480-2518, Option 1
<https://txdot.txdotcms.com/>

Our **certification application** forms and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City is the member of a Unified Certification Program (UCP) administered by the NCTRCA. The UCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

We 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 provision of Federal or state law, we will not release any information 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, we will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

All participants in the Department's DBE program (including, but not limited to, City's, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and City compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a

contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The *City*, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan -
Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

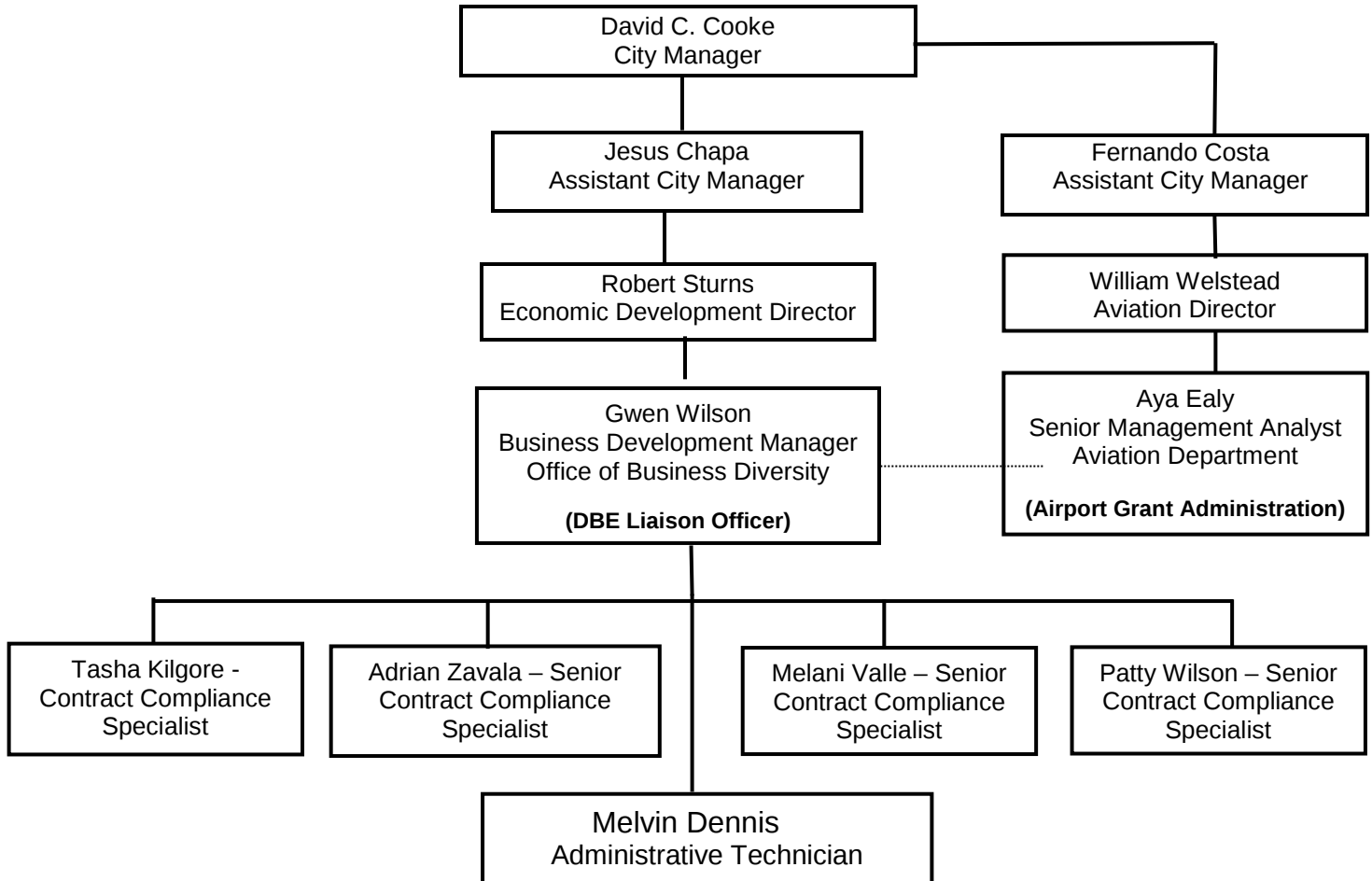
ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

- Subpart A - General (§§ 26.1 - 26.15)
- Subpart B - Administrative Requirements for DBE Programs for Federally-Assisted Contracting (§§ 26.21 - 26.39)
- Subpart C - Goals, Good Faith Efforts, and Counting (§§ 26.41 -26.55)
- Subpart D - Certification Standards (§§ 26.61 - 26.73)
- Subpart E - Certification Procedures (§§ 26.81 - 26.91)
- Subpart F - Compliance and Enforcement (§§ 26.101 - 26.109)
- Appendix A to Part 26 - Guidance Concerning Good Faith Efforts
- Appendix B to Part 26 - Uniform Report of DBE Awards or Commitments and Payments Form
- Appendix C to Part 26 - DBE Business Development Program Guidelines
- Appendix D to Part 26 - Mentor-Protégé Program Guidelines
- Appendix E to Part 26 - Individual Determinations of Social and Economic Disadvantage
- Appendix F to Part 26 - Uniform Certification Application Form
- Appendix G to Part 26 - Personal Net Worth Statement

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than \$500K ☐ \$500K - \$1 million ☐ \$1-2 million ☐ \$2-5 million ☐ Greater than \$5 million

ATTACHMENT 4

Texas DBE Directory or web link to DBE directory)

North Central Texas Regional Certification Agency (NCTRCA)
<https://nctrca.mwdbe.com/>

Texas Department of Transportation (TxDOT) <https://txdot.txdotcms.com>

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of City: City of Fort Worth, owner of the Alliance Airport, Meacham, and Spinks Airport(s)

Goal Period: Fiscal Years 2016-2017-2018 – October 1, 2016 through September 30, 2018)

DOT-assisted contract amount:	FY-2016	\$ <u>10,680,318.00</u>
	FY-2017	\$ <u>11,500,000.00</u>
	FY-2018	\$ <u>2,090,222.00</u>
	Total	\$ <u>24,270,540.00</u>

Overall Three-Year Goal: 20.74%, to be accomplished through 17.46% RC and 3.28 % RN

(Note: the goal may be reflected as (1) an average of the three years; (2) three year Median; or (3) weighted percentage)

Total dollar amount to be expended on DBE's: \$5,033,710.00 [multiply goal % x DOT-assisted amount]

Describe the Number and Type of Contracts that the airport anticipates awarding:

Contracts Fiscal Year 2016

	Runway Extension 16L/34R	Construction and Professional Services
1	631,584.68	Hauling
2	38,866.75	Barricades/Fencing
3	378,950.81	Erosion control
4	145,750.31	Demolition
5	3,449,424.02	Earthwork
6	1,214,585.92	Asphalt paving
7	2,642,938.97	Concrete Paving
8	330,367.37	Pavement Markings
9	320,650.68	Landscaping
10	563,567.87	Electrical
11	680,318.00	Construction Management
12	242,249.28	Utility Relocation
13	41,063.34	FAA Reimbursable Agreement-Relocate and upgrade the Runway 34R Localizer with MARK20A - 20 element antenna array expansion Kit

Contracts Fiscal Year 2017

	Runway Extension 16L/34R	Construction
1	632,500.00	Hauling/Trucks
2	46,000.00	Barricades/Fencing
3	448,500.00	Erosion control
4	172,500.00	Demolition
5	3,450,000.00	Earthwork
6	1,437,500.00	Asphalt paving
7	3,128,000.00	Concrete Paving
8	345,000.00	Pavement Markings
9	379,500.00	Landscaping
10	667,000.00	Electrical
11	609,500.00	Drainage
12	92,000.00	Water & Wastewater
13	92,000.00	Traffic Control

Contracts Fiscal Year 2018

	Rehabilitate Runway 16L Centerline and TDZ Lights	(Design)
1	6,000.00	Surveying
2	16,000.00	Electrical Engineering
3	4,000.00	Civil Engineering
4	2,000.00	Printing/Reproduction
5	12,000.00	Computer Aided Design

	Rehabilitate Runway 16L CL and TDZ Lights	(Construction)
1	20,000.00	Erosion Control
2	20,000.00	Barricades
3	200,000.00	Electrical
4	100,000.00	Civil
5	60,000.00	CM Services

	Rehabilitate Taxiway A Centerline Lighting (Construction)	
1	60,000.00	Erosion Control

2	60,000.00	Barricades
3	60,000.00	Electrical
4	300,000.00	Civil
5	180,000.00	CM Services

Rehabilitate Taxiway A Centerline Lighting (Construction)		
1	60,000.00	Erosion Control
2	60,000.00	Barricades
3	600,000.00	Electrical
4	300,000.00	Civil
5	180,000.00	CM Services

Rehabilitate Runway 16L Shoulders (Design)		
1	25,908.30	Surveying
2	69,088.80	Civil Engineering
3	17,272.20	Electrical Engineering
4	8,636.10	Printing/Reproduction
5	51,816.60	Computer Aided Design

Rehabilitate Runway 16R Shoulders (Design)		
1	23,625.00	Surveying
2	63,000.00	Civil Engineering
3	15,750.00	Electrical Engineering
4	7,875.00	Printing/Reproduction
5	47,250.00	Computer Aided Design

Market Area: Tarrant, Dallas, Denton, Johnson, Parker and Wise.

Determination of Market Area: As of June 1, 2012, The City of Fort Worth has been implementing the Business Diversity Enterprise (BDE) Ordinance #20020-12-2011 to reflect the City's availability and disparity study findings conducted in 2009 and approved by City Council on December 12, 2011. The new market areas in which 80% or "substantial majority" of the City's tax dollars are being spent are in the counties of **Tarrant, Dallas, Denton, Johnson, Parker, and Wise.**

Step 1. 26.45(c) Actual relative availability of DBE's

Determine the base figure for the relative availability of DBEs. The base figure for the relative availability was calculated as follows:

The method used to calculate the relative availability of DBEs for Step 1 in this process is [26.45(c) (1)] to review NCTRCA and TxDOT DBE Directories (TUCP) for the Dallas/Fort Worth Districts and Census Bureau 2015 County Business Patterns Data for Dallas, Tarrant, Denton, Johnson, Parker, and Wise Counties. The base figure was determined by dividing the total DBE firms in the local market area by the total of all firms in the market area (both compiled according to the relevant NAICS project codes).

Fiscal Year 2016

NAICS	Type of Work	DBEs in Market Area	Total All Firms
237110	Utility Relocation	35	368
236220	CM Services	119	368
484220	Hauling	91	295
332999	Barricades/Fencing	4	11
541360	Erosion control	23	100
238910	Demolition	35	103
238910	Earthwork	35	109
237310	Asphalt paving	80	83
237310	Concrete Paving	80	83
237990	Pavement Markings	2	39
561730	Landscaping	43	457
238210	Electrical	38	474
Total		585	2490

Base figure = **23.49%** of all firms ready, willing and able.

Base Figure Goal = Number of DBEs in Local Market Area = **585**

Divided by

Number of All Available Firms = **2,490**

Base Figure Goal = 23.49%

Fiscal Year 2017

NAICS	Type of Work	DBEs in Market Area	Total All Firms
484220	Hauling	91	295
332999	Barricades/Fencing	4	11
541360	Erosion control	23	100
238910	Demolition	35	103
238910	Earthwork	35	109

237310	Asphalt paving	80	83
237310	Concrete Paving	80	83
237990	Pavement Markings	2	39
561730	Landscaping	43	457
238210	Electrical	38	474
237990	Drainage	33	46
221300	Water & Wastewater	1	13
561990	Traffic Control	7	196
Total		472	2009

Base figure = **23.49%** of all firms ready, willing and able.

Base Figure Goal = Number of DBEs in Local Market Area = 472

Divided by

Number of All Available Firms = **2,009**

Base Figure Goal = 23.49%

Fiscal Year 2018

NAICS	Type of Work	DBEs in Market Area	Total All Firms
541360	Surveying Services, Land	23	100
541330	Engineering Services, Electrical	167	1004
541330	Engineering Services, Civil	139	776
541340	Reprographics	1	20
541340	Computer Aided Design and Drafting (CADD)	19	78
541360	Erosion Control	23	100
332999	Barricades	4	11
238210	Electrical	36	474
541330	Civil	29	776
236220	CM Services	119	368
Total		560	3707

Base figure = **15.11%** of all firms ready, willing and able.

Divide the total number of DBE's by the total number of All Firms = base figure for each contract.

Base Figure Goal = Number of DBEs in Local Market Area = **560**

Divided by
Number of All Available Firms = **3,707**

Base Figure Goal = 15.11%

The data source or demonstrable evidence used to derive the numerator was:

1. North Central Texas Regional Certification Agency (NCTRCA)
<https://nctrca.mwdbe.com/>
2. Texas Department of Transportation (TxDOT) <http://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html>

The data source or demonstrable evidence used to derive the denominator was:

1. Census Bureau_BP_2015_00A1
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

Step 2. 26.45(d): Adjustments to Step 1 base figure.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment (if any) was needed to the base figure in order to arrive at the overall goal.

An examination of the anticipated contracts for each fiscal year, the availability of the DBE firms by trade classification and the volume of work performed by DBE firms over previous years.

Fiscal Year #1 - For FY-2016, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I			
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)			
Contract #1 - Runway Extension Project 16L34R(Construction)	Hauling	Local dump trucking (e.g., gravel, sand, top-soil)	484220	\$631,584.68	295	91	30.85%	\$194,827.82			
	Barricades/Fencing	Barricades, metal, manufacturing	332999	\$38,866.75	11	4	36.36%	\$14,133.36			
	Erosion control	Erosion control engineering services	541330	\$378,950.81	100	23	23.00%	\$87,158.69			
	Demolition	Concrete breaking and cutting for demolition	238910	\$145,750.31	103	35	33.98%	\$49,526.80			
	Earthwork	Site Preparation	238910	\$3,449,424.02	109	35	32.11%	\$1,107,613.22			
	Asphalt paving	Asphalt paving (i.e., highway, road, street, public sidewalk)	237310	\$1,214,585.92	83	80	96.39%	\$1,170,685.23			
	Concrete Paving	Concrete paving (i.e., highway, road, street, public sidewalk)	237310	\$2,642,938.97	83	80	96.39%	\$2,547,411.05			
	Pavement Markings	Highway, Street, and Bridge Construction Painting traffic lanes or parking lot lines	237310	\$330,367.37	39	2	5.13%	\$16,941.92			
	Landscaping	Landscaping services (except planning)	561730	\$320,650.68	457	43	9.41%	\$30,170.63			
	Electrical	Electrical Contractors and Other Wiring Installation Contractors	238210	\$563,567.87	474	38	8.02%	\$45,180.55			
		Total Contract #1		\$9,716,687.38	1,754	431	24.57%	\$2,387,623.87			
						(431 / 1,754)	(24.57% of \$9,716,687.38)				
Contract #2 - Runway Extension Project 16L34R(Professional Services)	Trade Description	NAICS Description					DBE %	DBE (\$)			
	Construction Mangement	Construction management, water and sewer line	237110	\$680,318.00	368	35	32.34%	\$220,014.84			
	Utility Relocation	Utility line (i.e., communication, electric power), construction	236220	\$242,249.28	368	119	9.51%	\$23,037.91			
	FAA Reimbursable Agreement-Relocate and upgrade the Runway 34R Localizer with MARK20A - 20 element antenna array expansion Kit		N/A	\$41,063.34	0	0					
		Total Contract #2		\$963,630.62	736	154	20.92%	\$201,629.23			
							\$10,680,318.00	2,490	585	23.49%	\$2,509,231.34
								(585 / 2,490)	(23.49% of \$10,680,318)		

Fiscal Year #2 For FY-2017, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #1 - Runway Extension Project 16L/34R(Construction) Grant Number 3-48-0296-058-2017 & Grant Number 3-48-0296-059-2017								
	Hauling/Trucks	Local dump trucking (e.g., gravel, sand, top-soil)	484220	\$632,500.00	295	91	30.85%	\$195,126.25
	Barricades/Fencing	Barricades, metal, manufacturing	332999	\$46,000.00	11	4	36.36%	\$16,725.60
	Erosion control	Erosion control engineering services	541330	\$448,500.00	100	23	23.00%	\$103,155.00
	Demolition	Concrete breaking and cutting for demolition	238910	\$172,500.00	103	35	34.00%	\$58,650.00
	Earthwork	Site Preparation	238910	\$3,450,000.00	109	35	32.00%	\$1,104,000.00
	Asphalt paving	Asphalt paving (i.e., highway, road, street, public sidewalk)	237310	\$1,437,500.00	83	80	96.00%	\$1,380,000.00
	Concrete Paving	Concrete paving (i.e., highway, road, street, public sidewalk)	237310	\$3,128,000.00	83	80	96.00%	\$3,002,880.00
	Pavement Markings	Highway, Street, and Bridge Construction Painting traffic lanes or parking lot lines	237310	\$345,000.00	39	2	5.00%	\$17,250.00
	Landscaping	Landscaping services (except planning)	561730	\$379,500.00	457	43	9.00%	\$34,155.00
	Electrical	Electrical Contractors and Other Wiring Installation Contractors	238210	\$667,000.00	474	38	8.00%	\$53,360.00
	Drainage	Drainage canal and ditch construction	237990	\$609,500.00	46	33	72.00%	\$438,840.00
	Water & Wastewater	Waste collection, treatment and disposal through a sewer system	221320	\$92,000.00	13	1	8.00%	\$7,360.00
	Traffic Control	Traffic Control - Flagging	561990	\$92,000.00	196	7	4.00%	\$3,680.00
		Total Contract #1		\$11,500,000.00	2009	472	23.49%	\$2,701,841.71
								(23.49% of (\$85 / 2,490) 11,500,000)

Fiscal Year #3 For FY-2018, we anticipate the award of the following:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #1 - Rehabilitate Runway 16L Centerline and TDZ Lights (Design)								
	Surveying	Surveying Services, Land	541360	\$6,000.00	100	23	23.00%	\$1,380.00
	Electrical Engineering	Engineering Services, Electrical	541330	\$16,000.00	1004	167	16.63%	\$2,660.80
	Civil Engineering	Engineering Services, Civil	237990	\$4,000.00	776	139	17.91%	\$716.40
	Printing/Reproduction	Blueprinting and Reprographics	541340	\$2,000.00	20	1	5.00%	\$100.00
	Computer Aided Design	Computer Aided Design and Drafting (CADD)	541340	\$12,000.00	78	19	24.36%	\$2,923.20
		Total Contract #1		\$40,000.00	1978	349	17.64%	\$7,057.63
								(17.64% of (349 / 1,978) 40,000)

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #2 - Rehabilitate Taxiway A Centerline Lighting (Design)								
	Surveying	Surveying Services, Land	541360	\$18,000.00	100	23	23.00%	\$4,140.00
	Electrical Engineering	Engineering Services, Electrical	541330	\$48,000.00	1004	167	16.63%	\$7,982.40
	Civil Engineering	Engineering Services, Civil	237990	\$12,000.00	776	139	17.91%	\$2,149.20
	Printing/Reproduction	Blueprinting and Reprographics	541340	\$6,000.00	20	1	5.00%	\$300.00
	Computer Aided Design	Computer Aided Design and Drafting (CADD)	541340	\$36,000.00	78	19	24.36%	\$8,769.60
		Total Contract #2		\$120,000.00	1978	349	17.64%	\$21,172.98
								(17.64% of (349 / 1,978) 120,000)

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #3 - Rehabilitate Runway 16L CL and TDZ Lights (Construction)	Erosion Control	EROSION CONTROL SERVICES/DEVICES (includes Gabion Work)	541360	\$20,000.00	100	23	23.00%	\$4,600.00
	Barricades	BARRICADES, TRAFFIC CONES AND OTHER DEVICES	541330	\$20,000.00	11	4	36.36%	\$7,272.73
	Electrical	Engineering Services, Electrical	237990	\$200,000.00	474	36	7.59%	\$15,189.87
	Civil	Engineering Services, Civil	541340	\$100,000.00	776	29	3.74%	\$3,737.11
	CM Services	Construction Mmanagement, highway, road, street and bridge	237310	\$60,000.00	368	119	32.34%	\$19,402.17
		Total Contract #3		\$400,000.00	1729	211	6.88%	\$27,530.36
							(6.88% of (211 / 1,729)	400,000)

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #4 - Rehabilitate Taxiway A Centerline Lighting (Construction)	Erosion Control	EROSION CONTROL SERVICES/DEVICES (includes Gabion Work)	541360	\$60,000.00	100	23	23.00%	\$13,800.00
	Barricades	BARRICADES, TRAFFIC CONES AND OTHER DEVICES	541330	\$60,000.00	11	4	36.36%	\$21,818.18
	Electrical	Engineering Services, Electrical	237990	\$600,000.00	474	36	7.59%	\$45,569.62
	Civil	Engineering Services, Civil	541340	\$300,000.00	776	29	3.74%	\$11,211.34
	CM Services	Construction Mmanagement, highway, road, street and bridge	237310	\$180,000.00	368	119	32.34%	\$58,206.52
		Total Contract #4		\$1,200,000.00	1729	211	6.88%	\$82,591.09
							(6.88% of (211 / 1,729)	1,200,000)

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #5 - Rehabilitate Runway 16L Shoulders (Design)	Surveying	Surveying Services, Land	541360	\$25,908.30	100	23	23.00%	\$5,958.91
	Electrical Engineering	Engineering Services, Electrical	541330	\$69,088.80	1004	167	16.63%	\$11,489.47
	Civil Engineering	Engineering Services, Civil	237990	\$17,272.20	776	139	17.91%	\$3,093.45
	Printing/Reproduction	Blueprinting and Reprographics	541340	\$8,636.10	20	1	5.00%	\$431.81
	Computer Aided Design	Computer Aided Design and Drafting (CADD)	541340	\$51,816.60	78	19	24.36%	\$12,622.52
		Total Contract #5		\$172,722.00	1978	349	17.64%	\$30,475.22
							(17.64% of (349 / 1,978)	120,000)

A	B	C	D	E	F	G	H	I
Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE % (=G/F)	DBE (\$) (=H X E)
Contract #6 - Rehabilitate Runway 16R Shoulders (Design)	Surveying	Surveying Services, Land	541360	\$23,625.00	100	23	23.00%	\$5,433.75
	Electrical Engineering	Engineering Services, Electrical	541330	\$63,000.00	1004	167	16.63%	\$10,476.90
	Civil Engineering	Engineering Services, Civil	237990	\$15,750.00	776	139	17.91%	\$2,820.83
	Printing/Reproduction	Blueprinting and Reprographics	541340	\$7,875.00	20	1	5.00%	\$393.75
	Computer Aided Design	Computer Aided Design and Drafting (CADD)	541340	\$47,250.00	78	19	24.36%	\$11,510.10
		Total Contract #6		\$157,500.00	1978	349	17.64%	\$27,789.43
							(17.64% of (349 / 1,978)	120,000)
		Total FY - 2018		\$2,090,222.00				

Past History Participation

Other data used to determine the adjustment to the base figure was the median of historical DBE accomplishments as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 13	\$10,897,102.00	13.00	4.50	17.50	17.50	2.89	20.39	Construction
FY 14	\$10,684,139.00	13.00	4.50	17.50	17.50	3.28	20.78	Construction
FY 15	\$21,814,630.00	13.00	4.50	17.50	17.50	10.90	28.40	Construction

Arranging this historical data from low to high, (20.39%, 20.78%, 28.40%) the median is 20.78%.

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 23.49% **(23.49 + 20.78)/2 = 22.14%**
- Fiscal Year #2 – 23.49% **(23.49 + 20.78)/2 = 22.14%**
- Fiscal Year #3 – 15.11% **(15.11 + 20.78)/2 = 17.94%**

Our proposed overall three year goal will be reflected as (option 1- an average of the three years, option 2 – three year Median percentage)

- Year 1 Goal = 22.14%
- Year 2 Goal = 22.14%
- Year 3 Goal = 17.94%
- Average of the three years $22.14+22.14+17.94=62.22/3 = 20.74\%$
- Median of the three years of participation = 3.28%

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 20.74. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of work being awarded during this three-year period.

Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation. 26.51(b) (1-9)

The City will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;

6. *Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;*
7. *Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;*
8. *Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;*
9. *Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and*
10. *(Include other race neutral measures as appropriate)*

The City estimates that in meeting its overall goal 20.74%, it will obtain 3.28% from RN participation and 17.46% through RC measures.

This breakout is based on:

- *In FY-13, the City's accomplishments exceeded the 17.50% goal by 2.89%, in FY-14, the City's accomplishments exceeded the 17.50% goal by 3.28%, and in FY-15, the City's accomplishments exceeded the 17.50% goal by 10.90% which is evidence of race-neutral participation, therefore, we took the median of the amounts exceeded in those three years of 3.28% of our 20.74% goal is being applied to race-neutral and the remaining 17.46% is applied to race-conscious participation.*

The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

In establishing the overall goal, the City provided for consultation and publication. This included consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. The consultation(s) included a scheduled, direct, interactive exchange (e.g., a face-to-face meeting) with as many interested stakeholders as possible focused on obtaining information relevant to the City's goal setting process.

Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

The City will submit its overall DBE three-year goal to DOT on August 1, 2018 as required by the set schedule.

The City published a notice on the City's website Calendar and posted it on the board at City Hall informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Office of Business Diversity, Economic Development Department for 30 days following the date of the notice, and informing the public that the City and DOT will accept comments on the goals for 30 days from the date of the notice

Comments have been received.

From: Suzi Hill [<mailto:suzi@thehillcompany.com>]
Sent: Tuesday, August 15, 2017 10:34 AM
To: mwbeoffice@fortworthtexas.gov
Subject: August 15th DBE/FAA meeting

Gwen,

At the end of the meeting, a gentlemen asked you to provide information on how many contracts have been issued to WBE's vs. DBE's on the construction projects that were reviewed this morning. He could have been asking a general breakdown vs. FAA projects breakdown? I would also be interested in this information.

Thanks, and a pleasure meeting you this morning.

Suzi Hill
The Hill Company
1920 E. Lancaster Ave., Bldg. C
Fort Worth, Texas 76103
Cell - 817-371-5200



PUBLIC NOTICE

**City of Fort Worth
Office of Business Diversity Division and Economic Development Department**

**NOTICE REGARDING THE CITY OF FORT WORTH'S
PROPOSED GOAL FOR FISCAL YEAR 2016 THROUGH FISCAL YEAR 2018
FOR DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION ON FEDERALLY FUNDED CONTRACTS**

The proposed goals will also be discussed at a **Public Meeting on Tuesday, August 15, 2017 at 8:00 a.m.** The meeting will take place at the James E. Guinn Building, Business Assistance Center, 1150 South Freeway, Fort Worth, TX, 776104, 1st Floor, #116, PharmaFab Room.

The City proposes to spend approximately **\$24,270,540.00** on projects funded through the Federal Aviation Administration (FAA) at Alliance Airport.

**THE CITY'S PROPOSED GOAL AND RATIONALE FOR DISADVANTAGED BUSINESS
ENTERPRISE PARTICIPATION ON FAA FUNDED CONTRACTS WILL BE
AVAILABLE FOR INSPECTION AT:**

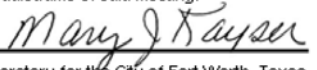
City of Fort Worth
Attention: Gwen Wilson
Business Development Manager
Office of Business Diversity Division
Economic Development Department
1150 South Freeway, Suite 144
Fort Worth, Texas 76104

Comments will be accepted on the goals for forty-five (45) days from the date of this notice. Written comments may be forwarded to the Office of Business Diversity, Economic Development Department, at the above stated address or by e-mail at mwbeoffice@fortworthtexas.gov

ECONOMIC DEVELOPMENT DEPARTMENT

The City of Fort Worth ★ 1150 South Freeway ★ Fort Worth, Texas 76104
817-392-2622 ★ Fax 817-392-2650

I, the undersigned authority do hereby certify that this Notice of Meeting was posted on the City of Fort Worth official website and official bulletin board, places convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time **Tuesday, August 08, 2017 at 5:00 p.m.** and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.


City Secretary for the City of Fort Worth, Texas

Revised
8/13/2017



PUBLIC NOTICE

City of Fort Worth
Office of Business Diversity Division and Economic Development Department

Posted Date: August 8, 2017

**NOTICE REGARDING THE CITY OF FORT WORTH'S
PROPOSED GOAL FOR FISCAL YEAR 2016 THROUGH FISCAL YEAR 2018
FOR DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION ON FEDERALLY FUNDED CONTRACTS**

The City of Fort Worth's proposed goal for Disadvantaged Business Enterprise participation on federally funded contracts is **20.74%** of **\$24,270,540.00**. The City proposes to spend approximately **\$5,033,710.00** with Disadvantaged Business Enterprises on projects funded through the Federal Aviation Administration (FAA) at Alliance Airport.

**THE CITY'S PROPOSED GOAL AND RATIONALE FOR DISADVANTAGED BUSINESS
ENTERPRISE PARTICIPATION ON FAA FUNDED CONTRACTS IS
AVAILABLE FOR INSPECTION AT:**

City of Fort Worth
Gwen Wilson
Business Development Manager
1150 South Freeway, Suite 144
Fort Worth, Texas 76104
Phone: (817) 392-2674
mwbeoffice@fortworthtexas.gov

or

Federal Aviation Administration
Dolores P. Leyva, Compliance Specialist
Office of Civil Rights – ACR-4
15000 Aviation Blvd., Room 3025
Lawndale, CA 90261
Dolores.leyva@faa.gov

Comments will be accepted on the goals for forty-five (45) days from the **post** date of this notice. Written comments may be forwarded to the Office of Business Diversity or the Federal Aviation Administration at the above stated addresses.

ECONOMIC DEVELOPMENT DEPARTMENT
The City of Fort Worth ★ 1150 South Freeway ★ Fort Worth, Texas 76104
817-392-2622 ★ Fax 817-392-2650

Contract Goals

The *City* will use contract goals to meet any portion of the overall goal that the City does not project being able to meet using RN 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 the City's overall goal that is not projected to be met through the use of RN means.

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

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

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____

Date:

(Signature)

(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The *City* has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to *the City Council-approved Business Diversity Enterprise (BDE) Ordinance No.: 20020-12-2011*

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

REFERENCE BDE Ordinance # 20020-12-2011 "APPENDIX A"

ATTACHMENT 8

DBE Certification Application Form

(New form October 2, 2014)

UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Reference "Appendix B"

ATTACHMENT 9
State's UCP Agreement

TEXAS
MEMORANDUM OF AGREEMENT
for a
DISADVANTAGED BUSINESS ENTERPRISE
(DBE)
UNIFIED CERTIFICATION PROGRAM

Reference "Appendix C"

ATTACHMENT 10

Small Business Element

It is recommended that you include the following components and notes:

1. Objective/Strategies

As part of this program element you may include, but are not limited to, the following strategies:

(1) 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.

(2) 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.

(3) 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.

(4) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

- *DBE firms should be identified in the Small Business element of the City’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.*
- *Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*
- *Personal Net Worth standards (optional) – should be consistent with 49 CFR Part 26 thresholds.*

3. Verification

- *Should diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.*

4. Monitoring/Record Keeping

- *How will the information will be organized (for counting purposes)*
- *SB element should be reasonably monitored*

5. Implementation Timeline

- *Identify implementation schedule/timeline, within 6 or 9 months of FAA’s approval.*

Small Business Element (continued)

6. Assurance

Compliant to BDE Ordinance #, the City of Fort Worth provides the following assurances regarding the development and implementation of the Small Business Program described here in:

1. Assurance that the program is authorized under state law;
2. Assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the 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; and
5. Assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
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).

Appendix A

APPENDIX A

BUSINESS DIVERSITY ENTERPRISE

ORDINANCE NO. 20020-12-2011

AN ORDINANCE REPEALING ALL PREVIOUS MINORITY AND WOMEN BUSINESS ENTERPRISE ORDINANCES AND POLICIES PREVIOUSLY ADOPTED; ADOPTING AN ORDINANCE TO REMEDY THE UNDERUTILIZATION OF MINORITY AND WOMEN BUSINESSES, AND TO ENHANCE THE UTILIZATION OF SAME; DEFINING MINORITY BUSINESS ENTERPRISE, AND WOMEN BUSINESS ENTERPRISE FOR PURPOSE OF CERTIFICATION; REQUIRING MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE PARTICIPANTS TO BE QUALIFIED AND DOING BUSINESS IN LOCALITY FROM WHICH THE CITY REGULARLY SOLICITS; ESTABLISHING SEPARATE CATEGORIES FOR GOALS FOR MINORITY BUSINESS ENTERPRISES IN THE SPECIFIC AREAS OF CONSTRUCTION, AND PROFESSIONAL SERVICES OTHER THAN ARCHITECTURAL AND ENGINEERING AND MINORITY AND WOMEN BUSINESS ENTERPRISES IN THE SPECIFIC AREA OF PURCHASING; ESTABLISHING PROCEDURES FOR CONTRACT SPECIFIC GOALS; PROVIDING GENERALLY FOR THE PROCEDURES TO BE FOLLOWED IN THE PROCUREMENT PROCESS; REQUIRING CONTRACTORS TO SUBMIT DOCUMENTATION OF COMPLIANCE IN ORDER TO BE RESPONSIVE TO CITY SPECIFICATIONS; ESTABLISHING WAIVER OF GOALS PROCEDURES; APPLYING THE SELECTIVE USE OF SMALL BUSINESS ENTERPRISE PROVISIONS AS DEEMED APPROPRIATE; ALLOWING FOR DEBARMENT FOR MISREPRESENTATION OF FACTS AS IT RELATES TO COMPLIANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has commissioned Availability/Disparity Studies (Studies) conducted by Browne, Bortz & Coddington, Inc. (BBC), Carl Anderson, Esq., MGT, Inc. and most recently Mason Tillman Associates, Ltd. and found disparities in the utilization of minority and women business enterprises in contracts awarded by the City of Fort Worth (City); and

WHEREAS, the Studies found that discrimination occurred in the major contracting areas (construction, purchasing, and professional services) of the City of Fort Worth and resulted in significant underutilization of minority and women business enterprises; and

WHEREAS, minority and women business enterprises have had and continue to have difficulties in obtaining financing, bonding, credit and insurance, and assistance programs have not been effective in either remedying the effects of underutilization in City contracting or in preventing ongoing underutilization; and

WHEREAS, the Studies determined that race-neutral alternatives for enhancing minority and women business enterprise contracting are not completely sufficient; and

WHEREAS, the City has also been a passive participant in discriminatory behavior practiced by private industry within the relevant Marketplace in the award of contracts to minorities and women businesses,

WHEREAS, the purpose of this ordinance is to overcome the effects of this past underutilization and prevent any ongoing discrimination in the City's contracting processes; and

WHEREAS, the provisions of this ordinance may increase the utilization of minority and women business enterprises in contracts awarded by the City of Fort Worth; and

WHEREAS, the City Council now desires to provide a narrowly tailored remedy for past underutilization of minority and women businesses through the annual setting and defining of percentage goals for different categories of contracts, providing penalties for fraudulent misuse of this ordinance, requiring regular review of the necessity for the provisions of this ordinance, limiting those minority and women's business enterprises that participate under this ordinance to those that qualify and do business in the City's Marketplace, providing for post bid submission of required information about minority and women business enterprises and establishing waiver of goals procedures;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:

SECTION 1.

It is the policy of the City of Fort Worth to attempt to provide a remedy for past underutilization of qualified minority and women businesses and prevent ongoing underutilization of minority and women business enterprises in the City's contracting process by ensuring the full and equitable participation of minority and women business enterprises in the provision of goods and services to the City on a contractual basis in the manner identified in Attachment I of this ordinance, said Attachment I being a part of this ordinance.

SECTION 2.

The ultimate goal of this ordinance is to remedy the effects of past underutilization in the Marketplace by increasing the use of minority and women business enterprises in the Fort Worth Marketplace. The City Manager shall recommend an annual aspirational goal for MBE/WBE participation in City procurement activities, based on utilization and availability analyses of the

most current procurement activity data within the Marketplace. An annual goal will provide a mechanism for adjustments as reflected by the relevant conditions in the Marketplace. This will be a measurement goal, not a quota.

SECTION 3.

The provisions of this ordinance shall apply to all contracts awarded by the City, except as may be hereafter specifically exempted. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to MBE/WBE or DBE participation may take precedence over this ordinance. The provisions of this ordinance shall be liberally construed for the accomplishment of its policies and purposes. Specific goals shall be established in the areas of construction and professional services. A goal may be set on individual contracts based on the type of work or services to be performed, or goods to be acquired and the availability of minority and women businesses in the City's Marketplace.

SECTION 4.

The provisions of this ordinance shall be considered in determining the responsiveness to specifications of offerors to the City. The City shall consider the offeror's responsiveness to this ordinance in the evaluation of bids and proposals and shall award contracts in accordance with governing law, inclusive of compliance to this business diversity ordinance.

SECTION 5.

Debarment procedures shall be established for firms willfully misrepresenting the facts in compliance with this ordinance to the City.

SECTION 6.

Waiver procedures to the regulations established in this ordinance shall be provided for City procurement activities where a public calamity requires the emergency expenditure of funds; the purchase of goods or services from source(s) where subcontracting or supplier opportunities are nonexistent; where an economic risk or undue delay for the acquisition of goods or services will be imposed on the City, or when the availability of minority and women businesses is negligible.

SECTION 7.

From and after the date this ordinance takes effect, it shall supersede all previous City Council Policies affecting minority and women business enterprises.

SECTION 8.

The City Manager, with the advice and counsel of the Minority and Women Business Enterprise Advisory Committee ("MWBE-AC") in accord with City of Fort Worth Resolution No. 3698-12-2008, is hereby authorized to establish, implement and administer regulations necessary to carry out the intent of this ordinance.

SECTION 9.

The City Council shall regularly, approximately every five (5) years, determine whether there is a continuing need for a minority and women business enterprise program, make relevant findings, and, if necessary, repeal in whole or in part or enact appropriate amendments to this ordinance.

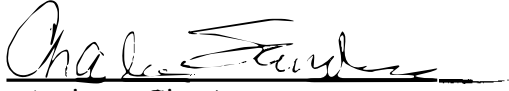
SECTION 10.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 11.

This ordinance shall take effect and be in full force and effect from on and after June 1, 2012; provided, however, that this ordinance shall not affect any procurement activity where formal solicitation began before the effective date of this ordinance, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:


Assistant City Attorney

December 13, 2012

Adopted

June 1, 2012

Effective

ATTACHMENT 1

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I. DEFINITIONS:

1. **Applicable Contract** means any contract greater than \$50,000 for construction projects and professional services and greater than \$50,000 for purchase agreements, as well as any other contracts that the City Council or City Manager deem appropriate.
2. **Best Practice** means a technique, method, process, activity, incentive, or reward that is generally accepted as one of the most effective and most efficient methods to deliver and accomplish a particular outcome.
3. **Best Value** means the optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and which achieves the City's procurement objectives.

The City will award contracts to the Offeror who presents the "best value" to the City, price and other factors considered.

The following criteria may be considered to determine the best value:

- a. Purchase Price
 - b. Reputation of the bidder and of the bidder's goods or services;
 - c. Quality of the bidder's goods or services;
 - d. Extent to which the goods or services meet the City's needs;
 - e. Bidder's past relationship with the City;
 - f. Impact on the ability of the City to comply with laws and rules relating to contracting with M/WBE's and non-profit organizations employing persons with disabilities;
 - g. Total long-term cost to the City to acquire the bidder's goods or services; and
 - h. Any relevant criteria specifically listed in the request for bids or proposals
4. **Business Diversity Coordinator** means the day-to-day administrator of the M/WBE Office of the City of Fort Worth.
 5. **Business/Technical Assistance** means education and training that improves business performance, profitability, competitiveness, skills, expertise and other qualities that enhance a business.
 6. **Certified** means those firms, located within the Marketplace, that have been determined to be a bonafide minority or women business enterprise by the North Central Texas Regional Certification Agency (NCTRCA) or other certifying agencies that the City may deem appropriate and accepted by the City of Fort Worth.
 7. **City** means the City of Fort Worth, Texas.
 8. **City business day** means Monday through Friday, inclusive, excluding legal holidays or applicable furlough days. Legal holidays shall be observed as prescribed by the City Council for observance as follows:

New Year's Day
M. L. King, Jr. Birthday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Thanksgiving Friday
Christmas Day

January 1
Third Monday in January
Last Monday in May
July 4
First Monday in September
Fourth Thursday in November
Fourth Friday in November
December 25

A furlough day is a temporary layoff from work during which an employee is without duties or pay because of a lack of work or funds or for other non-disciplinary reasons declared by the City Manager.

When one of the above named holidays falls on a Saturday, the holiday shall be observed on the preceding Friday. When one of the above named holidays falls on a Sunday, the holiday shall be observed on the following Monday.

9. **Combined Projects** means a construction contract, which includes paving and/or drainage elements of construction and water and/or sanitary sewer construction elements, but does not include a standard water and/or sanitary sewer contract where the pavement is temporarily or permanently repaired and that repair is not a separate unit.
10. **Commercially Useful Function** means a firm that is responsible for the performance, management and supervision of a distinct element of the work and/or materials or supplies. A firm will not be considered to perform a commercially useful function if the role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of participation.
11. **Compliance** means an Offeror adheres with the Ordinance's requirements during and/or at completion of the contract.
12. **Construction** means the erection, rehabilitation, alteration, conversion, extension, demolition, improvement, remodeling or repair to any real property, including streets, storm drains and facilities providing utility service owned by the City.
13. **Contract** means a binding agreement whereby the City either grants a privilege or is committed to expend or does expend its funds or other resources for or in connection with a) construction of any public improvement, and b) purchase of any services (including professional services). The term includes "purchase order".
14. **Contract Officer** means the person employed by the City to oversee the performance of the contract.
15. **Contracting Department** means the department responsible for payment of contract obligations.
16. **Contractor** means the business entity with whom the City has entered into an agreement, and includes the terms "Vendor", "Prime Contractor" and "Prime Consultant".
17. **Fee/Commission** means the reasonable cost associated with the assistance in the procurement of materials and supplies.
18. **Goal** means the percentage of minority business enterprise and/or small business enterprise participation on an applicable contract as determined by the City, based on the availability of such businesses in the marketplace and the subcontracting/supplier opportunities of the project.
19. **Good Faith Effort** means an honest and conscientious effort by the Offeror to explore all available options to achieve, to the maximum extent practical to meet the City's contract goal for MBE and/or SBE participation. Compliance with each of the following steps shall satisfy the Good Faith Effort (GFE) requirement absent mere pro forma efforts, proof of fraud, misrepresentation, or intentional discrimination by the Offeror:
 - a. List each and every subcontracting/subconsultant/supplier opportunity for the completion of this contract. On combined projects list each subcontracting and/or supplying opportunity through the 2nd tier.

- b. Obtain a current list (not more than two (2) months old from the bid open date) of MBE subcontracting/subconsultant/suppliers from the City's M/WBE Office and/or a current SBE listing, if available and applicable.
 - c. Solicit bids from MBEs and/or SBEs, within the subcontracting/subconsultant/supplier areas previously listed, at least ten calendar days prior to bid opening, exclusive of the day the bids are opened. Both MBEs and/or SBEs and non-MBEs and/or non-SBEs must receive the same solicitation for each area of opportunity. The four methods identified below are acceptable for soliciting bids, and each selected method must be applied to the applicable contract. The Offeror must document that at least two attempts were made using two of the four methods or that at least one successful contact was made using one of the four methods in order to be deemed responsive to the Good Faith Effort requirement.
 - 1) Email - A copy of sent confirmation to subcontracting/subconsultant/suppliers identifying the MBE and/or SBE firm name, date and time must be printed directly from the email system for proper documentation. If an email is returned as undeliverable, then that "undeliverable message" received must be printed directly from the email system for proper documentation. Failure to submit confirmation and/or "undeliverable message" documentation may render the GFE non-responsive.
 - 2) Fax - A copy of sent confirmation to subcontractors/subconsultants/suppliers identifying the MBE and/or SBE firm name, date and time must be printed directly from the facsimile for proper documentation. If a fax is returned as undeliverable, then that "undeliverable confirmation" received must be printed directly from the facsimile for proper documentation. Failure to submit confirmation and "undeliverable confirmation" documentation may render your GFE non-responsive.
 - 3) Mail - Copies of all individual letters to MBE and/or SBE subcontracting/subconsultant/suppliers to include firm name, date and address. The letters will identify all solicited scopes of work. All returned mail must be submitted as part of the GFE documentation. The Offeror must submit a signed letter to the City of Fort Worth that affirms letters were mailed within the required time frame. Failure to submit this affirmation may render your GFE non-responsive.
 - 4) Telephone - A call log that identifies the MBE and/or SBE firm name, phone number, name of individual contacted, time, date and outcome of phone call. Failure to submit the call log may render your GFE non-responsive.
 - d. Provide plans and specifications or information regarding the location of plans and specifications which shall be communicated to all MBEs and/or SBEs in each subcontracting/supplier area. Attach a copy of the solicitation sent to MBEs and/or SBEs identifying the instructions on how to obtain plans and specifications for this solicitation. All communications shall be documented and submitted to the City.
 - e. Submit documentation if MBE and/or SBE quotes were rejected. The documentation submitted should be in the form of an affidavit, include a detailed explanation of why the MBE and/or SBE was rejected and any supporting documentation the Offeror wishes to be considered by the City. In the event of a bona fide dispute concerning quotes, the Offeror will provide for confidential review of any relevant documentation by City personnel.
20. **Horizontal Construction** means construction of highways, roads, streets, bridges, utilities, water supply projects, water plans, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction as referenced in this ordinance.
21. **Joint Venture** means a business enterprise jointly owned by two or more businesses, who share the initial investment, risks, and profits, at least one must be a certified M/WBE firm. The M/WBE firm must be responsible for a clearly defined portion of the work to be performed, equal to a

share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture. A joint venture constitutes the establishment of a new company formed for a specific project as reflected in a formal joint venture agreement document. Joint venture agreements are subject to review and acceptance by the City relative to its M/WBE component. The joint venture M/WBE ownership percentage will be counted towards the M/WBE subcontracting goal. Joint ventures are strongly encouraged.

22. **Lease Agreement** means a written agreement to transfer control and use of truck(s) from one business entity to another, which outlines fees and/or commissions.
23. **Lease Trucks** means trucks that are leased from another M/WBE (or SBE, if applicable) firm, including M/WBE owner-operators. Trucks leased from non-M/WBE (or non-SBE, if applicable) firms will only receive credit for the fees and commissions earned by the M/WBE (or SBE, if applicable) as outlined in the lease agreement.
24. **MWBE-AC** means the Minority and Women Business Enterprise Advisory Committee appointed by the City Council to review the findings of Availability and Disparity Studies conducted for the City and present recommendations to the City Manager and City Council, on any amendments to the Business Diversity Enterprise Ordinance. Additionally, the Committee reviews the appropriateness of any economic incentive agreement's M/WBE commitment to use Fort Worth M/WBEs when that commitment is less than the standard twenty-five (25%) percent and to serve in an advisory capacity to the City Council on the on-going progress of the M/WBE Ordinance and/or any subsequently adopted Ordinances.
25. **Managing Department** means the department responsible for overseeing the day-to-day completion of the contract.
26. **Manufacturer** means one that makes something into a finished product using raw materials.
27. **Marketplace** means the geographic market area as defined in the Availability and Disparity Study represented by the counties of Tarrant and Dallas, plus Denton, Wise, Parker and Johnson which reflect counties into which the geographical boundaries of the City of Fort Worth extend.
28. **Mediation** means the intervention by a third party between two or more sides in a dispute in an attempt to help them reach an agreement.
29. **Minority** means a citizen of the United States or lawfully admitted permanent resident that is Asian American, American Indian, Black or Hispanic.
30. **Minority Business Enterprise** is defined as a business concern located in the Marketplace and meeting the following criteria:
 - a. is at least 51 percent owned by one or more minority persons, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more minority persons; and
 - b. management and daily business operations are controlled by one or more minority persons who own it.

The business must be certified prior to recommendation of award in order for the participation to be counted towards the established goal.

31. **Nepotism** means the state or fact of showing favoritism to a relative on the basis of a relationship.
32. **Non-compliance** means failure of an Offeror to comply with the Ordinance's requirements during the contract and/or at completion of the contract.

- 33. **Non-responsive** means failure of an Offeror to be responsive to the Ordinance's requirements upon submission of a bid or proposal, herein specifically defined by either 1) meeting or exceeding the stated contract goal, or 2) making a good faith effort to meet the contract goal or 3) submitting the prime contractor waiver or 4) submitting the Joint Venture form and agreement.
- 34. **Offeror** means any person, firm, corporation, or partnership that submits a bid or proposal to provide labor, goods or services to the City where funds are expended. The term includes bidder and proposer.
- 35. **Payment Dispute** means a conflict or controversy regarding the amount owned under a contract or subcontract/supplier agreement.
- 36. **Procurement** means the buying, renting, leasing or otherwise obtaining or acquiring any supplies, materials, equipment or services.
- 37. **Professional Services** means services which require predominantly mental or intellectual labor and skills, and includes, but is not necessarily limited to, architects, engineers, surveyors, doctors, attorneys, and accountants.
- 38. **Project Manager** see Contract Officer.
- 39. **Purchasing** means the buying, renting, leasing or otherwise obtaining or acquiring any supplies, materials, equipment or services excluding construction and professional services previously defined.
- 40. **Qualified** means an individual or business entity having previously performed or received training in the work, industry or profession required.
- 41. **Race Neutral** means business/technical assistance and other processes and techniques that are intended to benefit all companies regardless of race and/or gender.
- 42. **Regular Dealer** is defined as a firm that owns, operates, or maintains a store, a warehouse, or other establishments in which the materials or supplies required for the contract are bought, kept in stock, and are regularly sold retail or wholesale. When a firm does not meet the regular dealer definition, nor is a manufacturer, only the cost of the fees or commissions charged for assistance in the procurement of the materials and supplies required for a job site will be counted towards the goal. The fee or commission must be determined to be reasonable and not excessive.
- 43. **Responsive** means an Offeror's response to the Ordinance's requirements upon submission of a bid or proposal, herein specifically defined by either 1) meeting or exceeding the stated contract goal, or 2) making a good faith effort to meet the contract goal or 3) submitting the prime contractor waiver or 4) submitting the joint venture form and agreement.
- 44. **Small Business Enterprise** is defined as a business concern located in the Marketplace that meets the United State Small Business Administration's definition of a small business as outlined in the Code of Federal Regulations 13 CFR 121.

The business must be certified prior to recommendation of award in order for the participation to be counted towards the established goal.
- 45. **Subcontract** means an agreement between the contractor and another business entity for the performance of work.
- 45. **Subcontract/Subconsultant/Supplier Opportunity** means an area where there is more than one M/WBE or SBE subcontractor/subconsultant/ supplier in the market place

46. **Tier** means the level of subcontracting below the prime contractor/consultant, i.e., a direct payment from the prime contractor to a subcontractor/subconsultant is considered 1st tier, a payment by a subcontractor/subconsultant to its supplier/subcontractor/subconsultant is considered 2nd tier.
47. **Vertical Construction** means construction of a facility. Facility means buildings, the design and construction of which are governed by accepted building codes. The term does not include: (a) highways, roads, streets, bridges, utilities, water supply projects, water plans, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction or (b) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.
48. **Women Business Enterprise** is defined as a business concern located in the Marketplace meeting the following criteria:
- a. is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women; and
 - b. management and daily business operations are controlled by one or more women who own it.

The business must be certified prior to recommendation of award in order for the participation to be counted towards the established goal.

II. PURPOSE:

The ultimate goal of this ordinance is to remedy the effects of past underutilization in the City's Marketplace by increasing the utilization of minority and women business enterprises above the present level to one comparable to their availability in the City's Marketplace.

Specific goals shall be established in the areas of construction, professional services, and purchases of other goods and services, as applicable. A goal may be set on applicable individual contracts based on the type of work or services to be performed, or goods to be acquired and the availability of minority and women businesses in the City's Marketplace.

The City shall review its goals periodically for M/WBE participation in City procurement activities and determine if those goals remain consistent with the results of the City's Availability and Disparity Study.

The provisions of this ordinance shall apply to all contracts awarded by the City, except as may be hereafter specifically exempted. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to M/WBE or DBE participation may take precedence over this ordinance.

Award of a contract shall be recommended when the Offeror has complied with the requirements of this ordinance via meeting the goal, demonstrating a Good Faith Effort to meet the goal or meeting the requirements for a Prime Contractor Waiver. Failure to comply with the Ordinance by any of the required methods shall result in an Offeror being deemed non-responsive.

III. CERTIFICATION:

The City will recognize M/WBE firms that are certified by the North Central Texas Regional Certification Agency (NCTRCA) or other certifying agencies that the City may deem appropriate and accepted by the City of Fort Worth, including acceptable SBE certifying agencies. The firms shall be located in the Marketplace at the time of bid/proposal opening or no later than the Request for Compliance date.

IV. PROGRAM GOAL:

- A. Citywide goals, when applicable, for the utilization of minority business enterprises (MBE), women business enterprises (WBE) and small business enterprises (SBE) shall be reviewed and approved by the City Council. Citywide goals may be periodically revised and approved by the City Council, if changes in Marketplace availability, City utilization of MBEs, WBEs and SBEs or other relevant factors change to a degree that is deemed sufficient to warrant goal revisions.
1. The City Manager shall present to the City Council an annual report on M/WBE utilization by the second quarter of the new fiscal year.
 2. Based on the availability of M/WBEs in the Marketplace and the City's most recent goal attainment and with the appropriated advice and counsel, the City Manager shall, if deemed appropriate and warranted, recommend to the City Council revised and reasonable goals for the remainder of the current fiscal year.
 3. Goals shall be expressed in terms of a percentage of the total dollar value of all applicable contracts awarded by the City. Goals shall be established, when applicable, separately for categories of construction, professional services, and purchasing, as well as, any other categories that the City Council or City Manager deems appropriate.
- B. An individual contract goal shall be set by the M/WBE Office in collaboration with the Contracting Department and Risk Management and the Purchasing Division (where appropriate) prior to solicitation. The contract goal shall be reasonable and shall be based upon:
1. Specific subcontracting and/or materials opportunities required to complete the project, and
 2. The availability of MBEs and/or SBEs in the identified subcontracting and/or materials opportunities in the Marketplace.

VI. PROGRAM ENHANCEMENTS

- A. Joint Ventures
1. The City shall encourage, where it is economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for M/WBEs on eligible solicitations. When evaluating economic feasibility, the City shall consider factors including, but not limited to, the estimated dollar value of the solicitation, the scope of work, the duration of the work, the complexity of the work, the availability of potential M/WBE joint venture partners in the relevant market area, the nature of the work.
 2. Therefore, when the City uses a Best Value/Alternative Method of Procurement, which includes the evaluation of responses and the corresponding allocation of points, the City may, at its discretion and on a solicitation-by-solicitation basis, designate a particular solicitation as a **“Joint Venture Preferred” solicitation.**
 3. For solicitations designated as **“Joint Venture Preferred,”** the City will, consequently, apply Evaluation Preference Points for a joint venture that consists of at least one M/WBE joint venture partner. The Evaluation Preference Points may equal up to 20% of the total Points assigned for purposes of evaluating and ranking prospective proposals or statements of qualifications.
 4. No Evaluation Preference Points will be awarded to Respondents, that are not joint ventures when a solicitation is designated **“Joint Venture Preferred,”**

5. A prospective joint venture Respondent shall state within its statement of proposal or its statement of qualifications information that specifies the role and extent of the M/WBE joint venture partner(s) involvement. Such information shall include, but is not limited to:
 - a. The name of the M/WBE joint venture partner(s) that will participate on the project;
 - b. The percentage of prime contract dollars of the services to be provided by the M/WBE joint venture partner; and, as appropriate the total dollar value of the services to be provided,
 - c. A description of the work that each M/WBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.
6. The prospective joint venture Respondent must also submit the City's "Joint Venture Eligibility Form." The City's Housing and Economic Development Department's Minority and Women Business Enterprise Office will review the "Joint Venture Eligibility Form" and will have final approval, as to whether the proposed joint venture conforms to the City's definition of a "true joint venture."
7. The joint venture should ensure that, at a minimum, the following areas are addressed:
 - a. The initial capital investment of each venture partner;
 - b. The proportional allocation of profits and losses to each venture partner;
 - c. The sharing of the right to control the ownership and management of the joint venture;
 - d. Actual participation of the venture partners on the project;
 - e. The method of and responsibility for accounting;
 - f. The method by which disputes are resolved; and
 - g. Any additional or further information required by the City as set forth in this Ordinance, bid documents and/or otherwise.
8. To the extent practical, the City encourages joint venture partners to be of different ethnicities and/or genders to achieve the highest degree of diversity possible (i.e. diversity within the diversity).

B. M/WBE Prime Contract Program

1. M/WBE Prime Contract Program - Construction

The City shall encourage the use of M/WBEs as primes in Construction, when it is feasible to do so. For Construction solicitations that are estimated by the City to be at or below **\$100,000** in value, the City may, at its discretion and on a solicitation-by-solicitation basis, establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition and to provide the City with its "Best Value" on Construction projects using alternative methods of procurement (i.e. a method other than low bid) for the solicitation and selection of construction services in accordance with Texas Local Government Code, Chapter 271. Under this M/WBE Prime Contract Program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is a certified M/WBE firm. An M/WBE firm that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for the M/WBE Prime Contract Program, the City shall, at a minimum, consider a) whether there are at least three M/WBE firms that are available and capable to participate in this prime contract; and b) the degree of underutilization of M/WBEs in the specific Industry Categories.

2. M/WBE Prime Contract Program – Architectural and Engineering (A&E)

- a. The City shall encourage the use of M/WBEs as primes in Architectural and Engineering (A&E), when it is feasible to do so. For Architectural and Engineering Services solicitations that are estimated by the City to be at or below **\$150,000** in value, the City may, at its discretion and on a solicitation-by-solicitation basis apply to Formal Solicitations on City A&E contracts that are issued pursuant to a method of procurement under Chapter 2254 of the Texas Local Government Code wherein criteria other than price, such as demonstrated competence and qualifications, are factored into the selection process. Under the terms of this Evaluation Preference, the City shall assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of A&E responses submitted by those certified M/WBE A&E firms.
- b. An M/WBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for this Program, the City shall consider (a) the relative availability of M/WBEs to participate in this prime contract; and (b) the degree of underutilization of the M/WBEs in the specific Industry Categories.

3. M/WBE Prime Contract Program – Professional Services

- a. The City shall encourage the use of M/WBEs as primes in Professional Services, when it is feasible to do so. For Professional Services solicitations that are estimated by the City to be at or below **\$150,000** in value, the City may, at its discretion and on a solicitation-by-solicitation basis apply Evaluation Preference Points to M/WBEs proposing as primes. Under the terms of this Evaluation Preference, the City shall assign Point preferences equal to up to 20% of the total Points assigned for the evaluation, scoring and ranking of Professional Services proposals submitted by those certified M/WBE Professional Services firms.
- b. An M/WBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-M/WBE firm. In determining whether a particular contract is eligible for this Program, the City shall consider (a) the relative availability of M/WBEs to participate in this prime contract; and (b) the degree of underutilization of the M/WBEs in the specific Industry Categories.

C. Small Business Enterprise (SBE) Subcontracting Program

1. The City may, at its discretion and on a contract-by-contract basis, establish a SBE subcontracting goal.
 - a. A prospective Offeror, to a City solicitation for which price and scope are defined, shall submit such documentation as required by the City that provides:
 - 1) The name(s) of the SBE subcontractor(s) it intends to use on the project;
 - 2) The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;
 - 3) A description of the work that each SBE subcontractor shall perform; and
 - 4) Documentation confirming subcontractor commitment to perform the work.
 - b. A prospective Offeror on a City solicitation for which Offerors are not initially evaluated based on price or for which the project scope is not predefined, shall submit at the time of response such documentation as required by the City to affirm its intent to address the SBE subcontracting goal that is indicated in the solicitation.

- c. During the price proposal negotiation phase, Offeror(s) shall be required to submit:
 - 1) Subcontractor(s) it intends to use on the project;
 - 2) The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each SBE;
 - 3) A description of the work that each SBE subcontractor shall perform; and
 - 4) Documentation confirming subcontractor commitment to perform the work.
- d. The failure of an Offeror to meet the SBE subcontracting goal or to establish that it made good faith efforts to comply or to establish that it complied with other applicable requirements of the City's Ordinance shall render the Offeror as non-responsive.
- e. Except as otherwise noted and/or where it is not applicable or inconsistent with the race-neutral nature of an SBE subcontracting program, solicitations and subsequent contracts that have a SBE subcontracting goal shall be governed by the same requirements, as applicable, for the race-conscious elements of this Ordinance (e.g. reporting, request for change of an SBE subcontractor, payment requirements, application and payment of retainage, dispute resolution processes and other applicable sections of this Ordinance).

2. Small Business Enterprise (SBE) Certification

- a. In order for a firm to participate in the City's SBE Subcontracting Program, it must fall within the Small Business Administration's (SBA) Table of Small Business size standards as outlined in the Small Business Size Regulations, 13 CFR 121.
- b. All SBEs shall:
 - 1) Be registered in the City's vendor database and
 - 2) Have a certification that is accepted by the City and that meets the SBA size standards.
- c. Firms that do not have a City accepted certification that also meets the SBA size standard can not participate in the SBE Subcontracting Program.
- d. The City reserves the right to audit any firm that asserts that it meets the City's SBE Subcontracting certification requirements. Any firm that is determined to have intentionally and/or knowingly misrepresented or falsified its claim to be a SBE for the purpose of participating in the SBE Subcontracting Program may be debarred from doing any business with the City for a designated period of time, but no less than three (3) years and the City may also pursue other legal remedies, including criminal prosecution.

D. Procurements of \$50,000 or Less

M/WBEs shall be solicited and utilized to the fullest extent practicable for purchases of construction, professional services and goods and services of \$50,000 or less. To facilitate this objective, the City Manager shall:

- 1. Require that each department submit to the Minority and Women Business Enterprise Office and the Advisory Committee a quarterly M/WBE participation report that shows the total amount of departmental expenditures and the dollars spent with M/WBEs and the corresponding M/WBE participation percentage.
- 2. Recommend that each department designate at least one person in the department to serve as the primary liaison that will be responsible for ensuring that M/WBEs are solicited for purchases of \$50,000 or less.
- 3. Require that each department utilize the City's M/WBE Office's list of potential vendors to assist it with identifying certified M/WBEs and consult with the M/WBE Office as needed.

4. Require that each department identify and track its use of M/WBEs for purchases of \$50,000 or less.
5. Require that each department evaluate if it is consistently soliciting at least two M/WBEs, when there is availability and a minimum of three bids are required.
6. Require that each department, when there is availability and only one bid is required, evaluate if it is consistently soliciting M/WBEs to the fullest extent possible.
7. Require that each department rotates, to the fullest extent practical, the use of M/WBEs to ensure broad-based M/WBE participation; thereby spreading the overall participation across numerous M/WBEs.
8. An Offeror may count toward its subcontracting goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of participation in the joint venture. The M/WBE Office, however, at its discretion and prior to solicitation, may require joint ventures to meet or establish good faith efforts to meet its goal solely through the use of subcontracting participation.

VI. APPLICABLE CONTRACTS:

A. CONSTRUCTION PROJECTS

1. MBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, bid conditions shall include a statement of the MBE (and SBE, if applicable) goal established for the contract. The requirements below also apply to circumstances where change orders or extra work give rise to new trade or vendor opportunities outside the original scope of work.
- b. Bid conditions and all other specifications for applicable contracts to be awarded by the City shall require that Offerors make a good faith effort (GFE) to subcontract with or purchase supplies from MBE (and SBE, if applicable) firms. Such specifications shall require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.
- c. Construction contracts (estimated cost greater than \$50,000) shall be awarded and administered in accordance with the following standards and procedures:
 - 1) Competitive bids for applicable contracts shall include the MBE (and SBE, if applicable) requirements and documentation in the bid specifications. MBE (and SBE, if applicable) documentation consists of the **SPECIAL INSTRUCTIONS TO BIDDERS**, the **SUBCONTRACTOR UTILIZATION FORM**, the **PRIME CONTRACTOR WAIVER FORM**, the **GOOD FAITH EFFORT FORM**, and the **JOINT VENTURE FORM**.
 - a) Competitive bids where the Offeror equals or exceeds the project goal must submit the **SUBCONTRACTOR UTILIZATION FORM or the JOINT VENTURE FORM**.
 - b) Competitive bids where the Offeror does not have subcontracting and/or supplier opportunities must submit the **PRIME CONTRACTOR WAIVER FORM**.
 - c) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but does not include MBE (and SBE, if applicable) participation in an amount which equals or exceeds the contract goal, must submit the **SUBCONTRACTOR UTILIZATION FORM** and the **GOOD FAITH EFFORT FORM (GFE)** and documentation.

- d) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but do not include any MBE (and SBE, if applicable) participation must submit the **SUBCONTRACTOR UTILIZATION FORM and the GOOD FAITH EFFORT FORM** and documentation.
- 2) The Offeror shall submit the **SUBCONTRACTOR UTILIZATION FORM and/or the GOOD FAITH EFFORT FORM or the PRIME CONTRACTOR WAIVER FORM, or the JOINT VENTURE FORM** ("and documentation") as appropriate. The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the M/WBE requirements and documentation, shall render the Offeror non-responsive.
- 3) The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize MBE(s) (and SBE, if applicable). The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who submits GFE shall be required to submit documentation to support a review with the MBEs (and SBEs, if applicable) who did not submit the lowest bid. An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted will constitute a basis for classification as non-responsive and possible debarment.
- 4) The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING MBE PARTICIPATION

MBE (and SBE, if applicable) participation shall be counted toward meeting the goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as MBE (and SBE, if applicable) only when they have been certified as such prior to a recommendation for award being made to the City Council.
 - 1) Any firm listed by an Offeror as participation must be reflected on a City MBE service/supplier listing (or have met the City's SBE certification requirements, if applicable). Firms listed by the Offeror to meet MBE participation that are not on a City MBE listing will not be counted towards meeting the goal. The burden of ensuring that listed firms are accepted by the City is the responsibility of the Offeror. Offerors are strongly encouraged to request and use City MBE listings.
 - 2) Any business listed by an Offeror that is not certified at the time of bid opening must file an application for certification to a city authorized certification agency within a reasonable time for the City to consider the business and dollar amount towards meeting the goal.
 - 3) If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable MBE (and/or SBE, if

- applicable) participation, starting the next City business day following the day the written notification was received from the Managing Department.
- 4) Evidence of the additional certified/certifiable MBE (and/or SBE, if applicable) participation shall be delivered to and received by the Managing Department within five (5) City business days after the notification was received by the Offeror, exclusive of the date that the notification was received.
 - b. Except as provided for in paragraph c. below, if the Offeror is ruled non-responsive for failure to comply with the requirements of this ordinance, the Managing Department will provide written notification to the Offeror stating the specific basis for the ruling. The Offeror may then submit documentation that it will either meet or exceed the stated goal and if the documentation satisfies this ordinance, the Offeror may then be considered for an award of contract.
 - c. If the Offeror is ruled non-responsive solely for its failure to identify a subcontract/supplier opportunity and that opportunity is less than three (3%) percent of the total bid, the Offeror may submit documentation that an MBE (and/or SBE, if applicable) will be utilized for that subcontract/supplier opportunity, and may be considered for an award of contract.
 - d. Documentation required under either paragraph 2 or 3 above must be received by the Managing Department within five (5) City business days, exclusive of the date that the Offeror was notified that it was non-responsive. If the documentation is not received within the stated time, the Offeror shall be deemed to have withdrawn its bid. The City will not communicate with another Offeror regarding award of the contract until five (5) City business days after the original Offeror has been notified that it is non-responsive.
 - e. The Offeror may count toward the goal any tier of MBE (and/or SBE, if applicable) subcontractors and/or suppliers
 - f. The Offeror will be given credit toward the goal only when the MBE (and/or SBE, if applicable) subcontractor performs a commercially useful function. An MBE (and/or SBE, if applicable) subcontractor is considered to have performed a commercially useful function when.
 - 1) It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice;
 - 2) When the firm receives due compensation as agreed upon for the work performed; and
 - 3) The firm's role is not limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of participation.
 - g. The Offeror will be given credit toward the MBE (and/or SBE, if applicable) goal only when the MBE (and/or SBE, if applicable) supplier performs a commercially useful function. An MBE (and/or SBE, if applicable) supplier is considered to have performed a commercially useful function when the MBE (and/or SBE, if applicable) supplier is a manufacturer or a regular dealer.
 - h. The Offeror will be given credit for utilizing an MBE (and/or SBE, if applicable) hauling firm as long as the MBE (and/or SBE, if applicable) owns and operates at least one fully licensed and operational truck used on the contract. The MBE (and/or SBE, if applicable) may lease trucks from another MBE (and/or SBE, if applicable) firm, including MBE (and/or SBE, if applicable) owner-operators and receive full MBE (and/or SBE, if applicable) credit. The MBE (and/or SBE, if applicable) may lease trucks from non-, MBE (and/or SBE, if applicable) including owner-operators, but will only receive credit for the fees and commissions earned by the MBE (and/or SBE, if applicable) as outlined in the lease agreement.
 - i. Regardless of whether an arrangement between the contractor and the MBE (and/or SBE, if applicable) represents standard industry practice, if the

arrangement erodes the ownership, control or independence of the MBE (and/or SBE, if applicable) or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.

- j. An Offeror may count toward its subcontracting goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of participation in the joint venture. The M/WBE Office, however, at its discretion and prior to solicitation, may require joint ventures to meet or establish good faith efforts to meet its goal solely through the use of subcontracting participation. Also see Section VI., Program Enhancements, Section A., Joint Ventures.
 - 1) The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the MBE (and/or SBE, if applicable) requirements and documentation, shall render the Offeror non-responsive.
 - 2) The MBE involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
- k. Except for joint ventures, the prime contractor (regardless of their MBE or WBE status) and any work performed by the prime contractor is not counted toward meeting the MBE (and/or SBE, if applicable) contract goal and is not considered when determining compliance with this ordinance.
- l. An Offeror may not count toward its goal any arrangement with an MBE (and/or SBE, if applicable) that is nepotism or where an MBE (and/or SBE, if applicable) has been a recent employee (less than one year) of the Offeror.
- m. The Offeror may not count toward the goal any agreement with an MBE (and/or SBE, if applicable) that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. For **vertical** construction contracts, procedures will be established to ensure that the prime shall submit an invoice at least monthly and the City will pay the invoice as required by the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute. The prime shall pay subcontractors as required by the Texas Prompt Payment Act or any successor statute. The prime contractor's failure to make payments as provided by state law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments and/or reject future bids from the contractor until compliance with this ordinance is attained.
- b. For **horizontal** construction contracts, procedures will be established to ensure that all progress payments are made twice a month and that subcontractors are paid in accordance with the provisions of the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute. A contractor's failure to make payments as required by state law shall, in addition to any other remedies provided by state law, authorize the City to withhold future payments and/or reject future bids from the contractor until compliance with this ordinance is attained.
- c. Whenever there is a dispute over payment due between the prime and subcontractor and/or supplier, the City shall strongly encourage the parties to seek mediation before the City takes any action under this ordinance.

4. RETAINAGE

- a. The Contractor cannot withhold retainage from the subcontractor at a greater level than what the City withholds from the Contractor.
- b. If the Contractor and the subcontractor have an agreement and such agreement requires that additional monies or a fee in excess of the retainage amount required by the City and there is no dispute about payment the Contractor shall release the additional monies after the completion of subs work.
- c. The required retainage will be due upon project completion, acceptance and final payment by the City.
- d. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to M/WBE or DBE retainage may take precedence over this ordinance.

B. PROFESSIONAL SERVICES

1. MBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, requests for proposals shall include a statement of the MBE (and/or SBE, if applicable) goal established for the project. The requirements below shall also apply to circumstances where amendments or extra work give rise to new subconsulting/supplier opportunities.
- b. Requests for proposals and all other specifications for applicable contracts to be awarded by the City shall require that Offeror make a good faith effort (GFE) to sub-consult with or purchase supplies from MBE (and/or SBE, if applicable) firms. Such specifications shall require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.
- c. Professional Services contracts and such other contracts which may be competed for under sealed proposal procedures (estimated cost greater than \$50,000) shall be awarded and administered in accordance with the following standards and procedures:
 - 1) Other than responses to Requests for Proposals for those professional services defined in Chapter 2254 of the Texas Government Code, responses to Request for Proposals shall be submitted by the proposal deadline date and include a section, which identifies the particular MBE (and/or SBE, if applicable) utilization plan in performing the contract.
 - a) The proposal shall specify the estimated percentage of the MBE (and/or SBE, if applicable) participation, the type of work to be performed by the MBE (and/or SBE, if applicable), and such other information as may reasonably be required to determine the responsiveness to the Request for Proposal.
 - b) Proposals that do not meet or exceed the utilization goal, as required by the Request for Proposal, must submit a GFE explanation. Failure to include such GFE explanation shall render the proposal non-responsive.
 - 2) Initial responses to requests for proposals for those professional services defined in Chapter 2254 of the Texas Government Code shall not include a response to the requirements of this ordinance. The City shall comply with the requirements of said Chapter and rank the professional on the basis of demonstrated competence and qualifications. During negotiations, the proposer shall respond to this ordinance in the manner specified in paragraph 1) a) above.
 - 3) The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize MBE (and/or SBE, if applicable). The burden of preparing and submitting the GFE information is on the Offeror and

will be evaluated as part of the responsiveness to the proposal. An Offeror who submits GFE shall be required to submit documentation to support a review with the MBEs (and/or SBEs, if applicable) who were not selected by the Offeror. The documentation should reflect and validate the reason why the Offeror did not select the MBEs (and/or SBEs, if applicable). An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted may be classified as non-responsive and be subject to possible debarment.

- 4) The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING MBE PARTICIPATION

MBE (and/or SBE, if applicable) participation shall be counted toward meeting the goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as MBE (and/or SBE, if applicable) only when they have been certified as such prior to a recommendation for award being made to the City Council.
 - 1) Any business listed by an Offeror that is not certified at the time of response opening must file an application for certification to a eCity authorized certification agency within a reasonable time for the City to consider the business and dollar amount towards meeting the goal.
 - 2) If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable MBE (and/or SBE, if applicable) participation, starting the next City business day following the day the written notification was received from the Managing Department.
 - 3) Evidence of the additional certified/certifiable MBE (and/or SBE, if applicable) participation shall be delivered to and received by the Managing Department within five (5) City business days after the notification was received by the Offeror, exclusive of the date that the notification was received.
- b. The Offeror may count toward the goal any tier of MBE (and/or SBE, if applicable) sub-consultants and/or suppliers.
- c. The Offeror will be given credit toward the goal only when the MBE (and/or SBE, if applicable) sub-consultant performs a commercially useful function. An MBE (and/or SBE, if applicable) sub-consultant is considered to have performed a commercially useful function when:
 - 1) It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice;
 - 2) When the firm receives due compensation as agreed upon for the work performed; and
 - 3) The firm's role is not limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of participation.
- d. The Offeror will be given credit toward the MBE (and/or SBE, if applicable) contract goal only when the MBE (and/or SBE, if applicable) supplier performs a commercially useful function. An MBE (and/or SBE, if applicable) supplier is

- considered to have performed a commercially useful function when the MBE (and/or SBE, if applicable) supplier is a manufacturer or a regular dealer.
- e. Regardless of whether an arrangement between the consultant and the MBE (and/or SBE, if applicable) represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE (and/or SBE, if applicable) or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.
 - f. An Offeror may count toward its subcontracting goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of MBE participation in the joint venture. The M/WBE Office, however, at its discretion and prior to solicitation, may require joint ventures to meet or establish good faith efforts to meet its goal solely through the use of subcontracting participation.
 - 1) The Joint Venture Form must be submitted to the Managing Department with the proposal when determining the responsiveness of the proposal by the M/WBE Office. Failure to comply with the proposal scope of services, inclusive of the MBE (and/or SBE, if applicable) requirements, shall render the Offeror non-responsive.
 - 2) The MBE (and/or SBE, if applicable) involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
 - g. Except for joint ventures, the prime consultant (regardless of their MBE (and/or SBE, if applicable) status) and any work performed by the prime consultant is not counted toward meeting the MBE (and/or SBE, if applicable) contract goal and is not considered when determining compliance with this ordinance.
 - h. An Offeror may not count toward its goal any arrangement with an MBE (and/or SBE, if applicable) that is nepotism or where an MBE (and/or SBE, if applicable) has been a recent employee (less than one year) of the Offeror.
 - i. The Offeror may not count toward the goal any agreement with an MBE (and/or SBE, if applicable) that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. The prime shall submit an invoice at least monthly or as designated by the contract documents and the City will pay the invoice as required by the Texas Prompt Payment Act or any successor statute. The prime shall pay sub-consultants as required by the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute. A consultant's failure to make payments in accordance with state law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments and/or reject future proposals from the consultant until compliance with this ordinance is attained.
- b. Whenever there is a dispute over payment due between the prime and sub-consultant and/or supplier, the City shall strongly encourage the parties to seek mediation before the City initiates a stop payment order.

C. PURCHASES

1. M/WBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, bid conditions shall include, when applicable, a statement of the SBE goal established for the contract. The requirements below also apply to circumstances where purchase orders or extra work cause new subcontracting/supplier opportunities.

- b. Bid conditions and all other specifications for applicable contracts to be awarded by the City shall require that Offeror make a good faith effort (GFE) to subcontract with or purchase supplies from SBE firms. Such specifications shall require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.
- c. Purchase contracts and such other contracts which may be competed for under sealed proposal procedures (estimated cost greater than \$50,000) shall be awarded and administered in accordance with the following standards and procedures:
 - 1) Competitive bids for applicable contracts shall include the SBE requirements and documentation in the bid specifications. M/WBE documentation consists of the **SPECIAL INSTRUCTIONS TO BIDDERS**, the **SUBCONTRACTOR UTILIZATION FORM**, the **PRIME CONTRACTOR WAIVER FORM**, the **GOOD FAITH EFFORT FORM**, and, the **JOINT VENTURE FORM**.
 - a) Competitive bids where the Offeror equals or exceeds the contract goal must submit the **SUBCONTRACTOR UTILIZATION FORM**.
 - b) Competitive bids where the Offeror does not have subcontracting and/or supplier opportunities must submit the **PRIME CONTRACTOR WAIVER FORM**.
 - c) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but does not include SBE participation in an amount which equals or exceeds the contract goal, must submit the **SUBCONTRACTOR UTILIZATION FORM** and the **GOOD FAITH EFFORT FORM** and documentation.
 - d) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but do not include any SBE participation must submit the **GOOD FAITH EFFORT FORM** and documentation.
 - 2) The Offeror shall submit the **SUBCONTRACTOR UTILIZATION FORM** and/or the **GOOD FAITH EFFORT FORM** or the **PRIME CONTRACTOR WAIVER FORM**, or the **JOINT VENTURE FORM** ("and documentation") as appropriate. The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the SBE requirements and documentation, shall render the Offeror non-responsive.
 - 3) The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize SBE(s). The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who submits GFE shall be required to submit documentation to support a review with the MWBEs who did not submit the lowest bid. An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted will constitute a basis for classification as non-responsive and possible debarment.
 - 4) The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the

goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING SBE PARTICIPATION

SBE participation shall be counted toward meeting Goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as SBEs only when they have been certified as such prior to a recommendation for award being made to the City Council.
 - 1) Any business listed by an Offeror that is not certified at the time of bid/response opening must file an application for certification within a reasonable time for the City to consider the business towards meeting the goal.
 - 2) If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable SBE participation, starting the next City business day following the day the written notification was received from the Managing Department
 - 3) Evidence of the additional certified/certifiable SBE participation shall be delivered to and received by the Managing Department within five (5) City business days after the notification was received by the Offeror, exclusive of the date that the notification was received.
- b. Except as provided for in paragraph c. below, if the Offeror is ruled non-responsive for failure to comply with the requirements of this ordinance, the Managing Department will provide written notification to the Offeror stating the specific basis for the ruling. The Offeror may submit documentation that it will either meet or exceed the stated goal, and if the documentation satisfies this ordinance, the Offeror may then be considered for an award of contract.
- c. If the Offeror is ruled non-responsive solely for its failure to identify a subcontract/supplier opportunity and that opportunity is less than three (3%) percent of the total bid, the Offeror may submit documentation that an SBE will be utilized for that subcontract/supplier opportunity, and may be considered for an award of contract.
- d. Documentation required under either paragraph b. or c. above must be received by the Managing Department within five (5) City business days, exclusive of the date that the Offeror was notified that it was non-responsive. If the documentation is not received within the stated time, the Offeror shall be deemed to have withdrawn its bid. The City will not communicate with another Offeror regarding award of the contract until five (5) City business days after the original Offeror has been notified that it is non-responsive.
- e. The Offeror may count toward the goal any tier of SBE subcontractors and/or suppliers. It is the sole responsibility of the Offeror to report and document all subcontracting and/or supplier participation dollars counted towards the goal, irrespective of tier level. Failure to submit documentation as required in this subparagraph, shall entitle the City to withhold payments and/or reject future purchasing orders until compliance is attained.
- f. The Offeror will be given credit toward the goal only when the SBE subcontractor performs a commercially useful function. An SBE subcontractor is considered to have performed a commercially useful function when:
 - 1) It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice;

- 2) When the firm receives due compensation as agreed upon for the work performed; and
 - 3) The firm's role is not limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of participation.
- g. The Offeror will be given credit toward the SBE contract goal only when the SBE supplier performs a commercially useful function. An SBE supplier is considered to have performed a commercially useful function when the SBE supplier is a manufacturer or a regular dealer.
- h. The Offeror will be given credit for utilizing an SBE hauling firm as long as the SBE owns and operates at least one fully licensed, insured and operational truck used on the contract. The SBE may lease trucks from another SBE firm, including SBE owner-operators and receive 100% SBE credit. The SBE may lease trucks from non- SBEs, including owner-operators, but will only receive credit for the fees and commissions earned by the SBE as outlined in the lease agreement.
- i. Regardless of whether an arrangement between the contractor and the SBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the SBE or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.
- j. An Offeror may count toward its subcontracting goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of SBE participation in the joint venture. The M/WBE Office, however, at its discretion and prior to solicitation, may require joint ventures to meet or establish good faith efforts to meet its goal solely through the use of subcontracting participation.
- 1) The Managing Department must receive the Joint Venture form from the Offeror within five (5) City business days after the date of bid opening, exclusive of the day of the bid opening, for certification by the M/WBE Office.
 - 2) The SBE involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
- k. Except for joint ventures, the prime contractor (regardless of their SBE status) and any work performed by the prime contractor is not counted toward meeting the SBE contract goal and is not considered when determining compliance with this ordinance.
- l. An Offeror may not count toward its goal any arrangement with an SBE that is nepotism or where an SBE has been a recent employee (less than one year) of the Offeror.
- m. The Offeror may not count toward the goal any agreement with an SBE that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. Establish procedures to ensure that purchase orders for all vendors' invoices be paid as required by the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute and that subcontractors are also paid as required by state law. A vendor's failure to make payments as required by law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments from the vendor until compliance with this ordinance is attained.
- b. Whenever there is a dispute concerning payment due between the prime and subcontractor and/or supplier, the City shall strongly encourage the parties to seek mediation before the City initiates a stop payment order.

4. BEST VALUE CRITERIA

- a. In order to increase SBE, as well as M/WBE primes in direct purchases, the City will apply the best value criteria codified in State law (Tex. Local Gov't Code, Sec. 252.043 or any successor statute) to all purchasing activities as outlined in the state legislation.
- b. The City Manager, with the advice and counsel of the MWBE-AC in accord with City of Fort Worth Resolution No. 3698-12-2008, shall implement procedures for the purchase of goods and services under the formal bid amount to emphasize the inclusion of SBEs, as well as M/WBEs (see Program Enhancements).

VII. POST-AWARD COMPLIANCE:

A. In addition to such other requirements as may be set forth elsewhere, the following shall apply to applicable contracts awarded by the City:

1. Contracts shall incorporate this ordinance by reference, and shall provide that the contractor's violation of this ordinance shall constitute a breach of such contract and may result in debarment in accord with the procedures outlined in this ordinance.
2. Following the date and time of bid/proposal opening, any proposed change or deletion in MBE and/or WBE (and/or SBE, if applicable) participation identified in the bid, proposal or contract shall be reviewed by the M/WBE Office to determine whether such change or deletion is justified in accord with paragraphs 3 and 4 immediately below. Any unjustified change or deletion shall be a material breach of contract and may result in debarment in accord with the procedures outlined in this ordinance.
3. Following the date and time of bid/proposal opening, the contractor shall:
 - a. Make no unjustified changes or deletions in its MBE and/or WBE (and/or SBE, if applicable) participation commitments submitted with the bid, proposal or during negotiation, without prior submission of the proper documentation for review and approval by the M/WBE Office.
 - b. Shall submit a detailed explanation of how the requested change or deletion will affect the MBE, WBE or SBE commitment. If the detailed explanation is not submitted, it will affect the final compliance determination.
 - c. If substantial subcontracting and/or supplier opportunities arise during the term of any contract when the contractor represented in its bid to the City that it alone would perform the subcontracting/supplier opportunity work, the contractor shall notify the City before subcontracts for work and/or supplies are awarded and shall be required to comply with definition number 19 in the definition section (Good Faith Effort Requirements) of this Attachment I, exclusive of the time requirements stated in such subsections;
 - d. Maintain records reasonably necessary for monitoring their compliance with the provisions of this ordinance;
 - e. After the first payment and beginning with the second application for payment, submit the required MBE, WBE and/or SBE Periodic Payment Reports, including copies of MBE, WBE and/or SBE subcontractor's/ subconsultant's/supplier's applications for payment / invoices (as appropriate) and proof of payment documentation, to the M/WBE Office. Additionally, upon request of the M/WBE Office, the contractor shall submit such other documentation as may be reasonably required to verify proof of payments. Failure to submit these reports and other requested information, if any, as required shall authorize the City to withhold payment and/or reject future bids from the contractor until compliance with this ordinance is attained.

4. The contractor shall submit to the M/WBE Office for approval an MBE, WBE and/or SBE **REQUEST FOR APPROVAL OF CHANGE FORM** if, during the term of any contract, a contractor wishes to change or delete one or more MBE, WBE and/or SBE subcontractor(s), subconsultant(s) or supplier(s).
- a. Within three (3) City business days after receipt by the M/WBE Office, exclusive of the date of receipt, the Request shall be reviewed. The Request shall be approved if the change or deletion is justified. The following shall constitute justification for the requested change or deletion:
- 1) An MBE, WBE and/or SBE's failure to provide workers' compensation insurance evidence as required by state law; or
 - 2) An MBE, WBE and/or SBE's failure to provide evidence of general liability or other insurance under the same or similar terms as contained in the contract documents with limits of coverage no greater than the lower of 1) the limits required of the contractor by the City; or 2) the limits contained in the contractor's standard subcontract or supply agreements used on other projects of similar size and scope and within the contractor's normal business practice with non-M/WBE subcontractors/subconsultants or suppliers; or
 - 3) An MBE, WBE and/or SBE's failure to execute the contractor's standard subcontract form, if entering a subcontract is required by the contractor in its normal course of business, unless such failure is due to:
 - a) A change in the amount of the previously agreed to bid or scope of work; or
 - b) The contract presented provides for payment once a month or longer and the contractor is receiving payment from the City twice a month; or
 - c) Any limitation being placed on the ability of the MBE, WBE and/or SBE to report violations of this Ordinance or any other ordinance or violations of any state or federal law or other improprieties to the City or to provide notice of any claim to the contractor's surety company or insurance company.
 - d) Mediation shall be a consideration before the request for change is approved.
 - 4) An MBE, WBE and/or SBE defaults in the performance of the executed subcontract. In this event, the contractor shall:
 - a) Request bids from all MBE (and/or SBE, if applicable and/or WBE, if applicable) subcontractors previously submitting bids for the work,
 - b) If reasonably practicable, request bids from previously non-bidding MBEs (and/or SBEs, if applicable and/or WBEs, if applicable), and
 - c) Provide to the M/WBE Office documentation of compliance with a) and b) above.
 - 5) Any other reason found to be acceptable by the M/WBE Office in its sole discretion.

NOTE: The contractor shall submit such documentation as may reasonably be requested by the M/WBE Office to support the contractor's request. The time between the request by the M/WBE Office for additional documentation and the delivery of such documentation shall not be included within the time period that the M/WBE Office is required to respond as stated in subparagraph (a) above.

- b. If the M/WBE Office approves the deletion of an M/WBE or SBE and replacement by a non-M/WBE or non-SBE, such approval shall constitute a post award waiver to the extent of the value of the deleted subcontract.

- c. If the M/WBE Office denies the request for change or deletion, the contractor may appeal the denial to the City Manager whose decision will be final.
5. Whenever contract amendments, change orders, purchase orders or extra work orders are made individually or in the aggregate, the contractor shall comply with the provisions of this ordinance with respect to the alternates, amendments, change orders, or extra work orders.
 - a. If the amendment, change order, purchase order or extra work affects the subcontract of an MBE, WBE and/or SBE, such MBE, WBE and/or SBE shall be given the opportunity to perform such amendment, change order, purchase order or extra work.
 - b. If the amendment, change order, purchase order or extra work is or is not covered by any subcontractor performing like or similar work, and the amount of such amendment, change order, purchase order or extra work is greater than \$50,000.00, the contractor shall comply with definition number 19 in the definition section (Good Faith Effort Requirements), of this Attachment I (exclusive of the time requirements stated therein) with respect to such amendment, change order purchase order or extra work.
6. If the contractor/consultant in its bid/proposal included any second or lower tier subcontractor/subconsultant/supplier towards meeting the goal, it is the sole responsibility of the Offeror to report and document all subcontracting/subconsulting and/or supplier participation dollars counted towards the goal, irrespective of tier level. Failure to comply with the City's request to provide the required documentation shall entitle the City to withhold payments and/or to reject future bids/proposals from the Offeror until compliance with this ordinance is attained.
7. Upon completion of the contract and within ten (10) City business days after receipt of final payment from the City, exclusive of the date the contractor receives payment, the contractor shall provide the M/WBE Office with the MBE, WBE and/or SBE FINAL SUMMARY PAYMENT REPORT FORM to reflect the final participation of each subcontractor/subconsultant and/or supplier (including non-M/WBEs) used on the project. Failure to comply with the City's request to provide the required documentation shall entitle the City to reject future bids from the contractor until compliance with this ordinance is attained.
8. In the event a contractor is in non-compliance and is a subcontractor/subconsultant on a new quote, then, the contractor will be required to comply with this ordinance prior to a recommendation for award being made to the City Council.

VIII. CONTRACT MONITORING, AND REPORTING:

- A. The M/WBE Office shall monitor compliance with these requirements during the term of the contract. If it is determined that there is cause to believe that a contractor or subcontractor has failed to comply with any of the requirements of this ordinance, or the contract provisions pertaining to MBE, WBE and/or SBE utilization, the M/WBE Office shall notify the contracting department and the contractor. The M/WBE Office shall attempt to resolve the non-compliance through conciliation. If the non-compliance cannot be resolved, then, the M/WBE Office, through its specific department (i.e. Housing and Economic Development Department) and the contracting department shall submit written recommendations to the City Manager or designee, and if the City Manager concurs with the findings, sanctions shall be imposed as stated in this ordinance.
- B. Whenever the M/WBE Office finds, after investigation, that a contracting department has failed to comply with the provisions of this ordinance, a written finding specifying the nature of the non-compliance shall be transmitted to the contracting department, and the M/WBE Office shall

attempt to resolve any non-compliance through conference and conciliation. Should such attempt fail to resolve the non-compliance, the M/WBE Office shall transmit a copy of the findings of non-compliance, with a statement that conciliation was attempted and failed, to the City Manager who shall take appropriate action to secure compliance.

- C. The M/WBE Office may require such reports, information, and documentation from contractors, Offerors, contracting agencies, and the head of any department, division, or office of the City of Fort Worth, as are reasonably necessary to determine compliance with the requirements of this ordinance.
- D. Contracting departments shall maintain accurate records for each contract awarded, including the names of contractors providing quotes, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit quotes from MBEs, WBEs and/or SBEs, identifying for each its dollar value, the nature of the goods or services provided, and the name of the subcontractors/suppliers.
- E. The City Manager, with the advice and counsel of the MWBE-AC in accord with City of Fort Worth Resolution No. 1148, shall submit an annual report to the City Council on the progress of the City toward the utilization goal established by this ordinance, together with an identification of problems and specific recommendations for improving the City's performance.

IX. EXCEPTIONS AND WAIVERS:

- A. If an Offeror is unable to comply with the goal requirements established in the Program Goal section of this ordinance, such Offeror shall submit one of the two forms listed below within the allotted time.
 - 1. A Prime Contractor Waiver Form is submitted if the Offeror will perform the entire contract without subcontractors or suppliers.
 - 2. A Good Faith Effort Form is submitted if the Offeror has a subcontracting and/or supplier opportunity but was unable to meet or exceed the contract goal. The Offeror will submit requested documentation that demonstrates a good faith effort to comply with the goal requirements as described in the Program Goal section above.
- B. A contracting department may request the M/WBE Office to waive or modify the goal requirements by submitting a Departmental Waiver Form, in writing, prior to solicitation of bids or proposals. The M/WBE Office may grant such a waiver or reduction upon determination that:
 - 1. The reasonable and necessary requirements of the contract render subcontracting or other participation of businesses other than the Offeror infeasible; or
 - 2. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy; or
 - 3. Lack of sufficient MBE, WBE and/or SBE subcontracting/ subconsulting/suppliers providing the services required by the contract are unavailable in the marketplace, despite attempts to locate them; or
 - 4. The application of the provisions of this ordinance will impose an unwarranted risk on the City or unduly delay acquisition of the goods or services.
- C. Whenever the M/WBE Office denies a request to waive a goal; the contracting department may appeal that denial to the City Manager whose decision on the request shall be final.

X. PROGRAM ADMINISTRATION:

- A. The City Manager, with the advice and counsel of the MWBE-AC in accord with City of Fort Worth Resolution No. 3698-12-2008, is authorized to establish and implement the regulations set forth in this ordinance. The M/WBE Office shall be responsible for the overall administration of the City's Business Diversity Enterprise Program, and its duties and responsibilities shall include:
1. Recommending rules and regulations to effectuate this ordinance;
 2. Maintaining a current listing of certified firms for distribution internally and externally on contracts;
 3. Providing information, outreach (to include workshops, seminars, etc.) and needed assistance to MBEs, WBEs and SBEs to increase their ability to compete effectively for the award of City contracts;
 4. Investigating alleged violations of this ordinance and making written recommendations to appropriate City authorities for remedial action when appropriate;
 5. Developing and distributing all necessary forms, applications, and documents necessary to comply with this ordinance;
 6. Reviewing, on a regular basis, the progress of departments toward achieving the category goals for the utilization of minority, women and small business enterprises;
 7. Making recommendations to appropriate City staff regarding methods to further the policies and goals of this ordinance;
 8. Determining ordinance compliance on bids and proposals before they are submitted to the City Council for award;
 9. Maintaining an accurate contract performance reporting system; and
 10. Compiling a report reflecting the progress in attaining the City's annual goal, quarterly and annually.
- B. It shall be the responsibility of the contracting department to ensure that bids or proposals for the department's projects adhere to the procedures and provisions set forth in this ordinance.
1. The department director or designee shall assume primary responsibility for achieving the goals of this program and shall review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained.
 2. The contracting department shall take the following action to ensure that MBEs, WBEs and SBEs have the maximum opportunity to participate on City contracts:
 - a. Effectively use the City's website, email blasts and other tools, techniques and forms of relevant media to effectively advertise and notify minority, women and small business trade associations, professional associations, contractor's associations, and minority, women and other chambers of commerce and technical assistance organizations about the availability of formally advertised contracting opportunities no less than 28 days before bids are due;
 - b. All applicable contract solicitations shall include the requirements contained in this ordinance;
 - c. All contracting opportunities shall be evaluated in an effort to divide the total requirements of a contract to provide reasonable opportunities for MBEs, WBEs and/or SBEs;

- d. Establish procedures to ensure that all contractors' invoices are paid on construction, professional services and purchases as follows:
 - 1) Vertical construction shall be paid monthly or whenever practical, within ten (10) City business days after receipt of an approved invoice,
 - 2) Horizontal construction shall be paid twice monthly,
 - 3) Professional Services shall be paid within ten (10) City business days after receipt of an approved invoice, and
 - 4) Purchases shall be paid within ten (10) City business days after receipt of an approved invoice.
- e. Ensure that applicable contracts with prime contractors/consultants that provide construction, professional services, all other services and applicable goods have appropriate contract language that require primes to pay all of its subcontractors/subconsultants within five (5) business days after receipt of payment from the City (exclusive of the date payment is received).
- f. Establish guidelines to ensure that a notice to proceed is not issued until signed letters of intent evidencing receipt by the MBEs, WBEs and/or SBEs or executed agreements with the MBEs, WBEs and/or SBEs have been submitted to substantiate the participation commitment along with the project work schedule, if applicable;
- g. Ensure that all required statistics and documentation are submitted to the M/WBE Office as requested; and
- h. If circumstances prevent the contracting department from meeting the 28-day advertising and notification requirements, the contracting department shall perform extensive outreach to MBE, WBE and/or SBE associations or other relevant organizations to inform them of the contracting opportunity.

XI. SANCTIONS:

- A. The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize MBEs, WBEs and/or SBEs. The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who intentionally and/or knowingly misrepresents facts in the documentation submitted will be classified as non-responsive and be subject to possible debarment.
- B. A contractor's failure to make payments within five (5) City business days shall authorize the City to withhold payment from the contractor until compliance with this ordinance is attained.
- C. Debarment:
 - 1. An Offeror who intentionally and/or knowingly misrepresents material facts shall be determined to be an irresponsible Offeror and barred from participating in City work for a period of time of not less than three (3) years.
 - 2. The failure of an Offeror to comply with this ordinance where such non-compliance constitutes a material breach of contract as stated herein, may result in the Offeror being determined to be an irresponsible Offeror and barred from participating in City work for a period of time of not less than one (1) year.
 - 3. The M/WBE Office will send a written statement of facts and a recommendation for debarment to the City Manager. The City Manager, after consultation with the Department of Law, will make the decision regarding debarment and send a certified notice to the Offeror.

4. An Offeror that receives notification of debarment may appeal to an Appeal Board, hereinafter created, by giving written notice within ten (10) days from the date of receipt of the debarment notice, to the City Manager of its request for appeal.
5. An Appeal Board, consisting of not less than three members appointed by the City Manager with the approval of the City Council, will meet within thirty (30) days from the date of receipt of the request for appeal of debarment, unless Offeror requests an extension of time. The Offeror will be notified of the meeting time and location.
6. The Offeror will be afforded an opportunity to appear with Counsel if they so desire, submit documentary evidence, and confront any witness that the City presents.
7. The Appeal Board will render its decision not more than thirty (30) days after the hearing and send a certified notice to the Offeror.
8. If the Appeal Board upholds the original debarment, the Offeror may appeal to the City Council within ten (10) days from the date of receipt of the Appeal Board's decision by giving written notice to the City Manager.
9. The appeal will be placed on the City Council agenda within thirty (30) days from receipt of written notice, unless Offeror requests an extension in writing.
10. From the date of notification of debarment and during the pendency of any appeal, the City will not consider offers from, award contracts to, renew or otherwise extend contracts with, or contract directly or indirectly through subcontracts with the Offeror pending the Appeal Board's decision.
11. Any MBE, WBE, SBE or other relevant subcontractor or supplier who intentionally and/or knowingly misrepresents facts or otherwise violates the provisions of this ordinance may be determined to be irresponsible for a period not to exceed one (1) year, and if deemed irresponsible, such MBE, WBE or SBE subcontractor or supplier shall not be included in calculating an Offeror's responsiveness and barred from bidding on City work.

XII. SEVERABILITY:

If any provision of this attachment or ordinance, the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, such invalidity shall not affect the other provisions of any other application of this attachment or ordinance which can be given effect without the invalid provision or application, and to this end, all the provisions of this attachment or ordinance are hereby declared to be severable.

APPENDIX B

ATTACHMENT 8

DBE Certification Application Form

(New form October 2, 2014)



UNIFORM CERTIFICATION APPLICATION **DISADVANTAGED BUSINESS ENTERPRISE (DBE) /** **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)** **49 C.F.R. Parts 23 and 26**

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS):
<http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.



**INSTRUCTIONS FOR COMPLETING THE
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
UNIFORM CERTIFICATION APPLICATION**

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website addresses, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

- (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or



oral agreement. Provide an explanation of any items shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
 - (a) ever existed under different ownership, a different type of ownership, or a different name;
 - (b) existed as a subsidiary of any other firm;
 - (c) existed as a partnership in which one or more of the partners are/were other firms;
 - (d) owned any percentage of any other firm; and
 - (e) had any subsidiaries of its own.
- (f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
- (8) Enter the number of years during which this owner has been an owner of your firm.
- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
- (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," state the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
 - (b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.
- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
- (b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.
- (5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles

State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION



A. Basic Contact Information

(1) Contact person and Title: _____ (2) Legal name of firm: _____

(3) Phone #: (____) _____ - _____ (4) Other Phone #: (____) _____ - _____ (5) Fax #: (____) _____ - _____

(6) E-mail: _____ (7) Firm Websites: _____

(8) Street address of firm (No P.O. Box): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

(9) Mailing address of firm (if different): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?

☐ DBE ☐ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ____/____/____ State/UCP Member: _____ Date ____/____/____ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ☐ Yes ☐ No

(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ☐ Yes ☐ No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision,

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____

(3) This firm was established on ____/____/____ (4) I/We have owned this firm since: ____/____/____

(5) Method of acquisition (Check all that apply):

☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession
☐ Merger or consolidation ☐ Other (explain) _____



(6) Is your firm "for profit"? ☐ Yes ☐ No → **⊗ STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.
Federal Tax ID# _____

(7) Type of Legal Business Structure: (check all that apply):

- | | |
|--|---|
| ☐ Sole Proprietorship | ☐ Limited Liability Partnership |
| ☐ Partnership | ☐ Corporation |
| ☐ Limited Liability Company | ☐ Joint Venture (Identify all JV partners _____) |
| ☐ Applying as an ACDBE | ☐ Other, Describe _____ |

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____ Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. (Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ☐ Yes ☐ No

If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?

☐ Yes ☐ No If Yes, explain _____

(3) At present, or at any time in the past, has your firm:

- (a) Ever existed under different ownership, a different type of ownership, or a different name? ☐ Yes ☐ No
- (b) Existed as a subsidiary of any other firm? ☐ Yes ☐ No
- (c) Existed as a partnership in which one or more of the partners are/were other firms? ☐ Yes ☐ No
- (d) Owned any percentage of any other firm? ☐ Yes ☐ No
- (e) Had any subsidiaries? ☐ Yes ☐ No
- (f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ☐ Yes ☐ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).



Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____	(2) Title: _____	(3) Home Phone #: _____ () _____ - _____										
(4) Home Address (Street and Number): _____	City: _____	State: _____ Zip: _____										
(5) Gender: ☐ Male ☐ Female	(8) Number of years as owner: _____											
(6) Ethnic group membership (Check all that apply): ☐ Black ☐ Hispanic ☐ Asian Pacific ☐ Native American ☐ Subcontinent Asian ☐ Other (specify) _____	(9) Percentage owned: _____ % Class of stock owned: _____ Date acquired _____											
(7) U.S. Citizenship: ☐ U.S. Citizen ☐ Lawfully Admitted Permanent Resident	(10) Initial investment to acquire ownership interest in firm: <table border="1"><thead><tr><th>Type</th><th>Dollar Value</th></tr></thead><tbody><tr><td>Cash</td><td>\$ _____</td></tr><tr><td>Real Estate</td><td>\$ _____</td></tr><tr><td>Equipment</td><td>\$ _____</td></tr><tr><td>Other</td><td>\$ _____</td></tr></tbody></table> Describe how you acquired your business: ☐ Started business myself ☐ It was a gift from: _____ ☐ I bought it from: _____ ☐ I inherited it from: _____ ☐ Other _____ (Attach documentation substantiating your investment)		Type	Dollar Value	Cash	\$ _____	Real Estate	\$ _____	Equipment	\$ _____	Other	\$ _____
Type	Dollar Value											
Cash	\$ _____											
Real Estate	\$ _____											
Equipment	\$ _____											
Other	\$ _____											

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification ? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: (Please attach extra sheets, if needed): _____



Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (Attach separate sheets for each additional owner)

(1) Full Name: _____	(2) Title: _____	(3) Home Phone #: () _____ - _____															
(4) Home Address (Street and Number): _____	City: _____	State: _____															
(5) Gender: ☐ Male ☐ Female																	
(6) Ethnic group membership (Check all that apply) ☐ Black ☐ Hispanic ☐ Asian Pacific ☐ Native American ☐ Subcontinent Asian ☐ Other (specify) _____																	
(7) U.S. Citizenship: ☐ U.S. Citizen ☐ Lawfully Admitted Permanent Resident																	
(8) Number of years as owner: _____																	
(9) Percentage owned: _____ % Class of stock owned: _____ Date acquired _____																	
<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%;">(10) Initial investment to acquire ownership interest in firm:</td><td style="width: 20%; text-align: center;"><u>Type</u></td><td style="width: 20%; text-align: center;"><u>Dollar Value</u></td></tr><tr><td></td><td style="text-align: center;">Cash</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Real Estate</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Equipment</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Other</td><td style="text-align: center;">\$</td></tr></table>			(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>		Cash	\$		Real Estate	\$		Equipment	\$		Other	\$
(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>															
	Cash	\$															
	Real Estate	\$															
	Equipment	\$															
	Other	\$															
Describe how you acquired your business: ☐ Started business myself ☐ It was a gift from: _____ ☐ I bought it from: _____ ☐ I inherited it from: _____ ☐ Other _____ (Attach documentation substantiating your investment)																	

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (Please attach extra sheets, if needed): _____



Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?

☐ Yes ☐ No If Yes, identify for each:

Person: _____ Title: _____
 Business: _____ Function: _____

Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)

☐ Yes ☐ No If Yes, identify for each:

Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. (Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).)

A = Always F = Frequently	S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
		Name: _____	Title: _____	Percent Owned: _____		Name: _____	Title: _____	Percent Owned: _____	
Sets policy for company direction/scope of operations		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Bidding and estimating		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Major purchasing decisions		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Marketing and sales		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Supervises field operations		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Attend bid opening and lettings		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Perform office management (billing, accounts receivable/payable, etc.)		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hires and fires management staff		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hire and fire field staff or crew		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Designates profits spending or investment		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Obligates business by contract/credit		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Purchase equipment		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Signs business checks		A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

A= Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/ Key Personnel			
	Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Bidding and estimating	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Major purchasing decisions	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Marketing and sales	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Supervises field operations	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Attend bid opening and lettings	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Perform office management (billing, accounts receivable/payable, etc.)	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hires and fires management staff	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hire and fire field staff or crew	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Designates profits spending or investment	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Obligates business by contract/credit	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Purchase equipment	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Signs business checks	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) If Yes, describe the nature of the business relationship: _____

C. Inventory: Indicate your firm's inventory in the following categories (Please attach additional sheets if needed):

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease



3. Storage Space (Provide signed lease agreements for the properties listed)

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease
_____	_____	_____
_____	_____	_____

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

E. Financial/Banking Information (Provide bank authorization and signature cards)

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:

Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (Provide copies of signed loan agreements and security agreements).

Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (Attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

H. List current licenses/permits held by any owner and/or employee of your firm

(e.g. contractor, engineer, architect, etc.) (Attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____



I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

<u>Concession Space</u>	<u>Address / Location at Airport</u>	<u>Value of Property or Lease</u>	<u>Fees/Lease Payments Paid to the Airport</u>

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

<u>Name of Concession</u>	<u>Location</u>	<u>Type of Concession</u>	<u>Start Date of Concession</u>



AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed),
swear or affirm under penalty of law that I am
_____ (title) of the applicant firm
_____ and that I
have read and understood all of the questions in this
application and that all of the foregoing information and
statements submitted in this application and its attachments
and supporting documents are true and correct to the best of
my knowledge, and that all responses to the questions are full
and complete, omitting no material information. The responses
include all material information necessary to fully and
accurately identify and explain the operations, capabilities and
pertinent history of the named firm as well as the ownership,
control, and affiliations thereof.

I recognize that the information submitted in this application is
for the purpose of inducing certification approval by a
government agency. I understand that a government agency
may, by means it deems appropriate, determine the accuracy
and truth of the statements in the application, and I authorize
such agency to contact any entity named in the application, and
the named firm's bonding companies, banking institutions,
credit agencies, contractors, clients, and other certifying
agencies for the purpose of verifying the information supplied
and determining the named firm's eligibility.

I agree to submit to government audit, examination and review
of books, records, documents and files, in whatever form they
exist, of the named firm and its affiliates, inspection of its
places(s) of business and equipment, and to permit interviews
of its principals, agents, and employees. I understand that
refusal to permit such inquiries shall be grounds for denial of
certification.

If awarded a contract, subcontract, concession lease or
sublease, I agree to promptly and directly provide the prime
contractor, if any, and the Department, recipient agency, or
federal funding agency on an ongoing basis, current, complete
and accurate information regarding (1) work performed on the
project; (2) payments; and (3) proposed changes, if any, to the
foregoing arrangements.

I agree to provide written notice to the recipient agency or
Unified Certification Program of any material change in the
information contained in the original application within 30
calendar days of such change (e.g., ownership changes,
address/telephone number, personal net worth exceeding \$1.32
million, etc.).

I acknowledge and agree that any misrepresentations in this
application or in records pertaining to a contract or subcontract
will be grounds for terminating any contract or subcontract
which may be awarded; denial or revocation of certification;
suspension and debarment; and for initiating action under
federal and/or state law concerning false statement, fraud or
other applicable offenses.

I certify that I am a socially and economically disadvantaged
individual who is an owner of the above-referenced firm seeking
certification as a Disadvantaged Business Enterprise or Airport
Concession Disadvantaged Business Enterprise. In support of my
application, I certify that I am a member of one or more of the
following groups, and that I have held myself out as a member of
the group(s): (Check all that apply):

- ☐ Female ☐ Black American ☐ Hispanic American
☐ Native American ☐ Asian-Pacific American
☐ Subcontinent Asian American ☐ Other (specify)

I certify that I am socially disadvantaged because I have been
subjected to racial or ethnic prejudice or cultural bias, or have
suffered the effects of discrimination, because of my identity
as a member of one or more of the groups identified above,
without regard to my individual qualities.

I further certify that my personal net worth does not exceed
\$1.32 million, and that I am economically disadvantaged
because my ability to compete in the free enterprise system has
been impaired due to diminished capital and credit
opportunities as compared to others in the same or similar line
of business who are not socially and economically
disadvantaged.

I declare under penalty of perjury that the information
provided in this application and supporting documents is true
and correct.

Signature _____
(DBE/ACDBE Applicant) (Date)

NOTARY CERTIFICATE



UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following **REQUIRED** documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

- ☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- ☐ Signed loan and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ Licenses, license renewal forms, permits, and haul authority forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment.
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement(s)
- ☐ Minutes of all stockholders and board of directors meetings

- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers

- ☐ List of product lines carried and list of distribution equipment owned and/or leased

APPENDIX C

TEXAS

MEMORANDUM OF AGREEMENT

for a

DISADVANTAGED BUSINESS ENTERPRISE
(DBE)

UNIFIED CERTIFICATION PROGRAM

U.S. DEPARTMENT OF TRANSPORTATION
PARTNERS



Texas Department of Transportation
City of Houston
City of Austin
Corpus Christi Regional Transportation Authority
North Central Texas Regional Certification Agency
South Central Texas Regional Certification Agency

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STATE OF TEXAS MEMORANDUM OF AGREEMENT

I. UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE)/Airport Concessionaire DBE(ACDBE) Texas Unified Certification Program (TUCP) in the State of Texas in accordance with Title 49 Parts 23 and 26 of the Code of Federal Regulations (49 CFR Parts 23 and 26). The TUCP Certifying Partners are the Texas Department of Transportation, City of Houston, City of Austin, Corpus Christi Regional Transportation Authority, North Central Texas Regional Certification Agency, and South Central Texas Regional Certification Agency. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

A. Definitions

1. TUCP Certifying Partner

The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA).

2. Recipient

Any public entity which receives direct USDOT financial assistance.

3. Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

4. Grantee

Any public entity that has received USDOT assistance.

B. Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive Committee will also be responsible for resolving any conflicts regarding certification actions between its members. The Standard Operating Procedures of the TUCP Section P subparagraph 1- Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact for the TUCP is the Texas Department of Transportation, Civil Rights Division.

A *Certifying TUCP Partner* may terminate its responsibilities under this Agreement upon a six month notice to all TUCP Partners. *Potential Certifying agencies* may request to perform certifications through a formal submittal of qualifications to the Executive Committee of the TUCP.

1. The following procedures must be followed by the transitioning agency when terminating its responsibility:

- A. Notify the TUCP Executive Committee at least six months prior to the termination of certification responsibilities.
- B. Provide a written notice to each DBE/ACDBE explaining the agency's termination of responsibility. Include in this notice the following:
 - 1) A date the change will be effective.
 - 2) The name, physical address, email, telephone number and contact information of the new Certifying partner to which the DBE/ACDBE is being transferred.
 - 3) A written assurance that the change of Certifying Partners will have no effect on the firm's DBE/ACDBE status or certification.
 - 4) A reminder that all future contact regarding certification should be directed to the new certifying partner.
- C. Deliver all certification material including complete files to the new Certifying Partner on or before the effective termination date.
- D. Ensure that the TUCP DB/ACDBE directory is updated to reflect the change of certifying agencies on or before the effective termination date.

2. A *potential TUCP Partner* may request to perform DBE/ACDBE certifications on behalf of the TUCP through the following procedures:
 - A. The agency must submit a formal written request to the TUCP Executive Committee stating the following:
 - 1) The reason for the request.
 - 2) A description of the agency as well as the functions or duties of the section or office that will be conducting the certifications.
 - 3) A statement reflecting the capabilities of the agency to perform certification including available staffing, training and expertise.
 - 4) A statement reflecting the available resources and budget to perform certification.
 - 5) A description of the counties for which the agency will serve.
 - B. The TUCP Executive Committee shall review the formal request of the Potential Certifying Agency and determine whether any additional information is needed before a decision can be made.
 - C. The TUCP Executive Committee has the right to require the requesting agency to be available for interviewing prior to a decision (should it be necessary).
 - D. The TUCP Executive Committee shall either deny or tentatively approve an agency's request to perform certifications by a majority decision. As lead agency, the TxDOT shall break any tied votes.
 - E. Should the TUCP Executive Committee tentatively approve an agency's request to perform certification, a request for addition shall be drafted by the Committee and submitted to US DOT for formal approval.
3. The TUCP Executive Committee shall adhere to the following procedures with the addition of a *new Certifying Partner*:
 - A. Establish an effective start date for the new agency.
 - B. Provide a written notice to each DBE/ACBDE explaining the addition of a new Certifying Partner for their area. Include in this notice the following:
 - 1) A date the change will be effective.
 - 2) The name, physical address, email, telephone number and contact information of the new Certifying member for which the DBE/ACDBE is being transferred.
 - 3) A written assurance that the change of Certifying Partners will have no effect on the firm's DBE/ACDBE status or certification.
 - 4) A reminder that all future contact regarding certification should be directed to the new certifying member.
 - C. Deliver all certification material including complete files to the new Certifying Partner on or before the effective start date.
 - D. Ensure that the TUCP DBE/ACDBE directory is updated to reflect the change of certifying agencies on or before the effective start date.

C. Purpose

The objectives of the TUCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 23 and 26.
- To cooperate fully with all oversight, review and monitoring activities USDOT and its operating administrations.
- To provide directives and guidance on DBE/ACDBE certification matters.
- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Certifying Partners.
- To provide a single DBE/ACDBE certification that will be honored by all TUCP Partners.
- To maintain a unified DBE/ACDBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print.
- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE/ACDBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

II. TUCP PROGRAM DESCRIPTION

A. Partners' Roles, Responsibilities & Obligations

All TUCP Partners agree to maintain DBE/ACDBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must comply with 49 CFR Parts 23 and 26.
- The TUCP Certifying Partners who are recipients or sub-recipients of federal funds must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.

- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in their Standard Operating Procedures.
- If a TUCP Certifying Partner is no longer able or willing to uphold the procedures outlined in this MOA and in the TUCP SOP, then that partner shall notify each partner in writing and submit to TxDOT all certification files within 180 days to maintain proper certification coordination.
- TUCP certifying partners agree to assist and comply with FHWA, Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) in conducting partner reviews outlined in the TUCP SOP.
- Any request received by a TUCP Partner by organizations and entities to become certifying members of the TUCP will be forwarded to each TUCP Partner for review. The TUCP Certifying partners will make a recommendation and forward the request to USDOT for review and a recommendation.
- Any changes or additions to the TUCP Certifying Partners will require an amendment to this agreement. Parties to this MOA cannot add another member to the TUCP without the organization signing the MOA. The other TUCP partners will also need to sign the updated MOA acknowledging the new partner.

B. DBE/ACDBE Directory & Internet Access

The TUCP DBE/ACDBE Directory will be located on the TUCP website. In accordance with 49 CFR §23.31(b) and §26.31, the DBE/ACDBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (6) digit NAICS code and description.

The TUCP DBE/ACDBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm

- Name of Certifying Partner

Each TUCP Partner by signature of this agreement agrees to submit the above information.

III. TUCP PROGRAM COST AND FUNDING

The cost of creating and establishing the TUCP website will be the responsibility of TxDOT and the electronic DBE/ACDBE Directory will be the responsibility of each TUCP Partner. Each TUCP Partner has agreed to collaboratively respond to information requests or open records requests for certification lists or copies of the database as appropriate.

A. Training and Resources

The TUCP Partners will conduct ongoing in-service training. The TUCP Partners will agree to rotate the duties of hosting, planning and conducting training sessions amongst the TUCP Partners.

IV. CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 23 and Part 26, and will implement USDOT directives and guidance concerning DBE/ACDBE certification matters. The SOP has been developed and will be utilized by all Certifying TUCP Partners. The SOP may be modified as needed and agreed upon by majority consensus of the Certifying TUCP Partners. If consensus cannot be reached, the issue will be forwarded to Federal Highway Administration (FHWA) – Texas Division for further guidance.

- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

A. Geographic & Industry Considerations

The TUCP Certifying Partners have agreed to perform the certification process for DBE/ACDBE program applicants within the State of Texas by geographical location and by industry. If a DBE applicant/firm is interested in working only on TxDOT projects, TxDOT agrees to process the application and/or have certification responsibility for the DBE firm. In these cases, all certifying TUCP partners will forward the application within three to five business days to TxDOT for processing. All Certifying Partners will process intrastate airport concessionaire ACDBE certification applications, based on the firm's geographical location of its principal place of business.

City of Austin: Geographical: Bastrop, Caldwell, Hays, Travis and Williamson

City of Houston: Geographical: Counties of Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto and Waller.

Corpus Christi Regional Transportation Authority: Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

North Central Texas Regional Certification Agency: Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

South Central Texas Regional Certification Agency: Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, and Wilson.

Texas Department of Transportation: Geographical: All other remaining counties in Texas.

B. Quality Assurance (New Certifications)

Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

C. Annual Review Process

By signature of this agreement, ACDBE and DBE certification updates will be conducted annually using the TUCP Annual Update "No Change" Affidavit process as required in the SOP and following the procedures outlined in 49 CFR §26.87.

D. Decertification Procedures

The TUCP Partner agrees to process decertification in compliance to 49 CFR §26.87. Provisions exist in the TUCP SOP for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm. The TUCP SOP outlines how those complaints will be handled by the receiving partner.

E. Appeals Process and Procedures

An appeals procedure has been established as part of the TUCP SOP for appeals of denial of original certification and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

- **Denials of Original Certifications and Decertification:** The DBE/ACDBE applicant has the opportunity to appeal to USDOT in accordance with 49 CFR §26.89.

Firms that are decertified will have due process in accordance with 49 CFR §26.87.

F. Staff Training

Each TUCP Partner agrees to:

- Participate in annual staff training; including assisting with the development and coordination of training modules that support the SOP.
- Recruit instructors and determine locations for training workshops.
- Schedule joint training sessions.
- Conduct staff training to assure that all staff are knowledgeable about certification regulations and procedures as updates and changes are made to the regulations.

G. Unified DBE/ACDBE Directory

By signature of this MOA, the TUCP Partners agree to:

- Develop and complete parameters for the TUCP DBE/ACDBE Directory.
- Compare TUCP Certifying Partner's databases.
- Remove duplicate DBE/ACDBE firms.
- Develop common databases, however, nothing in this agreement excludes the certifying partners from creating and maintaining separate databases for other programmatic needs.
- Develop procedures for electronic submission of DBE/ACDBE firms for inclusion in the TUCP Directory.
- Develop and issue press releases on public access to the online TUCP DBE/ACDBE Directory (information will be maintained on TXDOT Website).

V. CHANGES TO THE MOA

This MOA can be amended by approval of the majority of the TUCP Partners. Changes to this MOA shall require a majority agreement by the TUCP Certifying Partners. In cases where there is not a majority agreement, the issue will be forwarded to USDOT for resolution and the partners agree to execute the decision of USDOT by signature of this MOA.

VI. SUMMARY

As a result of the requirements set forth in 49 CFR Parts 23 and 28, we the undersigned, agree to participate in the TUCP in accordance with the provisions of this MOA and agree to abide by its contents.

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

City of Austin
Name Yancy Briseno Lara Date 8-24-16
Signature [Signature] Title Director, SMR

City of Houston
Name Carlecia D. Wright Date 8-26-16
Signature [Signature] Title Director

Corpus Christi Regional Transportation Authority
Name Jorge Cruz-Aedo Date 8/25/16
Signature [Signature] Title CEO

North Central Texas Regional Certification Agency
Name Elicia Mitchell, MPA Date 8/25/16
Signature [Signature] Title Executive Director

South Central Texas Regional Certification Agency
Name Julio C. Fuentes Date 08/25/2016
Signature [Signature] Title Executive Director

Texas Department of Transportation
Name MICHAEL D. BRYANT Date 8/29/16
Signature [Signature] Title DIRECTOR,
CIVIL RIGHTS DIVISION