



CITY OF FORT WORTH

FFY 2022 – 2024

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM GOAL



FORT WORTH ALLIANCE AIRPORT

CONTACT:

GWEN WILSON, DBELO

ASSISTANT DIRECTOR, BUSINESS EQUITY DIVISION

DEPARTMENT OF DIVERSITY AND INCLUSION

818 MISSOURI AVENUE | FORT WORTH | TEXAS 76104

(817) 392-2676 (OFFICE)

GWEN.WILSON@FORTWORTHTEXAS.GOV

Disadvantaged Business Enterprise Program

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

City of Fort Worth (City), owner of Fort Worth Alliance Airport, Fort Worth Meacham International Airport and Fort Worth Spinks Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (hereafter referred to as "Part 26"). The City has received federal financial assistance from Department of Transportation, and as a condition of receiving this assistance, the City has signed assurances that it will comply with Part 26 and other federal requirements.

Policy Statement

It is the policy of the City of Fort Worth to ensure that DBE's as defined in Part 26, have an equal opportunity to receive and participate in DOT funded contracts. It is also the City of Fort Worth's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Assistant Diversity and Inclusion Director, Business Equity Division, Diversity and Inclusion Department, has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Diversity and Inclusion Director 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.

In September 2017, the City's original Policy Statement was approved by the City Manager, and the DBE Program Resolution No. 4846-09-2017 was adopted by the Mayor and City Council. This updated statement has been approved by the Mayor and City Council on January 26, 2022 under Resolution No. 5522-01-2022 and additionally, has been dispersed through all of the components of the City. The Statement has been distributed to the DBE and non-DBE communities that perform work for the City on federally-funded 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 July 13, 2021
3. City 's quarterly Informational Vendor Forums
4. Posting of DBE Program Goal and opportunities distributed through the B2GNow System to more than 10,000 DBE, M/WBE and SBE businesses
5. Interviews with small businesses at Business Networking events and trade fairs held throughout the years.
6. Policy Statement and DBE Program Goals and Methodology posted on the Business Equity Division website at: <https://www.fortworthtexas.gov/departments/diversity-inclusion/business-equity>

David Cooke

David Cooke (Apr 14, 2022 16:40 CDT)

David Cooke, City Manager
City of Fort Worth

Date

CM
CB

Christina Brooks - Chief Equity Officer/Director

TRH
TRH

T. Royce Hansen-Asst City Attorney II

FC
FC

Fernando Costa - Asst. City Manager

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated 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.* and therefore, is subject to the requirements under Part 26.

Section 26.5 Definitions

The City will use terms in this program that have their meanings defined in Part 26, §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, 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

The City will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to DOT/FAA as follows:

The City will transmit to DOT/FAA annually, by or before December 1 each year, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The City will similarly report the required information about participating DBE firms. All reporting will be done through the DBE FAA Civil Rights official reporting system, or another format acceptable to Federal Aviation Administration as instructed thereby.

Bidders List

The City, through the Department of Diversity and Inclusion, Business Equity Division 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 City, DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status (age of firm, and annual gross receipts of firms may be obtained from the DOT or the North Central Texas Regional Certification Agency (NCTRCA) and members of the Unified Certification Program ([UCP](#)).

This information will be collected in the following way(s): DBE Listings will be obtained from the NCTRCA or TXDOT or UCP DBE certification databases. The City will periodically run campaigns through the Business Equity Management System advertising upcoming DOT/FAA projects and will request the recipients to specify within a range its gross receipts information (e.g., less than \$500,000; \$500,000 – \$1 million; \$1-2 million, \$2-5 million, etc.) rather than requesting an exact figure from the firm. The bidders list will only include names of bidders/offerors who attempt to participate on the City projects. Compliant to Part 26, information will be collected for all primes and all subcontractors who submit bids to those primes, whether or not they were successful in obtaining a subcontract or the prime contract.

Records Retention and Reporting:

City will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, City will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of City's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

The City, as a member of the Texas UCP established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance (26:13a): - Each financial assistance agreement 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 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): City will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, 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.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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. City is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City is in compliance with it and Part 26. City will continue to carry out this program until all funds from DOT financial assistance have been expended. City does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT 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)

The following individual has been designated as the DBE Liaison Officer for City:

Gwen Wilson CCA MCA

Assistant Diversity and Inclusion Director | Business Equity Division
Department of Diversity and Inclusion
City of Fort Worth

Hazel Harvey Peace Center
818 Missouri Avenue, Suite 230
Fort Worth, TX 76104
(817) 392-2676 (office)
(817) 992-8072 (work cell)
gwen.wilson@fortworthtexas.gov
www.fortworthtexas.gov/diversity-inclusion/business-equity/

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 Director, Assistant City Manager and City Manager concerning DBE

program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** of 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 six (6) direct employees, and coordinates with the Aviation Department, the City Attorney's Office, the Consultants and Operators for the City, and General Contractor(s) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes City's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Determine contractor compliance with good faith efforts.
8. Provides DBEs with information and assistance in preparing bids
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

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 works closely with its Chamber partners, the Fort Worth Hispanic Chamber of Commerce and the Fort Worth Metropolitan Black Chamber of Commerce and other advocacy groups to help identify and engage these institutions. The City has a directory of Minority-owned Depository Institutions and their branches and reviews this directory triennially.

Section 26.29 Prompt Payment Mechanisms

The City requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the City.

The City ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the City has selected the following method to comply with this requirement:

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

To implement this measure, the City includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

49 CFR § 26.29- Prompt Payment Mechanisms

The City requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

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 subcontractor's 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.

Section 26.31 Directory

The City is a non-certifying member of the Texas Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The City has access to the UCPs, i.e., B2GNow System, NCTRCA (www.nctrca.org) and TxDOT (www.TxDOT.txdotcms.com) directories or the City upon request will provide the DBE listings. A link to the directory may be found on the Business Equity Division website at: <https://www.fortworthtexas.gov/departments/diversity-inclusion/business-equity> .

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 City has a DBE Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The rationale for the BDP is to help certified small businesses, DBEs, MBEs and WBEs build capacity so that they can compete on larger in scale projects and increase their ability to gain access to capital and bonding. These businesses are required to obtain certification from a third-party agency that is acceptable by the City. All Business Equity Firms (M/WBEs) and DBEs are qualified to participate in the program. The City hosts business development workshops and events quarterly. D/M/WBEs are notified through the Business Equity Management System, Community Partners, City News and the City's website.

Section 26.37 Monitoring Responsibilities

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in City's DBE program.

The City's DBELO actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments through its automated B2GNow System.

Monitoring Payments to DBEs and Non-DBEs

The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring and performing audits within the system
- Audit feature built into the system that allows the staff to audit records on a daily or monthly basis
- The Business Equity Management System automated feature notifies the subcontractor when the Prime has received payment from the City
- Subcontractor will confirm, in the Business Equity Management System, payment amount and dates when it received payment from the Prime
- Closeout of a project, the City, Prime and Subcontractor will confirm the accuracy of all payments and sign off

The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The City proactively reviews contract payments to subcontractors including DBEs quarterly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor.

Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The City's Business Equity Management System tracks its payments to the Prime and the payments that the Prime made to the subcontractors
- Prime enters in the payment it made to its subcontractor
- Subcontractor has 30 days to confirm or deny the accuracy of the payment and the date recorded by the Prime
- If there is a dispute and the subcontractor submit a denial, a system generated message goes back to the Prime

- Prime then confirms or denies (dispute) and the system will allow two communication attempts for both parties to resolve their dispute
- Dispute not resolved by both parties a notification is sent to the DBELO
- DBELO staff will reach out to the Prime and Sub and request supporting documentation (e.g. cancelled check, etc.) to help mediate the dispute
- DBELO may engage the resident project representative/project manager and include individuals authorized to bind each interested party and any City representatives with authority to take enforcement action.

The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage as follows:

Alternative dispute resolution (ADR) – Refer to the [City Council-approved Business Equity Ordinance #25165-11-2021](#), §20-371 (i-2&3) and [§20-373 Violations and Sanctions](#)

(c)Payments Withheld. Failure to comply with the provisions of the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute shall authorize the City to withhold payment from the Contractor until compliance is attained. Noncompliance may impact bidder evaluation scoring on future City bid opportunities.

Refer to the Business Equity Ordinance or click on the link below:

<https://www.fortworthtexas.gov/departments/diversity-inclusion/business-equity>

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA Civil Rights contact.

Herlinda J. Bradley

DBE/ACDBE Program Compliance Specialist
Federal Aviation Administration
Office of Civil Rights – External Operations (ACR-4)
E-mail: herlinda.j.bradley@faa.gov

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The City will provide appropriate means to enforce the requirements of §26.29. These means include:

- Failure to comply with the provisions of the Texas Prompt Payment Act (Tex. Gov't. Code, Chap. 2251) or any successor statute shall authorize the City to withhold payment from the Contractor until compliance is attained. Noncompliance may impact bidder evaluation scoring on future City bid opportunities.

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Refer to §20-373 [VIOLATIONS AND SANCTIONS](#) in the Business Equity Ordinance .

The City will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by DBELO/compliance team/project managers/consultant/etc. Contracting records are reviewed by the DBELO/compliance team/project managers/consultant/etc. The City will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

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 small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation.

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program. This section of the program will be updated annually.

The City will establish an overall DBE goal covering a triennial federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the triennial goal period. In accordance with §26.45(f), the City will submit its Overall Triennial DBE Goal to FAA Office of Civil Rights ACR-4 by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA Office of Civil Rights ACR-4.

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

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 prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the triennial reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City will use a Disparity Study method, the DBE Directory information and Census Bureau Data that complies with §26.45 as a method to determine the base figure. The City understands 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 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The City will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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 efforts by the City 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 goal setting process, and it will occur before the City is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City will publish a notice announcing the proposed overall goal before submission to the Office of Civil Rights – External Operations (ACR-4) on August 1st. The notice will be posted on the City’s official internet web site and may be posted in other sources (e.g., City Calendar, City News, Business Equity Management System Campaigns, Partner Organizations media to D/MWBEs). If the proposed goal changes following review by Office of Civil Rights – External Operations (ACR-4), the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the City’s DBELO ‘s office. This notice will provide that the City and Office of Civil Rights – External Operations (ACR-4) 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 Overall Triennial DBE Goal submission to the FAA Office of Civil Rights – External Operations (ACR-4) will include a summary of information and comments received, if any, during this public participation process and the City responses.

The City will begin using the overall goal on October 1 of the relevant period, unless other instructions from Office of Civil Rights – External Operations (ACR-4) have been received.

Project Goals

If permitted or required by the FAA Office of Civil Rights – External Operations (ACR-4) Administrator, an overall goal may be expressed 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 will 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 the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The City understands that prior Office of Civil Rights – External Operations (ACR-4) concurrence with the overall goal is not required. However, if the Office of Civil Rights – External Operations (ACR-4) review suggests that the overall goal has not been correctly calculated or that the method employed by the City for calculating goals is inadequate, Office of Civil Rights – External Operations (ACR-4) may, after consulting with the City, adjust the overall goal or require that the goal be adjusted by the City. 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 cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the City fails to administer its DBE program in good faith.

The City understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The City understands that if the awards and commitments shown on the 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, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The City will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the Office of Civil Rights – External Operations (ACR-4) for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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.
- (2) Aiding 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 recipient 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) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) 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;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE

participation has historically been low;

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

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.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in [49CFR Appendix A to Part 26](#).

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

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

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (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 recipient, at the time provided in paragraph (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 (as elaborated in [Appendix A of Part 26](#)). 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) The bidder/offeror will be required to present the information stipulated in paragraph (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 (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 5 days of being informed by the City that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: DVIN Business Equity Division, 818 Missouri Avenue, Fort Worth Texas 76104, (817) 392-2674, DVIN_BEOffice@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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent 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 procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City. This includes, but is 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 another DBE firm.

Such written consent will be provided only if the City agrees, for reasons stated in the 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) The City determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides The City 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 the City has 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 the City a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the City as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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 was established for the procurement. The good faith efforts shall be documented by the contractor. If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The City shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the City may 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.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted 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.

In the case of post-award substitutions or additions, if a 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, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The 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. The City makes all 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

Title: Certification Specialist
Address, 624 Six Flags Drive, Arlington, TX 76011
Telephone Number: (817) 640-0606
Fax Number: (817) 640-6315
E-mail Address: Mail@nctrca.org

Or

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

The Uniform Certification Application form and documentation requirements are found in [Appendix F to Part 26](#) 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.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City

The City understands that if it fails to comply with any requirement of this part, the City may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122. requirements.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties. Under the Texas Public Information Act, Section 552 of the Texas Government Code (the “Act”), the City will notify any third parties, including all disadvantage business enterprises of any request made to the City for any third party proprietary or confidential business information which will allow the DBE’s the ability to make arguments to the Texas Attorney General’s Office regarding the proprietary or confidential nature of their documents. The City will not release any documents that were requested under the Act that involve proprietary or confidential records of a third party, including any DBE, until an official ruling has been provided by the Texas Attorney General regarding the withholding or release of the records.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in

any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, 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 recipient 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. The City understands that it is in noncompliance with Part 26 if it violates this prohibition.