



DALLAS/FORT WORTH
INTERNATIONAL AIRPORT

Disadvantaged Business Enterprise (DBE) Program

Small & Emerging Business Department

DFW will be the Airport of Choice by creating a positive, competitive, and safe environment that exceeds our customers' expectations.



*Dallas/Fort Worth International Airport Board
Disadvantaged Business Enterprise (DBE) Program
49 CFR Part 26
FY
September, 2001-2002*

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Policy Statement (26.1, 26.23)

The Dallas/Fort Worth International Airport (Airport Board) has established a Disadvantaged Business Enterprise program in accordance with U.S. Department of Transportation (DOT), regulations 49 CFR Part 26-Attachment A. The Airport Board receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, the Airport Board signed an assurance that it will comply with 49 CFR Part 26.

The Airport Board, has developed this Disadvantaged Business Enterprise program based on the guidelines provided in 49 CFR Part 26, State of Texas statutes, and on applicable local laws.

It is the policy of the Airport Board to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Airport Board's 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 the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that 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; and,
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Don T. O'Bannon has been designated as the Airport Board's Liaison Officer for the DBE Program. The DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the program is accorded the same priority as compliance with all other legal obligations incurred by the Airport Board in its financial assistance agreements with the Department of Transportation.

The Airport Board has distributed this policy statement to the Board of Directors and relevant Departments. The Airport Board will distribute this statement to DBE and non-DBE businesses that perform work for the Airport Board on DOT-assisted contracts at all pre-bid conferences.

Jeffrey P. Fegan
Chief Executive Officer
Dallas/Fort Worth International Airport

Date

SUBPART A - GENERAL REQUIREMENTS

Objectives (26.1)

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

Applicability (26.3)

The Airport Board is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

Definitions (26.5)

The terms used in this program have the meanings as defined in 49 CFR 26.5.

Nondiscrimination (26.7)

The Airport Board will never exclude any person from participation, deny any person the benefits 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 Airport Board will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Record Keeping Requirements (26.11)

Reporting to DOT (26.11(b))

We will report DBE participation to DOT as follows:

We will submit annually DOT Form 4630. As modified for use by FAA recipients.

Bidders List (26.11(c))

The Airport Board will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBEs and non-DBEs contractors and subcontractors who seek 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 and a range of annual gross receipts of firms. A contract provision will be included in the solicitation that requires all bidders to provide the requested information of this section for all DBE and Non-DBE subcontractors.

Federal Financial Assistance Agreement (26.13)

The Airport Board will sign the following assurance, applicable to all DOT-assisted contracts and their administration:

Assurance (26.13(a))

The Airport Board 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 Airport Board 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 Airport Board'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 Airport Board of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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.).

This language will appear in the financial assistance agreement with sub-recipients.

Contract Assurance (26.13(b))

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 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, and may result in the termination of this contract or such other remedy as the Airport Board deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (26.21)

Since the Airport Board receives a federal grant of \$250,000.00 or more for Airport planning, or development, the Airport Board will continue to utilize this program until all funds from DOT financial assistance have been expended. The Airport Board will provide to DOT updates representing significant changes in the program for approval. We will submit an updated goal annually on August 1, if we plan to award contract exceeding \$250,000.00 in FAA funds in that fiscal year.

Policy Statement (26.23)

The policy statement is elaborated on the first page of this program.

DBE Liaison Officer (DDELO) (26.25)

The Airport Board's DBE Liaison Officer is Don T. O'Bannon, Vice President of Small & Emerging Business Department, Dallas/Fort Worth International Airport, P.O. Box 619428, DFW Airport, Texas 75261, telephone number: 972 574 8002, e-mail address: dobannon@dfwairport.com. Mr. O'Bannon and his staff are responsible for implementing all aspects of the DBE program and ensuring compliance with all provisions of 49 CFR Part 26. Mr. O'Bannon has direct, independent access to the Chief Executive Officer, concerning DBE program matters.

Mr. O'Bannon has a staff of eight full-time professional employees whose duties include support for the DBE program. Consultant help is also used to support the DBE program. An organization chart displaying Mr. O'Bannon's position in the organization is found in Attachment B to this program.

Mr. O'Bannon is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT .
2. Review contracts and purchase requisitions for compliance with this program.
3. Work with all applicable departments to set overall annual goals.
4. Ensure that notices and requests for bids/proposals are available to DBEs in a timely manner.
5. Identify contracts and solicitations so that DBE goals are included in these documents (both race-neutral methods and contract specific goals) and monitor the results.
6. Analyze Airport Board's progress toward goal attainment and identify ways to improve progress.
7. Participate in pre-bid/proposal meetings.
8. Advise the Airport Board CEO and the Airport Board of DBE matters and achievements.
9. Monitor contractor compliance with good faith efforts.
10. Provide DBEs with information for obtaining bonding and insurance.

11. Plan and participate in DBE training seminars.
12. Ensure DBEs certified according to the criteria set by DOT.
13. Provide aggressive outreach to DBEs and community organizations to advise them of opportunities.
14. Maintain the Airport Board's updated directory on certified DBEs.
15. Coordinate interim and post-award compliance reviews.

DBE Program Implementation Responsibility

The Airport Board's Small & Emerging Business Department will administer, monitor, and enforce or seek to enforce the procedures for implementation of the DBE program and will perform in a manner as may be necessary to achieve the purposes and objectives of the program.

Each department of the Airport Board which has or shares responsibility for the awarding of DOT-funded contracts, including concessions or contract administration, has a responsibility to promote, support, and assist in carrying out the DBE program. Such departments are to be held accountable for exercising specific functions in support of the program, as well as any other function(s) deemed necessary by management. The following Airport Board departments have specific DBE program implementation responsibilities as follows:

Small & Emerging Business Department

- Responsible for the Airport Board's DBE program;
- Enforce or seek to enforce and administer such policies, standards, definitions, application of this program in a manner as may be necessary to achieve its purposes;

Develop and maintain systematic procedures to ensure that DBEs are afforded an equitable opportunity to compete on all Airport Board contracts such as, but not limited to, timely dissemination of bid/contract information, assistance and opportunities, conducting workshops, trade fairs, developing handbooks, attending pre-bid/pre-proposal conferences, contractor compliance, technical, financial, and managerial assistance, etc.;
- Develop and maintain listings (DBE Directory) of minority/women-owned business enterprises. These listings will reflect products or services for which the Airport Board has a business use;
- Consider and evaluate documentation of reasonable good faith efforts for DBE utilization by applicable contractors;

- Prepare and present reports to the Airport Board of Directors on the progress of the DBE program on a quarterly and annual basis. Also, recommend annual DBE goals and program changes, which may be necessary to improve the overall effectiveness of the DBE program;
- Develop reports from information provided by Airport Board departments and contractors to monitor and determine the effectiveness of the DBE program; and
- Conduct surveys on as-need basis to update DBE listings. In conjunction with other applicable Airport Board departments, conduct surveys to determine availability of qualified DBEs.

Audit Services Department

- Provide audit assistance, as necessary, to ensure compliance with policies and procedures set forth in the DBE program.

Operations and Airport Development Departments

- Ensure that all applicable provisions of the DBE program are included in bid proposal specifications and contracts administered by these representatives subject to formal Airport Board of Director's review and approval;
- Make plans and specifications relating to Airport Board contracts available to prospective bidders including DBEs in sufficient time for adequate review. In coordination with outside resource agencies, provide copies of Airport Board requests for proposals, construction plans, and specifications to such agencies, thus enabling DBEs or other interested bidders to review the plans without purchasing or placing a deposit on them, and within sufficient notice to provide adequate response time;
- Assist, when necessary, in the compilation of contract data for DBE utilization;
- Ensure that project design criteria includes consideration, when feasible, of DBE availability, bonding limits, and type of work capabilities to facilitate maximum competitive participation;
- In coordination with the DBE program officials, assist in notifying DBE-related organizations or associations within the DFW Metroplex area of the specific nature of the Airport Board contracts;
- Periodically review applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs to bid more competitively on all Airport Board contracts;

- Ensure that all prospective bidders, including DBEs, are advised of the estimated cost range of Airport Board construction projects to avoid overbidding. This provides a frame of reference in which to bid Airport Board projects;
 - Provided that it will not increase the overall cost of a project or violate bid law requirements, recommend bid packages and requests for proposal so as to increase potential DBE participation, e.g., using certain types of materials and methods, and breaking down larger contracts into smaller ones;
 - Assist DBE program officials in conducting surveys to determine the availability of qualified DBEs;
 - Assist and participate in workshops, trade fairs, outreach seminars, etc., aimed at identifying and increasing the participation of DBEs on Airport Board projects;
- Advertise construction and professional services contract opportunities via the Airport Board's Bidders Hotline and Web Site as an effort to maximize DBE participation;
- Include the Small & Emerging Business Department representatives as part of the Airport Board's principal selection team in professional services contracts to ensure review and consideration of DBE participation on such contracts and compliance with DBE program requirements;
 - Require that all changes to the original list of the subcontractors/subconsultants included with the bid/proposal be submitted for review and approval by the applicable department and DBE program officials through DBE Form 102, Request for Approval of Change to Original List of Subcontractors/ Subconsultants, when adding, changing, or deleting subcontractors/subconsultants on Airport Board projects;
 - Assist and support DBE program administration by providing relevant contractual information such as, but not limited to, successful low bidder information, construction/professional services schedules, solicitation notices, etc., to better monitor and ensure compliance with applicable DBE program requirements; and
 - Require that each contractor submit the required DBE contractual information as part of the Airport Board's pay request process to ensure an accurate accounting of DBE contractual participation.

Procurement & Materials Management Department

- Specifically appoint a departmental representative to serve as liaison between the department and potential DBE bidders on Airport Board purchases. The representative will, in conjunction with DBE program officials, make known to

DBEs and DBE-related associations, upcoming purchases on which bids/proposals are required and their specifications; assist them in understanding the bid procedures; and coordinate the department's efforts with those of other Airport Board departments, and state and Federal government offices aimed at assisting DBEs;

- Ensure that all applicable provisions of the DBE program are included in bid specifications/proposals and contracts administered by the Procurement & Materials Management Department;
- Make bid specifications available to prospective bidders on Airport Board contracts, including DBEs, in sufficient time for review. Allow, to the greatest extent feasible, sufficient time in order to facilitate the participation of DBEs. Where possible, attempt to reach DBEs by using Public Service announcements, in addition to advertising for specific bids;
- Together with the user department, provided that the overall cost of a purchase is not increased and to the extent that it does not violate bid laws, develop bid packages and requests for proposals to increase potential DBE participation; e.g., using certain types of materials and methods, and breaking down large contracts into smaller ones;
- Periodically review applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, including DBEs, to bid more competitively on all Airport Board contracts;
- Buyers shall identify DBE contacts in soliciting quotes for bids under \$15,000 (informal bids or contracts) for those items where DBEs are known suppliers of these goods and services;
- Assist DBE program officials in conducting surveys to determine the availability of qualified DBEs;
- Assist DBE program officials in maintaining a listing of DBEs in the procurement area;
- Advertise purchasing-related contract opportunities via the Airport Board's Bidders Hotline and Web Site as an effort to maximize DBE participation; and
- Assist in compilation of purchasing data for DBE utilization determination.

DBE Financial Institutions (26.27)

It is the policy of the Airport Board 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 Airport Board has made the following efforts to identify and use such institutions:

1. Language is included in all DOT solicitations encouraging contractors to use banks which are controlled by Disadvantage Business Enterprises (DBEs).
2. The Airport Board's SEB department maintains a listing of minority and women owned banks in the Dallas/Fort Worth metropolitan area. A listing of these institutions is provided (Attachment C).

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Prompt Payment to Subcontractors (26.29)

The Airport Board will include the following clause in each DOT-assisted prime contract:

The Contractor agrees to submit to the Airport on a monthly basis all invoices/bills for services, labor and costs incurred by its subcontractors. The Contractor promises that it will pay its subcontractors within seven (7) days following receipt of payment from the Airport Board. The prime contractor also agrees to return any retainage withheld from subcontractors within seven (7) days after the contractor has satisfactorily completed the work. Any delay or postponement of payment may not take place without prior approval of the Airport Board. A finding of non-payment is a material breach of this contract. The Airport Board may, at its option, increase allowable retainage or withhold progress payments unless and until the Contractor demonstrates timely payment of sums due subcontractors. The Airport Board also reserves the right to exercise other breach of contract remedies. The presence of a "pay when paid" provision in a subcontract shall not preclude the Airport Board inquiry into allegations of non-payment. The remedies for non-payment of subcontractors shall not be employed when the Contractor demonstrates that failure to pay results from a bonafide dispute with its subcontractor or supplier. The Contractor shall incorporate this provision into all subcontracts that result from this contract.

Directory (26.31)

The Airport Board maintains a directory identifying all firms eligible to participate as DBEs. 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. The Airport Board will revise the Directory at least monthly. The Airport Board will make the Directory available as follows:

at the Airport Board's Small & Emerging Business Department, P.O. Box 619428, DFW Airport, Texas 75261, 972 574 8008, at business and community outreach events, and upon request. A copy of the Directory may be found in (Attachment D) to this program document.

Over Concentration (26.33)

The Airport Board has not identified over concentration as an issue.

Business Development Programs (26.35)

The Airport Board has not established a formal business development program.

Monitoring and Enforcement Mechanisms (26.37)

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

Every DOT-assisted contract is monitored to ensure that DBE subcontractors are on the job, that they are performing the work as approved, and that payments are made to DBEs consistent with previously approved work plans.

The following specific procedures are established to monitor compliance after contract award:

1. The Airport Board 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 26.109.
2. The Airport Board will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment E lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participation in our procurement activities.
3. The Airport Board will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. The Contractor shall report DBE participation on a monthly basis in the form of a pay activity request. This mechanism will provide for a running tally of actual DBE attainment (e.g., the payment actually made to DBE firms), including a means of comparing these attainments to commitments. The SEB staff will verify with the DBE at minimum on a quarterly

basis the contract amount and payment to the DBE reported by the contractor. These verification forms, for example, request information to confirm scope of services, contract amount and starting date of the DBE contract. DBE subcontractors must complete and return verification forms to the SBE contract. Appropriate follow-up is conducted to ensure that responses are received. Where no response is received, follow-up notices are issued.

4. The Airport Board shall not release the contractor's retainage until all DBE subcontractors' participation information is reported and the appropriate forms submitted to SEB.
5. In our reports of DBE participation to DOT, The Airport Board will show both commitments and attainments, as required by the DOT reporting form.

When the contractor is found to be in non-compliance, and informal resolution procedures have failed to demonstrate that the contractor has made every effort to resolve the issue(s) of non-compliance, the Airport Board will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced. A copy of the DBE utilization forms are found in Attachment F.

SUBPART C - GOALS, GOOD FAITH EFFORT AND COUNTING

Quotas (26.43)

The Airport Board will not use set asides or quotas in any way in the administration of this DBE program.

Overall Goals (26.45)

The Airport Board will annually establish overall goals if we anticipate that we will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year, October 1 – September 30, in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Airport Board does not anticipate awarding more than \$250,000 in FAA funds in prime contracts within the Federal fiscal year, we will not develop an overall goal; however the existing DBE program will remain in effect and the Airport Board will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The Airport Board will annually establish goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the market area, "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 recipient 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 projects.

The Airport Board submits its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, the Airport Board will review its DBE listings and consult with minority organizations and chambers regarding the proposed goal. The Airport Board will also consult with non-minority groups. These consultations will take place to obtain information concerning opportunities for DBEs and the effectiveness of the Airport Board's efforts to establish a level playing field for participation of DBEs.

Following these consultations, the Airport Board will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its office for thirty (30) days following the date of the notice. It will inform the public that the Airport Board and DOT will accept comments on the goals for forty-five (45) days from the date of the notice. This notice will be issued each year in newspaper of general circulation, and in minority focus media and trade publications. This notice will include the Airport Board's address - Dallas/Fort Worth International Airport, Small & Emerging Business Department, P.O. Box 619428, Dallas/Fort Worth International Airport, Texas 75261-9428 where comments may be sent and where the proposal may be reviewed.

The Airport Board's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the Airport Board's responses.

The Airport Board will begin using its overall goal on October 1 of each year, unless the Airport Board receives instructions otherwise from DOT. If the Airport Board establishes a goal on a project basis, the Airport Board will begin using our goal by the time of the first solicitation for a DOT-Assisted contract for the project.

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

The Airport Board will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Airport Board uses the following race-neutral means to increase DBE participation: aggressive outreach to potential DBE firms through the use of media advertisements, distribution of Opportunity Alerts and other outreach events, promotion on the Airport Board's web site, and dissemination of information at regional trade fairs, business promotions and other events. The Airport Board also assists by making contractor listings available and generally encouraging teaming arrangements in Airport Board contracting.

The breakout of estimated race-neutral and race conscious participation can be found in the Attachment G to this program. This section of the program will be updated annually when the goal calculation is updated.

Contract Goals (26.51)

The Airport Board will use contract goals to meet any portion of the overall goal that the Airport Board does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the Airport Board's overall goal that is not projected to be met through the use of race-neutral means.

The Airport Board will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It need not established a contract, and the size of the contract goals will be adapted to the circumstances of each contract (e.g. type and location of the work and availability of DBEs to perform the particular type of work).

The Airport Board will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts (26.53)

Demonstration of Good Faith Efforts (26.53 (a) & (c))

It is the obligation of the bidder/offeror 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 Attachment A to 49 CFR Part 26.

The Airport Board's Vice President of Small & Emerging Business Department will assist bidder/offeror in meeting its DBE goal by identifying Airport Board certified DBE firms and other certifiable M/WBE firms.

The Airport Board's Vice President of Small & Emerging Business Department is responsible for determining whether a offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. The Airport Board's Procurement staff is the responsible for determining whether an offeror has submitted the required DBE documentation to be regarded as responsive. The Airport Board will verify that all information is complete and accurate and adequately documents the offeror's good faith efforts before the Airport Board will enter into a contract with the apparent successful offeror.

Information To Be Submitted (26.53(b))

The Airport Board treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established requires the offeror to submit the following information with the bid/proposal:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (26.53(d))

If the Airport Board is not satisfied that the requested waiver is justified, the bidder/offeror shall be notified in writing that the good faith effort was not met. The notification will provide the bidder/offeror an opportunity for an administrative reconsideration. The request for administrative reconsideration shall be postmarked not later than seven (7) days after the initial notification of denial of the waiver was received by the offeror. Bidder/Offeror shall make this request in writing to the following Reconsideration Official:

Linda Valdez Thompson
Executive Vice President of Administration and Diversity
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261
972 574 0100
E-mail address: lvthompson@dfwairport.com

The reconsideration official will not have played any role in the original determination that the offeror did not make sufficient good faith effort.

As part of this administrative reconsideration, the bidder/offeror shall have opportunity to provide written documentation or arguments concerning the issue of whether it met the goal or made adequate good faith effort to do so. The bidder/offeror shall also have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Following the administrative reconsideration, the Reconsideration Official may find that the offeror has met the good faith effort requirements. However, if the Reconsideration Official determines that the good faith effort requirement is not met, the Airport Board may determine that the bidder/offeror is non-responsive and reject the offer. The bidder/offeror shall be notified of the Reconsideration Official's decision in writing. The Reconsideration Official's decision is final and is not administratively appealable to the U. S. Department of Transportation.

Good Faith Efforts When A DBE Is Replaced On A Contract (26.53 (f))

In the event that a DBE contractor must be replaced, the Airport Board requires contractors to make good faith efforts to substitute another certified DBE to the extent needed to meet the contract goal. Situations in which a DBE may be replaced include, but are not limited to, the following:

- Failure to remain qualified as a DBE.
- Death or physical disability of the DBE owner.
- Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- Inability to furnish the required performance and payment bond.
- Failure or refusal to execute the subcontract in accordance with the terms of an

offer negotiated with the Contractor, but only where the Airport Board can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal shall be considered an unusual situation only if the successful offeror obtained an enforceable commitment from the subcontractor involved.

- Failure to comply with the terms and conditions of its subcontract or joint venture agreement.

The Airport Board requires the prime contractor to notify the Airport Board when the need for substitution arises and to submit a written request describing the justification for the substitution plus the submission of a Change of DBE Subcontractor Form and a new Schedule of Work and Subcontractor/Supplier Form.

The Airport Board requires the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts to obtain a DBE replacement contractor. The Contractor shall submit a Form 102 requesting administrative approval of the substitution prior to making a change in the contract. The prime contractor's good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the terminated DBE. (26.54(2))

If a contractor fails or refuses to comply with the contract's DBE provisions, the Airport Board shall impose (in accordance with Part 26) appropriate sanctions, including, but not limited to, withholding all or part of payments/work or terminating the contract, if corrective action is not taken within forty-eight (48) hours after notification by the Airport Board. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (26.55)

The Airport Board 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 subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBEs.

SUBPART D - CERTIFICATION STANDARDS

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Certification (26.61 - 26.73)

The Airport Board will through the North Central Texas Regional Certification Agency ("NCTRCA") follow the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E 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 the certification eligibility standards. The DBELO will monitor and ensure that the certification criteria used by the NCTRCA meets the requirements of these regulations. The Airport Board will make certification decisions based on the facts as a whole.

Process

The Airport Board's certification application form and documentation requirements are found in Attachment H. For information about the certification process or to apply for certification, firms should contact:

Don T. O'Bannon
Vice President of Small & Emerging Business Department
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261
972 574 8002
E-mail address: dobannon@dfwairport.com

North Central Texas Regional Certification Agency (NCTRCA)
John Kelly, Director
624 Six Flags Drive, Suite 216
Arlington, Texas 76011
Telephone number: 817 640 0606
Fax number: 817 640 6315
Website: www.nctrca.org

If a firm's application for certification as a DBE is denied by the NCTRCA, the applicant firm must wait a year from the date of denial to submit a new certification application.

SUBPART E - CERTIFICATION PROCEDURES

Unified Certification Programs (26.81)

The Airport Board is a member of a Unified Certification Program (UCP) administered by the Texas Department of Transportation (TxDOT). The DBELO will monitor and ensure that the UCP administratively will meet the requirements of this section. The following is a description of the UCP:

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The Texas UCP consists of six certifying agencies that have signed a memorandum of agreement to perform DBE certifications for the State of Texas. All agencies receiving federal financial assistance from the federal DOT sign a letter stating their support for the Texas UCP. Those letters of support were submitted as part of the Texas UCP submission to the federal DOT for UCP approval. The following language is excerpted from that agreement and it further describes the Texas UCP.

MEMORANDUM OF AGREEMENT

Between

The Texas Department of Transportation, the North Central Texas Regional Certification Agency, the South Central Texas Regional Certification Agency, the City of Houston, the City of Austin, and the Corpus Christi Regional Transportation Authority, hereinafter referred to as the Texas Unified Certification Program (TUCP) entities, and all other United States Department of Transportation Recipients in Texas that are required to participate in the Disadvantaged Business Enterprise Program regulations 49 CFR Part 26.

PURPOSE

The purpose of this Memorandum of Agreement is to establish the Texas Unified Certification Program (TUCP) that will allow the TUCP entities listed above to certify Disadvantaged Business Enterprises (DBEs) and to provide for a one-stop DBE certification program in Texas consistent with federal regulations. This agreement will provide for the establishment of a UCP meeting all the requirements of Federal Regulation 49 CFR Part 26, Section 26.81 as it pertains to all Texas government entities receiving federal funds from the United States Department of Transportation (USDOT). The DBE program is designed to ensure that DBEs have an equal opportunity to compete on all USDOT federal assisted programs.

Disadvantaged Business Enterprise (DBE) Database Directory

The TUCP certifying entities are responsible for certifying and maintaining a centralized DBE database directory that is regulated by Federal Regulation 49 CFR Part 26, Section 26.81. The Texas Department of Transportation (TxDOT) has agreed to serve as the host for maintaining the TUCP DBE database directory. The TUCP shall maintain a unified DBE directory containing, for all firms certified by the TUCP (including those from other states certified under the provision of this section), the information required by Federal Regulation Section 26.31. TxDOT has agreed to make the TUCP DBE directory available to the public electronically, on the Internet, as well as in print. The TUCP shall on a monthly basis update the electronic version of the directory by including additions,

deletions, and changes.

Agreement

The TUCP certifying entities have agreed to establish regions where they will be responsible for the DBE certification decisions. The DBE certification regions have been identified and assigned to the six certifying agencies. The TUCP certifying entities agree to recognize all firms certified as DBEs which meet the eligibility criteria as a DBE defined in Federal Regulation 49 CFR Part 26. The Memorandum of Agreement also includes the Terms of Agreement between the TUCP certifying entities and TxDOT as it pertains to establishing and maintaining the TUCP database and directory. The Terms of Agreement sets forth the procedures, definitions, and automated processes for each agency.

Procedures for Certification Decisions (26.83)

Recertifications (26.83 (a) 8(c))

The Airport Board/NCTRCA will review the eligibility of DBEs that were certified under former Part 23, to ensure that they meet the standards of Subpart D of Part 26. The Airport Board will complete the review no later than three (3) years from the most recent certification date of each firm and shall use the following schedule to certify firms under 49 CFR Part 26.

Step One -A Personal Net Worth statement (PNW) and a Socio-Economic Eligibility Certification (for members of presumptive groups) will be obtained for each such application (The PNW and Socio-Economic Eligibility Certification will not apply to applicants in the Concessions Program). Process started May, 1999. The milestone was completed in September 1999.

Step Two -The Airport Board/NCTRCA will review all firms whose expiration date is between March 1999 and September 1999 and who will be applying or have applied for recertification. The milestone was completed in December, 1999.

Step Three -The Airport Board/NCTRCA will review all firms whose expiration dates are between October, 1999 and February, 2000 and who will be applying for recertification. The milestone was completed in June, 2000.

Note: The certification process may be expedited for those firms pursuing a current federally assisted contract where DBE certification under 49 CFR Part 26 is required.

For firms that the Airport Board has certified or reviewed and found eligible under Part 26, the Airport Board will again review their eligibility at thirty-six (36) month intervals. Recertification reviews will include the following components: an on-site review

(determined on a case by case basis), completion of a new application, including submission of a PNW , and a Socio-Economic Eligibility Certification Statement.

"No Change" Affidavits and Notices of Change (26.83 (j))

The Airport Board requires all DBEs to provide a written affidavit of any change in their circumstances affecting ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or any material changes in the information provided with the DBE's application for certification.

The Airport Board requires all owners of DBEs certified by the Texas UCP/NCTRCA to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(l). The text of this affidavit is the following:

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of [name of DBE firm] as well as the ownership thereof.

Further, the undersigned agrees to permit the Agency and/or U.S. Department of Transportation as part of this certification process and thereafter to interview owners, principals, officers and employees; and to audit or examine books, records and files of the above firm. Furthermore, any of the public entities that are part of this agency reserve the right to reevaluate a firm's eligibility for certification.

If at any time DOT, or the Airport Board or the Texas UCP/NCTRCA has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statement, it may refer the matter to General Counsel of DOT or take other action pursuant to law. The General Counsel may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.062 and/or refer the matter to the Department of Justice under U.S.C. 1001, as the General Counsel deems appropriate.

The Airport Board requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The Airport Board will notify all current DBE firms of these obligations during their recertification update (see above schedules delineated under recertification update). This notification will inform DBEs to submit the "no change" affidavit. Their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Removal of a DBE's Eligibility (26.87)

In the event we propose to remove a DBE's certification, we will follow procedures in accordance with 26.87. Attachment I to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that the NCTRCA Director will serve as the decision-maker in de-certification proceedings. If the Director performed the initial certification, then a designated certification specialist that was not involved in the initial certification will serve in that capacity. We have established an administrative "firewall" to ensure that the person performing certification will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

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Certification Appeals (26.89)

Any firm or complainant may appeal our decision matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 5414
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

An applicant may appeal a certification denial or de-certification decision to the NCTRCA. The NCTRCA will convene a three person appeals panel consisting of members of the NCTRCA's Board of Directors to review the case and make an independent determination. An applicant may opt to by-pass the NCTRCA's appeal process and appeal directly to the federal DOT (Attachment J).

SUBPART F - COMPLIANCE AND ENFORCEMENT

Compliance (26.107)

Failure of the Contractor to carry out the Airport's DBE Program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the Airport may deem appropriate. The Airport reserves the right to apply legal and contract remedies available under federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension/debarment procedures, and forfeiture of profits as provided elsewhere.

Pursuant to 49 CFR 26.107, any person or entity that makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or

otherwise violates applicable federal statutes, may be referred to the Department of Transportation, and possibly the Department of Justice for prosecution.

Information, Confidentiality, Cooperation (26.109)

The Airport Board will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Texas Public Information Act, Texas Government Code, Section 552.001 et. seq. requires a governmental entity to disclose information subject to certain procedural and substantive exceptions.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The Airport Board 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 and audit upon request by any authorized representative of the Airport Board or DOT. This reporting requirement also extends to any subcontractor.

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



DALLAS/FORT WORTH INTERNATIONAL AIRPORT - D/M/WBE FORM

SOLICITATION NUMBER: _____

INTENT TO PERFORM/CONTRACT AS A SUBCONTRACTOR

Pursuant to Airport Board policy, D/M/WBE firms participating in the Airport's D/M/WBE Program must have "current" certification status with the Airport prior to award of this contract. The NCTRCA's D/M/WBE certification of any firm is effective for three (3) years from the date of written notification of certification. If the Airport determines that the firm is not a certified D/M/WBE firm, such firm must immediately seek certification from the North Central Texas Regional Certification Agency, 624 Six Flags Drive, Suite 216, Arlington, TX 76011; or if a joint venture, submit a Joint Venture Certification Application to the Small & Emerging Business Department, P.O. Box 619428, DFW Airport, Texas 75261.

1. Name of Offeror / Prime Contractor _____

Address, City, State and Zip _____

2. The undersigned has been certified by the NCTRCA Certification # _____.

3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

and at the following price \$ _____.

With respect to the proposed subcontract described above, _____% of the dollar value of such subcontract will be sublet and/or awarded to non-D/M/WBE contractors.

(Name of D/M/WBE Firm)

(Address, City, State and Zip)

(Telephone)

(Signature of Owner, President or Authorized Agent)

(Printed name of signer)

_____/_____/_____
(Date)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title of Declarant)

and a duly authorized representative of _____
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the D/M/WBE firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Vice President of Procurement & Materials Management or his designee, the undersigned will enter into a formal agreement with the listed D/M/WBE firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Dallas/Fort Worth International Airport. The undersigned will, if requested, provide the Vice President of the Small & Emerging Business Department or his designee a copy of that agreement within three (3) business days of execution.

The Prime contractor designated the following person as their D/M/WBE Liaison Officer:

(Name-Please Print)

(Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

(Name of Declarant)

(Signature)

(Date)