

Minority and Women Business Enterprise (MWBE) Program Policy

Business Diversity & Development Department



Effective: June 1, 2020

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I. PROGRAM PREAMBLE

WHEREAS, on February 20, 2018, Colette Holt & Associates, (CHA) was retained to conduct a Disparity Study for the Dallas/Fort Worth International Airport to determine whether there was a compelling interest for the Airport to establish a narrowly-tailored minority- and women-owned business enterprise (MWBE) program; and

WHEREAS, CHA'S 2019 Disparity Study (Study) established findings from the contracting period between January 1, 2012 through December 30, 2017, that confirm that although the Board's Small Business Enterprise and Minority/Women Business Enterprise programs have reduced barriers to its contracting opportunities on the basis of race or gender, significant disparities in the Airport's utilization of MWBEs continue to persist; and

WHEREAS, the CHA Study found, based upon quantitative and qualitative evidence, that minority- and women-owned firms do not yet enjoy a fully level playing field for Airport prime contracts and associated subcontracts; and

WHEREAS, the Board is relying upon the strong basis in evidence provided by the Study findings in concluding that the Airport has a compelling interest in remedying the ongoing effects of marketplace discrimination adversely affecting the utilization of MWBEs in Airport contracts and in the Airport's relevant marketplace; and

WHEREAS, the CHA Study was reviewed and formally recommended for acceptance by an independent legal expert; and

WHEREAS, on January 9, 2020 the Board voted to formally accept the findings of the CHA studies for purposes of policy formulation; and

WHEREAS, the significant underutilization of available MWBEs is also a drain on the local economy and undermines the economic vitality and development of the Dallas/Fort Worth region; and

WHEREAS, this Board is fully committed to not only remedying the ongoing effects of marketplace discrimination, but to also using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, based upon an extensive factual predicate, the Board has determined that a narrowly tailored combination of race- and gender-neutral and race- and gender-conscious remedies and programs are necessary to serve these compelling interests and needs of the DFW International Airport; **NOW THEREFORE:**

The following Minority Business Enterprise Program Policy is adopted effective June 1, 2020.

Sean Donohue
Chief Executive Officer
Dallas/Fort Worth International Airport

Date

II. POLICY STATEMENT

Dallas/Fort Worth International Airport (DFW) has a long history of supporting small businesses owned by minority, women and disadvantaged individuals, including small businesses. This Minority and Women Business Enterprise (MWBE) Policy seeks to reduce race- and gender-based barriers to and foster participation by minority- and women-owned businesses in contracting and procurement opportunities at DFW by increasing the capacities of such firms to perform as prime vendors and subcontractors and as suppliers. This Policy will allow DFW to more effectively target MWBE participation and create opportunities relating to the Airport's contracting and procurement.

This Policy seeks to promote full and fair opportunities for MWBEs certified by an entity recognized by the Airport, and whose place of business is located in the Airport's relevant market area.

III. SCOPE OF THE MWBE PROGRAM

The intent of the -MWBE Program is to provide full and fair opportunities for equal participation by minority-, and women-owned businesses in locally-funded Airport contracting and procurement opportunities. This program shall not be applicable to any contracts or procurement opportunities that are federally funded or subject to the Disadvantaged Business Enterprise (DBE) or the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Programs or to contracts or solicitations that have been issued prior to the effective date of this Policy.

The MWBE Program requires contractors to make good faith efforts to use M/WBEs in certain contracting and procurement opportunities determined by DFW. Compliance with requirements for bidders to exercise good faith efforts shall be measured utilizing guidance provided in 49 C.F.R. Part 26, Appendix A.

Every locally funded contract will be evaluated by the Airport's Business Diversity and Development Department (BDDD) to determine the appropriate method for enhancing MWBE participation to be counted towards the achievement of the annual aspirational MWBE goal and other program objectives. For contracts determined to be inappropriate for the application of MWBE contract goals, various race- and gender-neutral methods may be employed. The criteria used to set a MWBE contract goal shall include business availability, the nature of the contract, the Airport's past experiences with MWBE participation in similar contracts, price competitiveness, subcontracting opportunities and progress towards meeting the annual goal.

For those locally-funded contracts that BDDD determines race-neutral remedies alone will likely be insufficient to fully overcome the effects of marketplace discrimination, the BDDD may, pursuant to the criteria stated herein, apply race / gender-conscious MWBE

program elements in an effort to assist MWBE firms in overcoming the effects of marketplace discrimination that have adversely affected their ability to compete for DFW subcontracts and prime contracts.

Procedures for implementation, including good faith efforts requirements, information submitted with bid/proposals, reporting procedures, etc., shall be consistent with procedures utilized in the Airport's Administrative Procedures Manual.

IV. MWBE PROGRAM ELEMENTS

The BDDD shall have the responsibility of evaluating categories of Informal Solicitations and each prospective Formal Solicitation document in advance of posting an advertisement to the public to determine which of the following MWBE program elements should be applied to a given contract.

A. MWBE Annual Aspirational Goal

For each fiscal year, the BDDD may establish an annual aspirational percentage goal for overall MWBE participation on DFW contracts.

This annual aspirational goal is to be established and adjusted by the BDDD on an annual basis based upon the Study and any additional accurate and reliable measure of relative MWBE availability.

The annual aspirational goal is not to be applied to individual solicitations but will serve as a benchmark against which to measure the overall effectiveness of the MWBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

B. Race- and Gender-Neutral Program Elements

1. Race- and Gender-Neutral Bidder Outreach

The following race- and gender-neutral Program Element shall be applied by the Airport to all appropriate bid solicitations regardless of the industry segment affected:

Pursuant to Board Resolution #2007-11-306, titled as "Delegation of Expenditure Authority," whereby the Board approved increasing the CEO's delegated contracting /expenditure authority up to \$50,000 for all contracts, and raised the threshold at which biddable contracts must be competitively bid to those valued above \$50,000, for all procurement contracts valued at between \$3,000 and \$50,000, the Airport shall contact and solicit bids or quotes from at least two Historically Under-utilized Businesses (HUB) as required by State law, and shall also contact and solicit bids from at least two HUB and/or MWBEs.

2. Technical and Business Development Resources

DFW may offer a wide range of technical assistance and business development resources to MWBEs and small businesses, including capital assistance, bonding assistance and support resources. Such assistance may include guidance with general administrative, personnel management, invoicing, preparation of business plans, change orders and project budgets. In addition to services offered or funded directly by DFW, numerous assistance programs are offered to small businesses throughout the North Texas Region.

3. Subcontractor Mobilization Payments

To account for the preparatory work and operations necessary for the movement of subcontractor personnel, equipment, supplies, and incidentals to the project site and for all other work or operations that must be performed or costs incurred when beginning work approved for subcontracting in accordance with Article 108.01 of Standard Specifications for construction contracts, the prime contractor shall be required to make a mobilization payment to each subcontractor as determined by the Airport.

C. Race - Conscious Program Elements

The BDDD may, on a contract-by-contract basis, at its discretion, set a predetermined percentage of a specific contract that would be expected to be performed by qualified MWBEs. Factors to be considered by the BDDD in making this determination shall include the relative availability of MWBEs, the nature of the contract, the Airport's past experiences with MWBE participation in similar contracts, price competitiveness, subcontracting opportunities and progress towards meeting the annual goal.

V. ADMINISTRATION OF THE PROGRAM

A. Counting and Tracking M/WBE Participation

Only small businesses that are certified as MWBEs shall be counted towards satisfaction of the Airport's MWBE goals. MWBE prime bidders may count the entire amount of that portion of the contract that is performed by the MWBE's own forces (inclusive of the cost of supplies and materials obtained by the MWBE for completion of the work for the contract, including supplies purchased or equipment leased by the MWBE) towards satisfaction of the MBWE contract goal. The Airport will use the guidance provided in 49 C.F.R. Part 26.55 for counting purposes.

DFW shall monitor and track participation by M/WBEs in locally funded projects.

B. Role of Business Diversity & Development Department in Program Administration

BDDD is responsible for the establishment, implementation, coordination, and monitoring of the MWBE Policy and Procedures. BDDD will coordinate and cooperate with the Airport operational staff as necessary for effective implementation of the MWBE Policy and Procedures.

BDDD will:

- Be responsible for establishing the administrative procedures in support of the MWBE Policy, including but not limited to:
 - Goal setting
 - Certification Standards and Procedures for MBEs, and WBEs
 - Graduation Standards and Procedures for MBEs, and WBEs
 - Determining a Commercially Useful Function
 - Determining Good Faith Efforts
 - Counting MWBE Participation
 - Monitoring and Reporting
 - Potential Violations
- Establish, distribute, interpret, and administer the Airport's MWBE Policy and Procedures Manual's policies, standards and procedures as well as govern the implementation, interpretation, and application of this Policy and Procedures Manual.
- Develop and maintain procedures to ensure that MWBEs are able to compete on all locally funded Airport and commercial development contracts.
- Develop listings of MWBEs for prime and subcontracting opportunities. These listings reflect suppliers or services for which the Airport and/or its contractors have a business use.
- Review and verify the certification status of MWBEs. The Vice President of BDDD makes the final determination on appeals regarding MWBE certification eligibility.
- Review bids and solicitations to ensure that MWBEs have an equal opportunity to participate in locally-funded Airport and commercial development contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements and the conditions in which retainage is held, etc.
- Verify the utilization of MWBEs by Airport contractors and consultants.
- Prepare and present periodic reports to the Airport Board of Directors on compliance with the MWBE Policy and Procedures Manual.

- Assess and recommend periodically any process changes that may be necessary to improve the overall effectiveness of the MWBE Policy and Procedures.
- Assess the procurement methods that can be applied on individual contracts to implement the MWBE Policy and Procedures.
- Monitor and report the progress of MBE and WBE, and non-MWBE participation in all procurements by Airport departments.
- Determine whether a MWBE is performing a Commercially Useful Function (CUF) on an Airport procurement.
- Determine whether a bidder/proposer made Good Faith Efforts (GFEs) to achieve the MWBE contract goal.
- Promote and educate Airport personnel and contractors about the Expedited Payment Program and other programs and identify Airport solicitations for participation per the program requirement.
- Monitor and ensure MWBE compliance for Airport procurements in the contract closeout process.
- Promote and conduct outreach functions to the MWBE community and other stakeholders.
- Assist all Airport departments and contractors with the implementation and/or application of the MWBE Policy and Procedures Manual.
- Participate in pre-solicitation discussions including any design review meetings to take into consideration factors including, but not limited, to MWBE availability, bonding limits, opportunities for unbundling larger contracts into smaller units for bidding purposes, and type of work capabilities available from MWBEs in the development of drawing and specifications.
- Attend pre-bid/proposal and pre-construction/design conferences to explain the MWBE Policy and Procedures and respond to pertinent questions.
- Review requests for bids/proposals and other solicitation documentation, including the evaluation criteria to ensure inclusion of MWBE Policy and Procedures and remove artificial barriers to potential MWBE participation.
- Promote the MWBE Policy and Procedures and its accomplishments through innovative initiatives such as recognition programs and awards as well as annual reports and newsletters.

C. Other Airport Departments' Roles and Responsibilities

Each Airport department that has or shares responsibility for the awarding or monitoring of Airport contracts is responsible for promoting, supporting and assisting in carrying out the MWBE Program Policy and administrative procedures. Such departments are to be held accountable for exercising specific functions in support of the MWBE Policy and Procedures, as well as any other function(s) deemed necessary by management to implement the goals and objectives of the Board's MWBE Program Policy.

Legal Department

- Provide legal assistance, as necessary, to ensure that the MWBE Policies and Administrative Procedures and their implementation meet legal standards.

Audit Services Department

- As appropriate, audit and provide other assistance with respect to compliance with the MWBE Program Policy and Procedures.

The following Airport departments have specific additional implementation responsibilities outlined in the administrative procedures:

- Risk Management Department
- Design, Code and Construction Department
- Revenue Management Department
- Procurement and Materials Management Department

D. Periodic Review and Sunset of Policy

Beginning no later than January 1, 2026, and every seven years thereafter, the Airport shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, the BDDD or designee shall present the disparity study findings and recommendations to the Board for review and approval. Following review of those study findings and recommendations, the BDDD shall consider any proposed modifications to, or sunset of, this Policy, and shall propose modifications to this Policy and submit any policy amendments to the Board for adoption as appropriate to effectuate the continuation, modification or termination of the MWBE Program Elements of this Policy. Absent an extension of this MWBE Program Policy by the Board, the provisions of this Policy shall be void and may not be enforced after September 1, 2027.

VI. AUTHORIZATION AND PROMULGATION OF PROCEDURES

The MWBE Program Policy is promulgated by the Chief Executive Officer pursuant to his powers and duties as defined by the Contract and Agreement between the City of Dallas

and the City of Fort Worth dated and effective as of April 15, 1968. The Executive Vice President of Administration and Diversity or the Vice President of Business Diversity and Development is authorized to issue exceptions to this Policy, and to promulgate and enforce procedures and practices necessary to effectuate its objectives.

VII. DEFINITIONS

Relevant Market Area – for purposes of this Policy, the Airport’s relevant market area, as established by the Study, consists of the counties of Dallas, Tarrant, Denton, and Collin.

Minority Business Enterprise – a Minority Business Enterprise (“MBE”) shall be defined as a “for-profit” business concern which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and whose management and daily business operations are controlled by one or more of the minority individuals who own it. An MBE is a firm that is certified by an approved Airport certification entity in accordance with the standards and procedures identified in the Certification section of the MWBE Policies and Procedures Manual. BDDD incorporates by reference the certification standards of 49 C.F.R. Part 26 and the NCTRCA Certification Guidelines (http://nctrca.org/docs/MBE-WBE_Manual.pdf) as model certification guidelines and reserves the right to independently certify MBEs.

Minority Persons – individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins, regardless of race;
- “Native Americans,” which includes persons who are American Indians or members of the any of the native tribes of indigenous people of North America recognized by the United States Department of the Interior’s Bureau of Indian Affairs; and
- “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Women Business Enterprise – Women Business Enterprise (“WBE”) shall be defined as for a “for-profit” business concern which is at least 51 percent owned and controlled by one or more non-minority female person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more non-minority women; and whose management and daily business operations are controlled by one or more of the female individuals who own it. A WBE is a firm that is certified by an approved Airport certification entity in accordance with the standards and procedures identified in the Certification section of the MWBE Policies and Procedures Manual. BDDD incorporates by reference the certification standards of 49 C.F.R. Part 26 and the NCTRCA Certification Guidelines (http://nctrca.org/docs/MBE-WBE_Manual.pdf) as model certification guidelines and reserves the right to independently certify WBEs.

VIII. SEVERABILITY

If any section, paragraph, sentence, clause, phrase or word of this MWBE Program Policy, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Policy which can be given effect without the invalid provision or application, and to this end, all the provisions of this Policy are hereby declared to be severable.