

RESOLUTION NO. 031014-2

A RESOLUTION APPROVING A DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR THE ABILENE MUNICIPAL AIRPORT OF THE CITY OF ABILENE, KANSAS

WHEREAS, the City has received federal financial assistance from the U.S. Department of Transportation for construction at the Abilene Municipal Airport;

WHEREAS, the Abilene Municipal Airport requires an approved Disadvantaged Business Enterprise (“DBE”) Program in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26; and

WHEREAS, the City Commission desires to approved its Disadvantaged Business Enterprise Program for the Abilene Municipal Airport in order to comply with federal requirements associated with federal funds for its Airport Runway Rehabilitation Project.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

Section 1. Disadvantaged Business Enterprise Program. That a Disadvantaged Business Enterprise Program for the Abilene Municipal Airport, dated February 2014, is hereby adopted as attached hereto as **Exhibit A.**

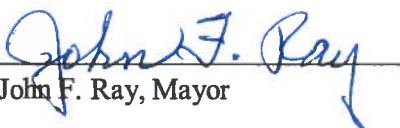
Section 2. Implementation. The City Manager is hereby authorized to execute the Disadvantaged Business Enterprise Program, and shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

Section 3. Notice of Program. The City Manager shall provide public notice of the aforementioned Disadvantaged Business Enterprise Program by publishing such notice in the official newspaper and the City’s website as required by federal law.

Section 4. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 10th day of March, 2014.

CITY OF ABILENE, KANSAS

By: 
John F. Ray, Mayor


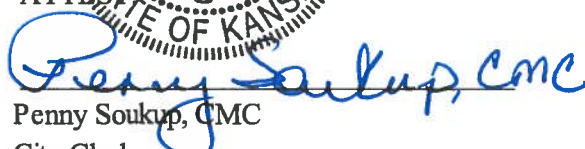

ATTEST

Penny Soukup, CMC
City Clerk

EXHIBIT A

Disadvantaged Business Enterprise Program

Abilene Municipal Airport

City of Abilene, Kansas

March 10, 2014

**DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM**

ABILENE MUNICIPAL AIRPORT

ABILENE, KANSAS

February 2014

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
Abilene Municipal Airport
Abilene, Kansas

POLICY STATEMENT

1. Definitions of Terms (26.5)

The City of Abilene, Kansas is hereinafter referred to as Sponsor.

The terms used in this program have been adopted by the Sponsor and have the meanings as defined in 49 CFR 26.5.

2. Objectives / Policy Statement (26.1, 26.23)

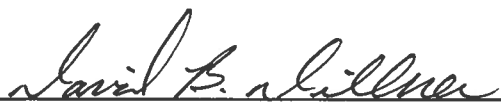
The Sponsor has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Sponsor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

David Dillner has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer 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 Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor has disseminated this policy statement to the governing Airport Advisory Board and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Distribution is included in the bid specification.



City Manager

Date: 3/11/14

SUBPART A – GENERAL REQUIREMENTS

1. **Objective (26.1).** The objectives are found in the policy statement on page 1 of this program.
2. **Applicability (26.3).** The Sponsor is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*
3. **Definitions (26.5).** The Sponsor will use terms in this program that have the meaning defined in 49 CFR Section 26.5.
4. **Nondiscrimination Requirements (26.7).** The Sponsor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Sponsor 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.

5. **Record Keeping Requirements (26.11).**

Reporting to DOT: 26.11. We will report DBE participation to DOT/FAA by submitting annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for use by FAA recipients.

Bidders List: 26.11(c). The Sponsor will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age, and annual gross receipts of firms.

We will collect this information by requesting that prime bidders report the names and addresses of all firms who quote to them on subcontracts and by utilizing information available from the Kansas Department of Transportation.

6. **Federal Financial Assistance Agreement (26.13).** The Sponsor has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

Assurance (26.13a).

The Sponsor 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 recipient 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 Sponsor'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 Sponsor 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.).

Contract Assurance (26.13b)

We 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, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

1. **DBE Program Updates (26.21).** Since the Sponsor will receive grant(s) for airport planning or development totaling \$250,000 or more in a Federal fiscal year, we will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The Sponsor is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

2. **Policy Statement (26.23).** The policy statement is elaborated on the first page of this program.
3. **DBE Liaison Officer (DBELO) (26.25).** We have designated the following individual as our DBE Liaison Officer:

Name: David Dillner
Address: 419 N Broadway
City: Abilene, KS 67401
Phone: (785) 263-2550
Email: citymgr@abilenecityhall.com

In that capacity, the DBE Liaison Officer (DBELO) is responsible for implementing all aspects of the DBE program and ensuring that the Sponsor complies with all provisions of 49 CFR Part 26. The Liaison Officer is the City Manager for the City of Abilene, KS, and has direct, independent access to the airport's advisory board concerning DBE program matters. The Sponsor does not have a dedicated civil rights department. The Sponsor uses the Kansas Department of Transportation civil rights staff for guidance on matters concerning the DBE program. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The airport advisory board has no staff and thus the DBELO has no staff to assist in the administration of the program. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
 2. Works with others to set overall annual goals.
 3. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
 4. Analyzes the Sponsor's progress toward goal attainment and identifies ways to improve progress.
 5. Participates in pre-bid meetings.
 6. Advises the governing body on DBE matters and achievement.
 7. Determines contractor compliance with good faith efforts.
 8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
 9. Acts as liaison to the Uniform Certification Process in Kansas.
 10. Maintains the Sponsor's updated directory on certified DBEs as published by the Kansas Department of Transportation.
4. **DBE Financial Institutions (26.27).** It is the policy of the Sponsor 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.

According to the KDOT Office of Contract Compliance published in January, 2014, there are two banks in the state of Kansas that known to be owned and controlled by socially and economically disadvantaged persons, as listed below.

Liberty Bank and Trust Company
1314 N 5th Street
Kansas City, KS
(913) 321-7200

CBW Bank
109 E Main Street
Weir, KS 66781
(620) 396-8221

The Sponsor will continue to search for and encourage the use of institutions of this type within their geographical area when applicable. Information on the availability of such institutions will be available from the DBE Liaison Officer.

5. **Prompt Payment Mechanisms (26.29).** The Sponsor has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to

pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

6. **Directory (26.31).** The Sponsor uses the State of Kansas Department of Transportation DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Kansas Department of Transportation revises the Directory at least quarterly. We make the Directory available as follows: The Directory may be obtained from the DBELO listed above or from the Kansas Department of Transportation, Office of Civil Rights, 700 SW Harrison Street, 3rd Floor, Topeka, KS 66603-3754 (phone 785.296.7940).

The Directory may be found at: <http://www.ksdot.org/divadmin/civilrights>

7. **Overconcentration (26.33).** The Sponsor has not identified that over-concentration exists in the types of work that DBEs perform.
8. **Business Development Programs (26.35).** The Sponsor has not established a business development program.
9. **Monitoring and Enforcement Mechanisms (26.37).** The Sponsor will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.
1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
 2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Below is a list of the regulations, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurements activities.
 - Breach of contract action, pursuant to the terms of the contract.

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

- Suspension or debarment proceedings pursuant to 49 CFR Part 26.
 - Enforcement action pursuant to 49 CFR Part 31.
 - Prosecution pursuant to 18 USC 1001.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
 4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by the Sponsor entering into an agreement with a consultant for construction observation services, which will include reviewing compliance with Labor and Civil Rights and keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
 5. We will implement a mechanism that will provide for a tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

10. Fostering Small Business Participation (26.39). The Sponsor has not established a small business program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. **Set-asides or Quotas (26.43).** The Sponsor does not use quotas in any way in the administration of this DBE program.
2. **Overall Goals (26.45).** The Sponsor will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Sponsor will submit its Overall Three-year DBE Goal to FAA by August 1, 2015 and every three years subsequent to that date..

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Sponsor does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the Sponsor will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

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.

In establishing the overall goal, Sponsor will consult with the Kansas Department of Transportation (KDOT) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal for 30 days following the date of the notice, and informing the public that the Sponsor and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites, if applicable) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

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

- 3. Section 26.47 Failure to meet overall goals.** The Sponsor will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) The Sponsor will retain this analysis and corrective action in our records for three years and make it available to FAA on request.

4. **Breakout of Estimated Race-Neutral & Race-Conscious Participation (26.51(a-c)).** The breakout of estimated race-neutral and race-conscious participation can be found in Attachment B to this program.
5. **Contract Goals (26.51(d)-(g)).** The Sponsor will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs.

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

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

6. Good Faith Efforts Procedures (26.53)

Demonstration of good faith efforts (26.53 (a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

The DBE Liaison Officer 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.

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

Information to be submitted (26.53(b))

The Sponsor treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information with two business days of being notified that they are the successful bidders, but before the contract is executed:

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 participation;
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 contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within three days of being informed by the Sponsor that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the City Manager, David Dillner, City of Abilene, 419 N. Broadway, Abilene KS, 67410. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

We 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;

- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Sponsor to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. The Sponsor has established a DBE contract goal of ___ percent for this contract. The bidder/offer shall make good faith efforts, as defined in Appendix A of 49 CFR Part 26, to subcontract ___ % of the dollar value of the prime contract to certified DBE firms as defined in 49 CFR Part 26.

All bidders shall submit the following information with their proposal on the form provided: (1) the names and addresses of DBE firms that will participate in the contract; (2) description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; and (4) written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal.

The apparent low bidder will be required to provide written confirmation from the participating DBE firms verifying their intent to participate in this project. This written confirmation shall be submitted within 2 working days of the bid opening.

If unable to meet the DBE goal, the apparent low bidder shall submit evidence of good faith efforts undertaken by the bidder, as described in Appendix A to 49 CFR Part 26, within 2 working days of the bid opening.

- 7. Counting DBE Participation (26.55).** We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

- 1. Certification Process. (26.61 - 26.73).** A Kansas Statewide Certification Program (KSCP) agreement has been approved by the U.S. Department of Transportation. The KSCP consists of other recipients of DOT financial assistance including the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and the Federal Transit Authority (FTA).

The sponsor accepts the certification procedures adopted by the KSCP for DBE contractors. The KSCP uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. If a contractor is certified on KSCP's current list, that contractor will be acceptable to the Sponsor.

For information about the KSCP certification process or to apply for certification, firms should contact either office listed below:

Kansas Department of Transportation, Office of Civil Rights
700 SW Harrison Street, 3rd Floor, Topeka, KS 66603-3754

Kansas Department of Commerce, Office of Minority and Women Business
1000 SW Jackson Street, Suite 100, Topeka, KS 66612-1354

SUBPART E – CERTIFICATION PROCEDURES

- 1. Unified Certification Programs (26.81).** The Sponsor accepts the certification procedures adopted by the KSCP for DBE contractors. The KSCP will meet all of the requirements of this section.
- 2. Procedures for Certification Decisions. (26.83).**

Recertifications (26.83(a) & (c))

The KSCP is responsible for all recertifications. The KSCP reviews the eligibility of DBEs to make sure that they will meet the standards of Subpart E of Part 26. The KSCP completes this review no later than three years from the most recent certification date of each firm.

For firms that have been certified or reviewed and found eligible under Part 26, the KSCP will again review their eligibility at least every ten years. The components of these reviews will be determined on a case-by-case basis.

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

The KSCP requires all DBEs to inform them with a sworn and notarized affidavit affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership or control eligibility requirements of 49 CFR Part 26 or of any material changes in the information provided with the DBE's application for certification.

The KSCP also requires all DBE owners that they have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j).

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

The KSCP will notify all currently certified DBE firms of these obligations. The notification will inform DBEs that 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.

3. **Interstate Certification (26.85).** When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.
4. **Denials of Initial Requests for Certification (26.85).** If the KSCP denies a firm's application or decertifies it, it may not reapply for a period of 6 months from the date of the denial letter.
5. **Removal of DBE's Eligibility (26.87).** In the event it is proposed to remove a DBE's certification, the KSCP will follow procedures consistent with 26.87. To ensure separation of functions in a de-certification, the KSCP has determined that the Topeka Federal Highway Administration designee will serve as the decision-maker in de-certification proceedings. The KSCP has established an administrative "firewall" to ensure that the Topeka Federal Highway Administration designee will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).
6. **Certification Appeals (26.89).** Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Departmental Office of Civil Rights
External Civil rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

- 1. Information, Compliance, Cooperation (26.109).** We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

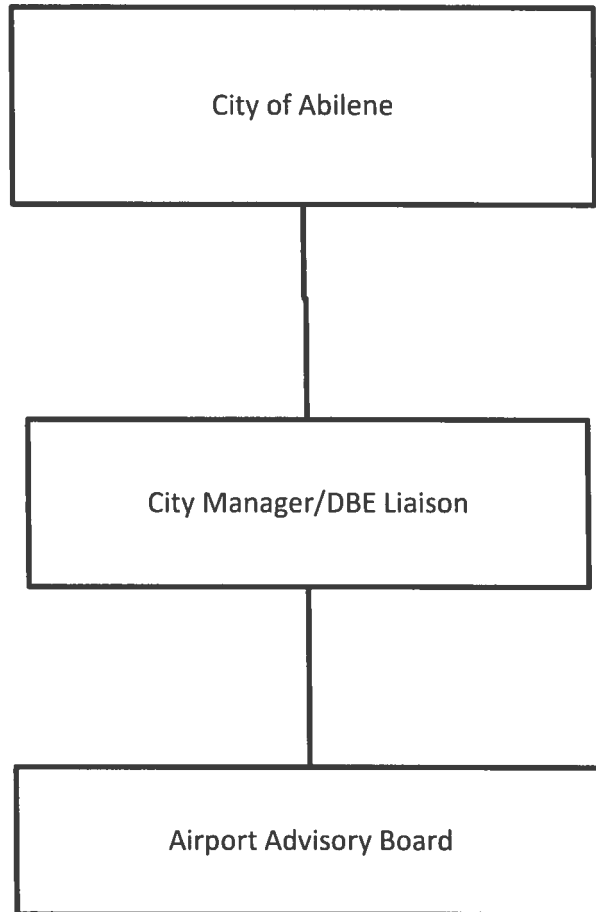
Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Sponsor or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a tally of actual payments to DBE firms for work committed to them at the time of contract award. We will require prime contractors to submit information on actual payments made to DBE subcontractors. We will require DBE subcontractors to certify that they have received these payments. If there is a discrepancy in the prime and subcontractor reports, we will perform audits of contract payments to DBEs. The purpose of the audits will be to review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participations.

Attachment A Organizational Chart



The Airport Advisory Board is appointed by the city. David Dillner is the designated DBE Liaison Officer and is also the Abilene City Manager. Thus, Mr. Dillner is able to bring all of the Airport Advisory Board members together if necessary for any required Board action.

Attachment B Overall Goal Calculations

Airport: Abilene Municipal Airport

Sponsor: City of Abilene, Kansas

Goal Period: Fiscal years 2013 – 2015 (October 1, 2012 to September 30, 2015)

DOT-Assisted Contract Amounts

Fiscal Year	Project	Contract Amount
2013	Engineering	\$212,000
2014	Runway and Taxiway Rehabilitation	\$3,116,000
2015	No Anticipated Federal Projects	\$ 0
Total (3-year)		\$3,328,000

Overall 3-Year DBE Goal: 1.6% to be accomplished through 1.6% Race-Conscious measures and 0% Race-Neutral measures.

Total dollar amount to be expended on DBEs: \$132,568

Number and Type of Projects for these Fiscal Years: See above table

Market Area: The market area was determined based on available information indicating that the substantial majority of contractors and subcontractors will come from this area. Information from Kansas Department of Transportation was also utilized. We selected the following geographical areas from Kansas, which will be used to seek contractors for the projects during the various years.

Counties: Butler, Chase, Chautauqua, Cheyenne, Clay, Cloud, Coffey, Cowley, Decatur, Dickinson, Elk, Ellis, Ellsworth, Geary, Gove, Graham, Greenwood, Harper, Harvey, Jackson, Jewell, Kingman, Lincoln, Logan, Lyon, Marion, Marshall, McPherson, Mitchell, Montgomery, Morris, Nemaha, Norton, Osage, Osborn, Ottawa, Phillips, Pottawatomie, Rawlins, Reno, Republic, Rice, Riley, Rooks, Russell, Saline, Sedgwick, Shawnee, Sheridan, Sherman, Smith, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wilson, Woodson

Step 1 of Analysis: Actual Relative Availability of DBEs

Method: We counted the number of DBE firms in the market area from the KDOT DBE Directory. The total number of all firms in the market area was identified from US Census information based on the same NAICS code found at the following website

<http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

Fiscal Year	NAICS	Type of Work	Total DBE Firms (a)	Total All Firms (b)	% DBE Firms (c) = (a/b)	Contract Amount (d)	DBE Contract Amount (c * d)
2013	541330	Engineering Services	1	192	0.52%	\$ 212,000	\$ 1,104
2014	237310	Paving Contractor	6	90	6.67%	\$1,687,900	\$ 112,527
	238210	Electrical Contractor	2	351	0.57%	\$387,800	\$ 2,210
	238910	Grading Contractor	4	189	2.12%	\$708,800	\$ 15,001
	541330	Engineering Services	1	192	0.52%	\$331,500	\$ 1,727
		FY Total			4.2%	\$ 3,116,000	\$ 131,464
2015	N/A	No Project	0	0	NA	\$ 0	\$ 0
Total					4.0%	\$ 3,328,000	\$ 132,568

The calculation for our total 3-year base figure is as follows:

$$\$132,568 / \$3,328,000 = 4.0\%$$

Step 2 of Analysis: Adjustment to Step 1 Base Figure

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

The table above lists the anticipated projects for each fiscal year and the availability of the DBE firms by trade classification.

Past History Participation. Other data used to determine the adjustment to the base figure was the historical DBE accomplishments, as shown below.

Fiscal Year	Grant Amount	DBE Goals (RC)*	DBE Accomplishments (RC)*	Type of Work
2009	\$146,183	0%	0%	Engineering
2010	\$850,250	3.5%	3.7%	Taxiway Paving
2011	\$304,000	2.5%	2.5%	Taxiway Lighting
2012	No Project	NA	NA	

* All DBE goals and accomplishments were race-conscious.

Arranging the historical data (2009-2011) from low to high, the median is 2.5% and the mean is 1.9%. Fiscal Year 2012 is not included since there was no project nor goal.

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of 1.6%. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during this three-year period.

The proposed Overall DBE Goals are as follows:

- Fiscal Year 2013: $1.5\% = (0.5\% + 2.5\%) / 2$
- Fiscal Year 2014: $3.3\% = (4.2\% + 2.5\%) / 2$
- Fiscal Year 2015: 0%

Our proposed overall three year goal will be reflected as an average of the three years.

Overall DBE Goal: 1.6%

Further, there are no applicable disparity studies for the local market area or recent legal case information available from the State of Kansas Department of Transportation to show any evidence of barriers to entry or competitiveness of DBEs in Dickinson County.

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

The Sponsor will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Sponsor uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations in ways that facilitate DBE, and other small business, participation, whenever possible
2. Ensuring that DBEs are notified on DOT-assisted contract lettings
3. Ensuring distribution of the DBE directory to potential prime contractors
4. When requested, conduct debriefing sessions to explain why certain bids were unsuccessful
5. Provide information on certification procedures, subcontracting, and bonding requirements to small businesses upon request

The recipient estimates that in meeting its overall goal, it will obtain none from RN participation and all through RC measures.

The Sponsor does not have a history of over-achievement of goals and expects to continue to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, we are applying the entire goal to race-conscious participation.

The Sponsor will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained

through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

PUBLIC PARTICIPATION

Consultation (26.45(g)(1)). In establishing the proposed goal, the Sponsor will consult with Kansas Department of Transportation, without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs

Following the consultation, we will publish the following 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 the airport administration building for 30 days following the date of the notice, and informing the public that the Sponsor and DOT will accept comments on the goals for 45 days from the date of the notice

The notice will be published in the legal newspaper that is used for legal notices and notifications to contractors.

PUBLIC NOTICE

The City of Abilene, KS hereby announces its fiscal year 2013-15 goal of 1.6% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goal and rationale are available for inspection between 8:00 a.m. and 5:00 p.m. Monday through Friday at 419 North Broadway Street, Abilene, KS for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to either of the following:

David Dillner, City Manager
City of Abilene
419 N Broadway
Abilene, KS 67410

Patricia Wright
Federal Aviation Administration
Western-Pacific Region headquarters, AWP-9
PO Box 92007
Los Angeles, CA 90009-2002

Contract Goals (26.51) The Sponsor will use contract goals to meet any portion of the overall goal that the Sponsor 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 our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The Sponsor need not establish a contract goal on every such contract and the

size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

We will express our contract goals as a percentage of the federal share of a DOT-assisted contract.