

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

POLICY STATEMENT

Section 26.1, 26.23. Objectives/Policy Statement

City of Abilene ("Recipient") owner of Abilene Municipal Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Recipient has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Recipient has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the Recipient to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Recipient's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in DOT assisted contracts.
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities.
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program,
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The City Manager has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO 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 Recipient in its financial assistance agreements with the Department of Transportation.

Recipient has disseminated this policy statement to the city officials and all of the components of our organization. This statement will be distributed to DBE and non-DBE business communities that may perform work on Recipient's DOT-assisted contracts, upon request. The distribution was accomplished by discussion during the governing board's meetings

City Manager

Date

GENERAL REQUIREMENTS

Section 26.1. Objectives

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

Section 26.3. Applicability

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

Section 26.5. Definitions

Recipient will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7. Non-discrimination Requirements

Recipient 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, Recipient will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11. Data Collection and Reporting Requirements

Reporting to DOT

Recipient will provide data about its DBE Program to the Department as directed by DOT and its operating administrations. DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

Recipient will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Part 26. Recipient will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

Recipient will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

Recipient will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm address including zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million, \$1-3 million, \$3-6 million, \$6-10 million, etc.) rather than requesting an exact figure from the firm.

Recipient will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

Recipient will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), Recipient will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Recipient will maintain records documenting a firm's compliance with the requirements of this part. Other related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13. Assurances Recipients and Contractors Must Make

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

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

The Recipient 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 Recipient 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 Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: Recipient will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments.
- 2) Assessing sanctions.
- 3) Liquidated damages.
- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21. DBE Program Updates

Recipient is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

Recipient is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Recipient is in compliance with it and Part 26. Recipient will continue to carry out this program until all

funds from DOT financial assistance have been expended. Recipient does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

Section 26.23. Policy Statement

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

Section 26.25. DBE Liaison Officer (DBELO)

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

City Manager
419 N. Broadway
Abilene, KS 67410
785-263-2550
ron@abilenecityhall.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Recipient complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the city manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has no staff and assistance from their consultant engineer, to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes Recipient's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the governing body on DBE matters and achievement.
8. Determines contractor compliance with good faith efforts.

Section 26.2. DBE Financial Institutions

It is the policy of Recipient 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. Availability of such institutions will be investigated on an annual basis.

The following efforts have been made to identify and use such institutions:

1. Investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
2. Obtain information on the availability of such institutions from the Minority Bank Deposit Program at <https://fiscal.treasury.gov/mbdp/participants.html>. No institutions have been identified on that website.

Section 26.29. Prompt Payment Mechanisms

Recipient requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors. In accordance with 49 CFR § 26.29, the Recipient established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Recipient.

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

Recipient will 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 Recipient payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, Recipient includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

Recipient clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, Recipient undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- Informing prime contractors and subcontractors regarding the prompt payment requirement at the preconstruction conference and progress meetings.
- Providing information to subcontractors when requested that a payment has been made to a prime contractor to alert them to the start of the 30-day clock for payment

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

- Recipient proactively reviews contract payments to DBE subcontractors at the completion of the project. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Recipient by the prime contractor.

Prompt Payment Dispute Resolution

Recipient will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

- Recipient will meet in-person or via a teleconference with the parties involved in the dispute. The resident project representative and/or the project manager will be included in this meeting, if appropriate. Any meeting for the purpose of dispute resolution should include individuals

authorized to bind each interested party, including Recipient representative with authority to take any necessary enforcement action.

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

- A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. The following contract clauses will be included in the

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar 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 Owner. This clause applies to both DBE and non-DBE subcontractors. (Reference: Federal Contract Provisions for Construction and Equipment Contracts)

- The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. (Reference General Provisions, Section 90-06)

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact the DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by Recipient to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

Recipient provides appropriate means to enforce the requirements of § 26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract

Recipient will actively implement the enforcement actions detailed above.

Section 26.31. Directory of Certified Firms

Recipient is a non-certifying member of the Kansas Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or

ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work that the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

Recipient has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37. Monitoring Responsibilities

Recipient implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, and describes and sets forth these mechanisms in this DBE program.

Recipient actively monitors attainment toward overall goals by maintaining running tally that provides for a comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by the DBELO in a spreadsheet and updated following each contract award and each project completion. This mechanism to maintain a running tally of overall goal attainment will be used to inform Recipient's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Recipient actively monitors participation with respect to each DBE commitment by using a running tally that provides for a comparison of payments made to each listed DBE. The tally for contract goal monitoring will be maintained by the DBELO in a spreadsheet and updated following each contract award and each project completion. These contract-specific running tallies will be used to determine whether the contractor has met its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

Recipient reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is

performed by the DBELO. The monitoring of work sites to assess commercially useful functions will include observations and photographic documentation of people and equipment performing the work.

Contracting records are reviewed by the DBELO. Recipient will require prime contractors to provide copies of subcontracts for review, upon request. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. Recipient will maintain records that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39. Fostering Small Business Participation

Recipient has not created a Small Business element to structure contracting requirements to facilitate competition by small business concerns.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43. Set-asides or Quotas

Recipient does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45. Overall Goals

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

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Recipient does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and Recipient will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. Recipient will use the DBE Directory information and Census Bureau Data. Recipient understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

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

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Recipient market.

In establishing the overall goal, Recipient will provide for consultation and publication. This includes consultation with the Kansas Department of Transportation to obtain information concerning the availability minority, women’s and general contractor groups, community organizations, and other officials

or organizations, which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs. The consultation will occur before Recipient is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which Recipient engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, Recipient will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on Recipient's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on Recipient's official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how Recipient considered and responded to any comments and information received before finalizing the goal.

Recipient will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

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

Prior Operating Administration Concurrence

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

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

Section 26.47. Failure to meet overall goals

Recipient cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless Recipient fails to administer its DBE program in good faith.

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

Recipient understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.
- (3) Recipient will prepare the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.49. How are overall goals established for transit vehicle manufacturers?

Not Applicable.

Section 26.51. Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs.
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors).
3. Ensuring distribution of the DBE directory, through electronic means, to the widest feasible universe of potential prime contractors.
4. Providing information on certification procedures, subcontracting, and bonding requirements.

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

Contract Goals

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

The DBELO 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 responsible.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section.
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract.
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - c. The dollar amount of the participation of each DBE firm participating.
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section no later than 2 days after bid opening as a matter of responsibility.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by Recipient. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor Recipient will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, Recipient will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which Recipient solicits proposals to design and build a project with minimal project details at time of letting, Recipient may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal.

The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, Recipient will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Recipient and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Recipient will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Recipient will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within 2 days of being informed by Recipient that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Mayor, City of Abilene, 419 N. Broadway, Abilene, KS 67410, Phone 785-263-2550. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts procedural requirements (post-solicitation/award)

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

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

Recipient will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless Recipient causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Recipient will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains Recipient's written consent as provided in § 26.53(f); and

- (2) Unless Recipient's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Recipient may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness.
- (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 1200 or applicable state law.
- (6) Recipient has determined that the listed DBE subcontractor is not a responsible contractor.
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to Recipient 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 Recipient determines compels the termination of the DBE subcontractor.

Before transmitting to Recipient, the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Recipient sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising Recipient and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why Recipient should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), Recipient may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs, or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If Recipient requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. Recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55. Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in § 26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in § 26.87(j).

For FAA-funded projects only, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

CERTIFICATION STANDARDS

Section 26.61 – 26.73. Certification Process

Recipient is a non-certifying member of the Kansas Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. This UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Kansas Department of Transportation
Office of Civil Rights Compliance
Eisenhower State Office Building
700 SW Harrison Street, 3rd Floor West
Topeka, Kansas 66603
Phone: 800-854-3613
Email: KDOT.CivilRights@ks.gov
<https://www.ksdot.gov/bureaus/divadmin/civilrights/>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full UCP agreement. The full UCP agreement can be found at:

<https://www.ksdot.gov/divadmin/civilrights/>

Section 26.81. Unified Certification Programs

Recipient is a member of a Unified Certification Program (UCP) administered by Kansas Department of Transportation. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.83. through 26.89.

Not applicable to non-certifying agency.

Section 26.91. Actions Following DOT Certification Appeal Decisions

If Recipient is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101. Compliance Procedures

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

Recipient understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103. Enforcement Actions Applicable to FHWA and FTA Programs

Not applicable.

Section 26.105. Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107. Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person 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.

Section 26.109. Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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

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

Recipient, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Recipient understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

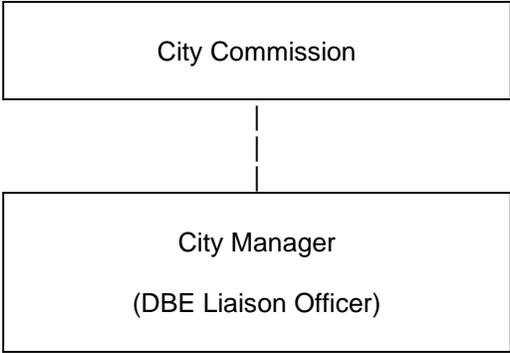
- Attachment 1. Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2. Organizational Chart
- Attachment 3. Bidders List Collection Form
- Attachment 4. Link to UCP Directory of Certified Firms
- Attachment 5. Overall Goal Methodology
- Attachment 6. Demonstration of Good Faith Efforts Forms
- Attachment 7. DBE Monitoring and Enforcement Mechanisms
- Attachment 8. Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9. Link to State's UCP Agreement

ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2
ORGANIZATIONAL CHART



ATTACHMENT 3

Bidders List Collection Form

**SUBCONTRACTOR'S LIST
ALL SUBCONTRACTORS MUST BE LISTED.**

Except for DBE firms included in the Letter(s) of Intent, use of subcontractors on this list is not mandatory. CFR § 26.11(c) requires airport sponsors to collect bidders list information from all bidders at the time of bid submittal. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not). Attach additional pages if necessary.

AIP Project No.: _____ Airport Name: _____

Project Description: _____ Airport Location: _____

| Firm Name | Street Address | City, State | Zip | DBE ⁽¹⁾ |
|------------------------------|---------------------------------------|--------------------------|-------------|--------------------------------------|
| | | | | Yes/No |
| NAICS Code(s) ⁽²⁾ | Race of Majority Owner ⁽³⁾ | Gender of Majority Owner | Age of Firm | Annual Gross Receipts ⁽⁴⁾ |
| | | | | |
| Firm Name | Street Address | City, State | Zip | DBE ⁽¹⁾ |
| | | | | Yes/No |
| NAICS Code(s) ⁽²⁾ | Race of Majority Owner ⁽³⁾ | Gender of Majority Owner | Age of Firm | Annual Gross Receipts ⁽⁴⁾ |
| | | | | |
| Firm Name | Street Address | City, State | Zip | DBE ⁽¹⁾ |
| | | | | Yes/No |
| NAICS Code(s) ⁽²⁾ | Race of Majority Owner ⁽³⁾ | Gender of Majority Owner | Age of Firm | Annual Gross Receipts ⁽⁴⁾ |
| | | | | |
| Firm Name | Street Address | City, State | Zip | DBE ⁽¹⁾ |
| | | | | Yes/No |
| NAICS Code(s) ⁽²⁾ | Race of Majority Owner ⁽³⁾ | Gender of Majority Owner | Age of Firm | Annual Gross Receipts ⁽⁴⁾ |
| | | | | |

- (1) Indicate if the firm is currently certified as a DBE by the state Department of Transportation for the state in the which the project is located.
- (2) NAICS is the North American Industry Classification System. Only list the codes for the work that is proposed to be completed by the subcontractor. Information on NAICS can be found at www.census.gov/naics
- (3) Use only these race/ethnicity classifications from 49 CFR part 26: Black American; Hispanic American; Native American; Asian Pacific American; Subcontinent Asian American; or Other
- (4) Report the gross receipts using the following range of values: A) less than \$1 million; B) \$1-3 million; C) \$3-6 million; D) \$6-10 million, or E) more than \$10 million.

ATTACHMENT 4

Kansas UCP Directory may be found here:

<https://www.ksdot.gov/divadmin/civilrights/>

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ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Abilene

Airports Owned by Recipient: Abilene Municipal Airport

Goal Period: FY25-27 – October 1, 2025 through September 30, 2027

| | | |
|--------------------------------------|--------------|---------------------|
| DOT-assisted contract amount: | FY25 | \$ 1,156,215 |
| | FY26 | \$ 0 |
| | FY27 | \$ 0 |
| | Total | \$ 1,156,215 |

Overall Three-Year Goal: 2.26%, to be accomplished through 1.96% RC and 0.30% RN

Total dollar amount to be expended on DBEs: \$23,402

Number and Type of Contracts that the airport anticipates awarding:

Contracts Fiscal Year #1 (FY25)

1. T-Hangar Construction Only - \$1,156,215
2. Note that the Engineering to the T-hangar will be funded with a state grant and local funds. No federal funds in the engineering contract

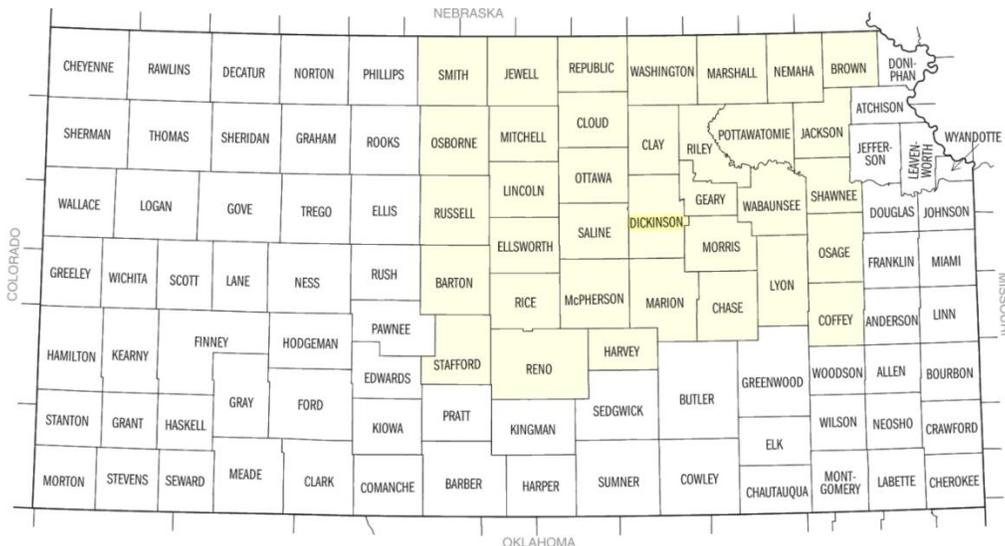
Contracts Fiscal Year #2 (FY26)

1. None

Contracts Fiscal Year #3 (FY27)

1. None

Market Area: Firms located in counties within the northcentral-northeast quadrant of the state. The market area is the area in which the substantial majority of the airport's contractors and subcontractors that seek to do business with the airport and located and the area in which the airport spends the substantial majority of its contracting dollars. The market area includes the counties in the exhibit below.



Step 1. Relative Availability of DBEs

The step 1 figure for the relative availability was calculated as follows:

Method: Use DBE Directory found at Census Bureau Data from <https://data.census.gov/cedsci/> and <https://www.ksdot.gov/divadmin/civilrights/>

Weighted Availability of DBE firms:

The table below lists the anticipated federally-funded contract awards for FY25-27.

| Fiscal Year / Project Description | NAICS | NAICS Description | Total DBE Firms (a) | Total All Firms (b) | % DBE Firms (c) = (a/b) | Estimated Contract Amount (d) | Weighted DBE Availability (e = c*d) |
|-----------------------------------|--------|---|---------------------|---------------------|-------------------------|-------------------------------|-------------------------------------|
| 2025 Construct T-Hangar | 236210 | Building Contractors | 0 | 3 | 0.0% | \$660,000 | \$0 |
| | 237310 | Highway & Street Construction (Major) | 0 | 39 | 0.0% | \$225,000 | \$0 |
| | 237310 | Highway & Street Construction (Minor) | 8 | 39 | 20.51% | \$107,690 | \$24,347 |
| | 238210 | Electrical Contractors | 2 | 303 | 0.66% | \$90,000 | \$594 |
| | 238910 | Site Preparation | 2 | 205 | 0.98% | \$73,525 | \$464 |
| | 541330 | Professional, Scientific & Technical Services | 1 | 90 | 1.11% | \$0 | \$2,569 |
| Subtotal 2025: | | | | | 2.02% (e / d) | \$1,156,215 | \$23,402 |
| Total FY25-27: | | | | | 2.02% (e / d) | \$1,156,215 | \$23,402 |

The base goal projection after weighting is as follows:

- Sum of Weighted DBE Availability (column e): \$23,402
- Sum of Estimated Federally-Funded Contract Amounts (column d): \$1,156,215

Dividing the weighted DBE totals by the total estimated contracts for all trades gives an initial DBE availability figure for the projects anticipated during the goal-setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Weighted DBE Goal at Step 1 (column c): 2.02%

Step 2: Adjustments to Step 1 Base Figure

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

Past History Participation

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

| Fiscal Year | Grant Amount | DBE Goals | | | DBE Accomplishments | | | Type of Work |
|-------------|--------------|-----------|------|-------|---------------------|-------|-------|------------------------------------|
| | | RC* | RN* | Total | RC | RN | Total | |
| 2009 | \$146,183 | NA | NA | NA | NA | NA | NA | Engineering |
| 2010 | \$850,250 | 3.5% | 0.0% | 3.5% | 3.5% | 0.2% | 3.7% | Taxiway Paving |
| 2011 | \$304,000 | 2.5% | 0.0% | 2.7% | 2.5% | 0.0% | 2.5% | Taxiway Lighting |
| 2014 | \$2,280,491 | 3.4% | 0.0% | 3.4% | 3.4% | 1.3% | 4.7% | Runway Reconstruction |
| 2017 | \$167,679 | NA | NA | NA | NA | NA | NA | Master Plan |
| 2023 | \$114,480 | NA | NA | NA | NA | NA | NA | Proj 016 - Land |
| 2023 | \$142,020 | 0.0% | 0.0% | 0.0% | 0.0% | 52.5% | 52.5% | Proj 017 - Engineering Tree Remove |
| 2024 | \$493,052 | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | Proj 018 - Displaced Threshold |
| 2024 | \$411,028 | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | Proj 019 - Construct Tree Remove |
| 2024 | \$102,000 | 0.0% | 0.0% | 0.0% | 0.0% | 71.7% | 71.7% | Proj 020 - Displaced Threshold |

This historical data was arranged from low to high; however, two projects had outliers (52.5% and 71.7%) and as such, these were excluded. For the non-outlier historical accomplishments (0.0%, 0.0%, 2.5%, 3.7%, 4.7%), the median is 2.5%. Step 1 Base Figure averaged with historical median: $(2.02\% + 2.50\%) / 2 = 2.26\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **2.26%**. Recipient believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Step 3. Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation.
2. Ensuring distribution of DBE directory, through electronic means, to the widest feasible universe of potential prime contractors.

Recipient estimates that in meeting the established overall goal of 2.26%, it will obtain 0.30% from RN participation and 1.96% through RC measures.

This breakout is based on:

In FY09-FY24 (excluding outliers), DBE participation exceeded the goal by 0.30% which may be construed as evidence of race-neutral participation. Therefore, 0.30% of the 2.26% goal is expected through race-neutral means and the remaining 1.96% is to be obtained by race-conscious measures.

Step 4. Public Participation

Consultation: In establishing the overall goal, Recipient provided for consultation and publication. This process included consultation with the Kansas Department of Transportation to obtain information concerning the minority, women’s, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for

DBEs. The consultation included a notice that comments on the proposed goal can be submitted or communicated within 30 days of the notice. Due to the airport's remote non-metropolitan location, minority, women's, and general contractor groups and similar organizations have not previously attended consultation meetings and are not expected to do so in the future. An opportunity to send written comments or call provides a consultation method that has the highest probability of useful interaction.

A notice of the proposed goal was published on the Recipient official website before the methodology was submitted to FAA. The notice was published here: <https://www.abilenecityhall.com/>

If the proposed goal changes following review by FAA, the revised goal will be posted on Recipient official website.

Notwithstanding paragraph (f)(4) of §26.45, Recipient proposed goals will not be implemented until the stakeholder consultation requirement has been met.

PUBLIC NOTICE

Recipient hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 2.26% for FAA-funded contracts/agreements. Recipient estimates that in meeting the established overall goal of 2.02%, it will obtain 0.30% from RN participation and 1.96% through RC measures. The proposed goal pertains to federal fiscal years 2025 through 2027. The proposed goal and its attendant methodology are available for inspection between 8:00 a.m. and 5:00 p.m. Monday through Friday at the city offices, 419 N. Broadway, Abilene KS for 30 days from the date of this publication. Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

City Manager
419 N. Broadway
Abilene, KS 67410
785-263-2550
ron@abilenecityhall.com

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.
- The bidder/offeror, while unable to meet the DBE goal of ____ %, is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

Bidder/offeror's Firm Name:

Signature

Date

DBE UTILIZATION SUMMARY

| | <u>Contract Amount</u> | | <u>DBE Amount</u> | | <u>Contract Percentage</u> |
|----------------------|------------------------|----------|-------------------|--|----------------------------|
| DBE Prime Contractor | \$ _____ | x 1.00 = | \$ _____ | | _____ % |
| DBE Subcontractor | \$ _____ | x 1.00 = | \$ _____ | | _____ % |
| DBE Regular Dealer* | \$ _____ | x 0.60 = | \$ _____ | | _____ % |
| DBE Distributor* | \$ _____ | x 0.40 = | \$ _____ | | _____ % |
| DBE Manufacturer | \$ _____ | x 1.00 = | \$ _____ | | _____ % |
| Total Amount DBE | | | \$ _____ | | _____ % |
| DBE Goal** | | | | | _____ % |

* If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs). as defined in § 26.55(e)(2)(iv)(A), (B), and (C) and (e)(3). **The “DBE Regular Dealer / Distributor Affirmation Form” must be completed to make this determination.**

** If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

FORM 2: LETTER OF INTENT
Disadvantaged Business Enterprise
 (This page shall be submitted for each DBE firm)

Bidder/Offer Name: _____
 Authorized Representative: _____
 Phone: _____ Email: _____

DBE Firm: DBE Firm: _____
 Authorized Representative: _____
 Phone: _____ Email: _____

DBE Certifying Agency: _____ Expiration Date: _____

Classification: Prime Contractor Subcontractor Manufacturer
 Regular Dealer* Distributor* Broker*

* Form 3 must be included

| Work item(s) to be performed by DBE | Description of Work Item | NAICS Code | Quantity | Total |
|-------------------------------------|--------------------------|------------|----------|-------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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

The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it **must enter into a subcontract with the DBE firm identified above** that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

 Signature of Bidder/Offeror's Authorized Representative Date: _____

The above-named DBE firm affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

 Signature of DBE Firm's Authorized Representative Date: _____

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

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

**DBE Regular Dealer/Distributor
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan. **DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

* If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?

YES² NO³

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to state statutes.

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

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

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

Kansas UCP Agreement can be found here:

<https://www.ksdot.gov/divadmin/civilrights/>