

# **WICHITA AIRPORT AUTHORITY**

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **CONSTRUCTION PROGRAM**

#### **Goal Period Federal Fiscal Year 2021-2024**

August 31, 1999; Revised: April 12, 2000; Revised: June 8, 2000; Approved: July 19, 2000;  
Revised: September 12, 2007; Revised: September 13, 2011; Revised: October 24, 2014;  
Revised May 20, 2021



## TABLE OF CONTENTS

OBJECTIVES /POLICY STATEMENT (26.1, 26.23)	0
SUBPART A- GENERAL REQUIREMENTS	1- 3
Objectives (26.1)	
Applicability (26.3)	
Definitions of Terms (26.5)	
Non-Discrimination Requirements (26.7)	
Record Keeping Requirements (26.11)	
Reporting to DOT	
Vendors List (26.11c)	
Records Retention and Reporting	
Federal Financial Assistance Agreement Assurance (26.13)	
Assurance (26.13a)	
Contract Assurance (26.13b)	
SUBPART B-ADMINISTRATIVE REQUIREMENTS	4-9
DBE Program Updates (26.21)	
Policy Statement (26.23)	
DBE Liaison Officer (DBELO) (26.25)	
DBE Financial Institutions (26.27)	
Prompt Payment Mechanisms (26.29)	
Directory (26.31)	
Overconcentration (26.33)	
Business Development Programs (26.35)	
Monitoring Responsibilities (26.37)	
Prompt Payment Dispute Resolution	
Prompt Payment Complaints	
Enforcement Compliance for Noncompliance	
Monitoring Contracts and Worksites	
Fostering Small Business Participation (26.39)	
SUBPART C- GOALS, GOOD FAITH EFFORTS AND COUNTING	10- 17
Quotas or Set Asides (26.43)	
Overall Goals (26.45)	
Project Goals	
Prior Operating Administration Concurrence	
Failure to Meet Overall Goals (26.47)	
Means Recipients Use to Meet Overall Goals (26.51)	
Breakout of Estimated Race-Neutral & Race-Conscious (26.51, a-c)	
Contract Goals (26.51d- 26.51g)	
Good Faith Efforts Procedures with Contract Goals (26.53)	
Demonstration of good faith efforts pre-award (26.53a & 26.53c)	
Information to be submitted (26.53b)	
Administrative reconsideration (26.53d)	
Good Faith Efforts procedural requirements post solicitation (26.53f)	
Counting DBE Participation (26.55)	

SUBPARTS D & E-CERTIFICATION STANDARDS & PROCEDURES	18
Certification Process (26.61 - 26.91)	
Unified Certification Program (26.81)	
SUBPART F-COMPLIANCE AND ENFORCEMENT	19
Compliance Procedures Applicable to WAA (26.101)	
Information, Confidentiality, Cooperation (26.109)	

ATTACHMENTS	20- 138
Attachment 1 Federal Regulation 49 CFR Part 26	21
Attachment 2 Organizational Chart of DBELO	22-23
Attachment 3 Vendor's List Collection Form	24-25
Attachment 4 KDOT DBE Directory Links	26
Attachment 5 DBE Goal Calculations	27-38
Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Forms 1 & 2	39-43
Attachment 7 Monitoring & Enforcement Mechanisms	44-46
Attachment 7A DBE Construction Specification	47-58
Attachment 7B Consultant RFQ DBE Section	59-66
Attachment 7C DBE Sample Prime Vendor Contracts & Monitoring Forms	67-111
Attachment 8 DBE Certification Application Form	112-115
Attachment 9 Kansas UCP Agreement	116-135
Attachment 10 Small Business Element Program	136-138

## WICHITA AIRPORT AUTHORITY

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

#### Section 26.1, 26.23 Objectives /Policy Statement

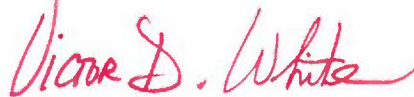
The Wichita Airport Authority (WAA) owner of Wichita Dwight D. Eisenhower National (ICT) and Colonel James Jabara (AAO) Airports has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the WAA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the WAA 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. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
7. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The WAA's Capital Program Coordinator has been designated 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 WAA in its financial assistance agreements with the Department of Transportation.

The WAA has disseminated this policy statement to the WAA Advisory Board, Wichita Airport Authority, the City of Wichita and has also made this policy statement available on the website, [www.flywichita.com](http://www.flywichita.com) to members of the business community that perform or are interested in performing work on WAA DOT-assisted contracts. This statement is published in the solicitation documents for each federally funded project.



Victor White, Director of Airports

Date: May 4, 2021



## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The seven enumerated objectives are elaborated in the Policy Statement on the first page of this Program.

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The WAA will use terms in this program that have their meanings defined in Part 26, §26.5. (Link to the current Federal Regulations in **Attachment 1.**)

All references made herein to “contractor”, “prime contractor”, “bidder”, and “offeror” (prior to bid or contract acceptance), “consultant” shall pertain to the Prime Vendor or Vendor.

All references made herein to “subcontractor”, “sub-tier contractor” or “lower tier contractor”, sub-consultant shall pertain to any sub-vendor under contract.

All references made herein to “sponsor” and “owner” shall pertain to the Wichita Airport Authority (WAA) executing contracts with the Vendor.

### **Section 26.7 Non-discrimination Requirements**

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

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT:**

WAA will provide data about its DBE Program to the Department of Transportation (DOT) as directed by DOT operating administrations.

The WAA will report DBE participation to DOT/FAA as follows:

WAA 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



Appendix B to Part 26. WAA will similarly report the required information about participating DBE Vendor firms. All reporting will be done through the FAA's DBE CONNECT, DBE Online Reporting System, program or other acceptable format..

#### Vendors List:

The WAA will create and maintain a master vendors list. The purpose of this list is to provide as accurate data as possible about the universe of DBE and non-DBE vendors and sub-vendors who seek to work on DOT-assisted contracts, for use in helping to set overall goals. The vendors list will include the name, address, DBE/non-DBE status, age of firm and annual gross receipts of firms.

This information will be collected with every solicitation, See **ATTACHMENT 3**, Vendor's List Collection Form.

#### Records Retention and Reporting:

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

### **Section 26.13 Federal Financial Assistance Agreement Assurance**

WAA as owner and operator of Dwight D. Eisenhower National Airport and Colonel James Jabara Airport has signed the following grant assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance

26.13a Each financial assistance agreement WAA signs with DOT/FAA will include the following assurance:

"The WAA 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 WAA 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 WAA'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 DBE 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 WAA of its failure to carry out its approved DBE 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

The WAA will ensure that the following clause is included in each contract signed with a prime vendor and each sub-vendor contract the prime vendor signs with a sub-vendor. Stated verbatim as in 26.13(b).

“The prime vendor, sub-recipient or sub-vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The vendor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the vendor 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 WAA deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the vendor from future bidding as non-responsible.”

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

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

Linda Turley, Capital Program Coordinator\*  
2173 Air Cargo Road  
Wichita, Kansas 67209  
Telephone: (316) 946-4716 FAX: (316) 946-1898

E-mail: [AIRPORTDBE@wichita.gov](mailto:AIRPORTDBE@wichita.gov)

\*Through 6/25/2021. The replacement DBELO will start on 6/28/2021 and will be:

Deidra Cronk, Capital Program Coordinator  
2173 Air Cargo Road  
Wichita, Kansas 67209  
Telephone: (316) 613-4103 FAX (316) 946-1898

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the WAA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Airports concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in **ATTACHMENT 2**, Organizational Chart.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO has a staff of the Airport Engineering Planning Manager and City Legal Counsel as permanent members of the DBE Advisory and Review Committee. Other individuals available are the Director of Airports, Assistant Director of Airports, Airport Finance Manager, City of Wichita Purchasing Manager and the Project Engineer or their designees to assist in the administration of the program. DBELO 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 DBE Program.

3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for qualifications are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes WAA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Conducts pre-construction meetings with the Vendor and all sub-vendor administrative personnel to review DBE policies, procedures and forms.
9. Advises the Director of Airports and City of Wichita Contract Compliance Officer on DBE matters and achievement.
10. Chairs the DBE Advisory and Review Committee. This permanent committee consists of Airport Engineering and Planning Manager, DBELO, and Wichita Airport Authority liaison lawyer from City of Wichita Law Department. Other members may be added as deemed appropriate.
11. Leads the committee to determine vendor compliance with good faith efforts and other DBE regulatory issues.
12. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
13. Plans and participates in DBE training seminars.
14. Acts as liaison to the Uniform Certification Process in Kansas.
15. Supports City of Wichita in providing outreach to DBEs and community organizations to advise them of opportunities.
16. Maintains an updated directory on certified DBEs from the UPC.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the WAA to investigate the extent of services offered by financial institutions chartered for commercial lending owned and controlled by socially and economically disadvantaged individuals in the community as defined by WAMPO (Wichita Area Metropolitan Planning Organization) jurisdiction, to make reasonable efforts to use these institutions, and to encourage prime vendors on DOT-assisted contracts to make use of these institutions.

After a review of all the financial institutions in the Wichita metropolitan area via telephone and written letter, it has been determined that there are no institutions owned and controlled by socially and economically disadvantaged individuals, at this time. The WAA will continue to investigate and review every three years the availability of financial institutions and services and to make reasonable efforts to use these institutions and encourage their use by others.

## **Section 26.29 Prompt Payment Mechanisms**

The WAA requires that all sub-vendors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. The WAA has established, as part of its DBE Program, a contract clause to implement this requirement and requires prime vendors to pay all sub-vendors for satisfactory performance of their contracts less retainage and amounts in dispute no later than **seven (7) business** days from receipt of each payment made to the prime vendor by the WAA.

WAA will monitor to confirm prompt and full payment of retainage from the prime vendor to the sub-vendor within **seven (7) business** days after the sub-vendor's work is satisfactorily completed. WAA will use the following method to comply with this requirement:

Hold retainage from prime vendors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime vendors based on these acceptances, and require a contract clause obligating the prime vendor to pay all retainage owed to the sub-vendor for satisfactory completion of the accepted work within seven (7) business days after the WAA payment is received by the prime vendor.

To implement this measure, the WAA will include the following clause in each DOT-assisted contract and subcontract.

"The Vendor agrees to pay each sub-vendor under this Contract for satisfactory performance of its contract no later than seven (7) business days from the receipt of each payment the Vendor receives from WAA. The Vendor agrees further to return retainage payments to each sub-vendor within seven (7) business days after the sub-vendor'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 WAA. This clause applies to both DBE and non-DBE sub-vendors."

#### **Section 26.31            Directory**

WAA is a non-certifying member of the Kansas Unified Certification Program (UCP). The Kansas Department of Transportation (Kansas UCP) publishes and maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by Part 26.31. See **ATTACHMENT 4**, KDOT Directory Links.

#### **Section 26.33            Over Concentration**

WAA monitors whether there is an over concentration element necessary in this DBE Program. At this time, none has been identified.

#### **Section 26.35            Business Development Programs**

The WAA, through the City of Wichita, has a Small Business Development Program (EBE) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The City of Wichita works in conjunction with the KDOT, Kansas Department of Commerce (KDOC), Kansas Small Business Development Center (KSBDC), and Procurement Technical Assistance Center (PTAC) in workshops, expos, technical assistance programs and resource centers to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. The City Contract Compliance Officer is a free business resource, advocacy and information contact for new and existing businesses. The Officer provides guidance and assistance for businesses and/or referrals to other assistance/resource agencies. Applicants can apply through the City's website at: <http://selfservice.wichita.gov> This website also includes links to the other participating partners.

## **Section 26.37            Monitoring Responsibilities**

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

WAA actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments through the use of an automated system that requires real time entry of payments to, and receipts by, prime Vendors and sub-vendors and regularly monitoring that system called the Diversity Management System (DMS).

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

- WAA proactively reviews contract payments to sub-vendors including DBEs monthly with each partial payment to the prime Vendor. Payment reviews will evaluate whether the actual amount paid to the sub-vendors is equivalent to the amounts reported to the WAA by the prime Vendor.

### **Prompt Payment Dispute Resolution**

WAA will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of 49 CFR Part 26.29. To implement this measure the following clauses shall be included in each DOT-assisted Contract and subcontract:

- "In the event of a dispute arising out of or relating to this Agreement, each party agrees not to commence legal proceedings without first attempting, in good faith, to resolve the dispute amicably and speedily in accordance with the following dispute resolution procedures.
  - Any such dispute shall be referred in the first instance to the main individuals responsible for administering this Agreement within the WAA's and Vendor's and sub-vendor's businesses respectively. Any meeting for the purpose of dispute resolution shall include individuals authorized to bind each interested party, including the WAA with authority to take enforcement action.
  - If the dispute is not resolved in accordance with the first instance meeting decision, it shall be referred at the written consent of either party to the Director of Airports representing the WAA and the owners of the companies representing the Vendor and sub-vendor. These Managing Directors may delegate their responsibilities and authority to representatives of their organizations.
- If the dispute is not resolved within fourteen (14) business days of being referred to the Managing Directors (or such longer period as the parties may mutually agree), the parties will attempt to settle by mediation through a neutral mediator available from the list of the Wichita Bar Association or the District Court for the State of Kansas selected by the Parties.

- If mediation is unsuccessful, this Alternative Dispute Resolution procedure shall be considered terminated as regards the dispute in question and either party may proceed to litigation.
- This Alternative Dispute Resolution shall not prevent a party to this Agreement from taking immediate injunctive action necessary to preserve its interests.
- This dispute resolution process will be included in all subcontracts as a mechanism to resolve payment disputes.”

### Prompt Payment Complaints

Complaints by sub-vendors regarding the prompt payment requirements are handled according to the following procedure:

- Affected sub-vendor should immediately contact the Prime Vendor regarding the prompt payment requirements. Prime Vendor is required as part of the contract obligations to agree to a prompt payment dispute resolution process prior to starting onsite work. If no resolution forthcoming, sub-vendor should contact DBELO.
- If affected sub-vendor is not comfortable contacting the Prime Vendor directly regarding payment or unable to resolve payment discrepancies with the Vendor, sub-vendor should contact DBELO to initiate complaint.
- The DBELO will facilitate meeting(s) between Prime Vendor and affected sub-vendor, with WAA project representative attending, as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including WAA representatives to take enforcement action. If still unresolved, the Alternative Dispute Resolution detailed above will take place.
- If filing a prompt payment complaint with the DBELO does not resolve a prompt payment dispute, affected sub-vendor may, as the next step regarding a resolution, contact the Federal Aviation Administration, Central Region, 1-816-329-2600.
- Reporting complaints to the FAA:
  - 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

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

- Failure of the prime Vendor to timely pay any sub-vendor in the manner described above subjects the Prime Vendor to an obligation of interest at the rate of 18% per annum pursuant to KSA 16-1903 to be paid to the affected sub-vendor(s).
- In accordance with the contract, WAA may assess liquidated damages against the prime vendor for each day beyond the required time period the Prime Vendor fails to pay the sub-vendor.
- Failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the WAA deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;

- (2) Assessing sanctions;
- (3) Disqualifying the Vendor from future WAA project bidding
- (4) Disqualifying the Vendor from future City of Wichita project bidding as non-responsible. The disqualifications listed herein may exist for up to three (3) years.
- WAA will advise sub-vendors of the availability of the payment and performance bonds, as applicable, to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay sub-vendors directly and deduct this amount from the payment owed to the Prime Vendor, The WAA reserves the right to charge a 20% administrative fee of each unpaid payment.
- Issue a stop-work order until payments are released to sub-vendors, specifying in the Agreement that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.

WAA will actively implement and enforce the actions of this section.

See **ATTACHMENT 7C**, DBE Monitoring Forms, for sample contract language for prime Vendors.

#### Monitoring Contracts and Work Sites

WAA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award and subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by DBELO and/or Resident Engineer or Inspector (consultants). Contracting records are reviewed by DBELO. WAA will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose. See **ATTACHMENTS 7A, 7B and 7C**, DBE Construction Specification and DBE RFQ Solicitation Sections and DBE Monitoring Forms.

#### **Section 26.39            Fostering Small Business Participation**

The WAA has created and submitted a Small Business element to the FAA for approval. Once approved the element will structure contracting requirements to facilitate competition by small business concerns. Once approved the WAA will take all reasonable steps to eliminate obstacles to small business participation that may preclude small business participation in procurements as prime vendors or sub-vendors.

The WAA's small business program element is incorporated as **ATTACHMENT 10**, Small Business Element, to this DBE Program. Until the WAA has the benefit of FAA guidance, it will implement this element as drafted.



## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Quotas or Set Asides**

The WAA does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The WAA will establish an overall DBE goal covering a three-year federal fiscal year period for each airport if it anticipates awarding FAA-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 Section 26.45(f) the WAA will submit its Overall Three-year DBE Goal to FAA by August 1 of the year in which the goal is due, as required by and posted to the website of the FAA.

([https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDRE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDRE_Reporting_Requirements_Dec_2017_Issue.pdf))

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Eisenhower ICT Small Hub Primary</b>	<b>Central</b>	<b>August 1, 2020 (2021/2022/2023)</b>	<b>August 1, 2023 (2024/2025/2026)</b>
<b>Jabara AAO Non-Primary GA</b>	<b>Central</b>	<b>August 1, 2021 (2022/2023/2024)</b>	<b>August 1, 2024 (2025/2026/2027)</b>

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the WAA 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 the WAA 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. WAA will use the KDOT DBE Directory and Census Bureau Data as a method to determine the base figure. The WAA 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 WAA 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. WAA 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 WAA market.

In establishing the overall goal, WAA will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the WAA efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, and / or teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the WAA is required to submit the goal methodology to the FAA Civil Rights Office for review pursuant to Part 26.45(f). The goal submission will document the consultation process in which the WAA engaged. Notwithstanding paragraph (f)(4) of Part 26.45, the proposed goal will not be implemented until this requirement is met. The persons or groups with whom this consultation occurred will be listed specifically in the goal methodology and calculation attachment.

In addition to the consultation, the WAA will publish a notice announcing the proposed overall goal before submission to the FAA on August 1<sup>st</sup> of the tri-annual goal submission. The notice will be posted on the WAA official internet web site ([www.flywichita.com](http://www.flywichita.com)) and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site ([www.flywichita.com](http://www.flywichita.com)).

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

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

### Project Goals

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

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

### Prior Operating Administration Concurrence

WAA 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 the WAA for calculating goals is inadequate, FAA may, after consulting with WAA,

adjust the overall goal or require that the goal be adjusted by WAA. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the FAA will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to Part 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **ATTACHMENT 5**, DBE Goal Calculations, to this program.

#### **Section 26.47 Failure to meet overall goals.**

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

WAA 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.

WAA understands that if the 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, the following actions must be taken in order to be regarded by the Department as implementing the 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 met;
3. WAA will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. A copy will be retained in WAA records for a minimum of three years and made available to FAA on request.

#### **Section 26.51 Means Recipients Use to Meet Overall Goals**

##### **Breakout of Estimated Race-Neutral & Race-Conscious Participation**

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

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation is found in **ATTACHMENT 5**, DBE Goal Calculations.

#### 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 DBE contract goal. The bidder/offerer can demonstrate that it has made good faith efforts by either meeting the DBE contract goal or

documenting that it has made good faith efforts prior to the time of bid opening or fee proposal. Examples of appropriate documentation of good faith efforts are found in Appendix A to Part 26 (See **ATTACHMENT 1**, Federal Regulations, 49 CFR Part 26).

The DBELO and/or the DBE Advisory and Review Committee is responsible for determining whether a bidder/offeree who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

This DBELO will ensure that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts as submitted with the bid/offering documents before committing to the performance of the contract by the vendor.

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

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 WAA, 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 and signed documentation of the bidder/offeree's commitment to use a DBE sub-vendor whose participation it submits to meet the DBE contract goal; and
  - e. Written and signed confirmation from each listed DBE that it is participating in the Contract in the kind and amount of work provided in the Vendor's commitment.
  - 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; and
3. The bidder/offeree will be required to present the information stipulated in paragraph 2. of this section:
4. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures with final fee estimate. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeree may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2.) of this section before the final selection for the contract is made by the WAA. See **ATTACHMENT 6**, Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1 & 2

#### Administrative reconsideration

Within three (3) business days after date of notification by WAA that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeree may request administrative

reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: City of Wichita Contract Compliance Officer or designee, 12<sup>th</sup> Floor City Hall, 455 N. Main, Wichita, Kansas 67202. 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 within 10 business days of written request to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. This official will send the bidder a written decision within 10 business days on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process for DBE responsiveness is not administratively appealable to the Department of Transportation and is a final administrative action exhausting all remedies.

#### Good Faith Efforts procedural requirements (post-solicitation)

The awarded Vendor will be required to submit a copy of all subcontracts. The Vendor shall ensure that all subcontracts or agreements with all sub-vendors to supply labor or materials include all required contract provisions and mandate that the sub-vendor and all lower tier sub-vendors perform in accordance with the provisions of Part 26.

Vendors will be prohibited from terminating a DBE sub-vendor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the WAA. This includes, but is not limited to, instances in which a Vendor seeks to perform work originally designated for a DBE sub-vendor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if WAA agrees, for reasons stated in the concurrence document, that the Vendor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause is defined as one or more of the following ten circumstances:

1. The listed DBE sub-vendor fails or refuses to execute a written contract;
2. The listed DBE sub-vendor 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 sub-vendor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime vendor;
3. The listed DBE sub-vendor fails or refuses to meet the prime vendor's reasonable, non-discriminatory bond requirements.
4. The listed DBE sub-vendor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE sub-vendor is ineligible to work on capital projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. WAA determined that the listed DBE sub-vendor is not a responsible vendor;
7. The listed DBE sub-vendor voluntarily withdraws from the project and provides WAA a 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 vendor is unable to complete its work on the contract;

10. Other documented good cause that WAA has determined compels the termination of the DBE sub-vendor. Provided, that good cause does not exist if the Vendor seeks to terminate a DBE it relied upon to obtain the contract so that the Vendor can self-perform the work for which the DBE vendor was engaged or so that the Vendor can substitute another DBE or non-DBE vendor after contract award.

Before transmitting to the WAA a request to terminate and/or substitute a DBE sub-vendor, the Vendor must give notice in writing to the DBE sub-vendor, with a copy to WAA, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

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

Each prime contract will include a provision stating:

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

WAA will require a Vendor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the vendor. If WAA requests documentation from the vendor under this provision, the vendor shall submit the documentation within 7 business days, which may be extended for an additional 7 business days if necessary at the request of the vendor. WAA shall provide a written determination to the vendor stating whether or not good faith efforts have been demonstrated.

If the vendor fails or refuses to comply in the time specified, the WAA may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the vendor still fails to comply, the contracting officer may issue a termination for default proceeding. ***If the Vendor fails or refuses to comply in the time specified, the WAA may, at its discretion, withhold payment until satisfactory action has been taken. The parties agree this action will be a valid retention under KSA 16-1901 SSQ.***

## **Section 26.55      Counting DBE Participation**

DBE participation will be counted toward overall and contract goals as provided in 49 CFR 26.55. The participation of a DBE sub-vendor will not be counted toward a Vendor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.



## **SUBPART D – CERTIFICATION STANDARDS**

### **Sections 26.61 - 26.73      Certification Process**

WAA is a non-certifying member of the Kansas Unified Certification Program (UCP). The Kansas Department of Transportation (KDOT), the Kansas 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 Kansas UCP (KDOT) makes all certification decisions based on the facts as a whole.

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

Doria Watson, Civil Rights Administrator  
Kansas Department of Transportation  
Office of Civil Rights  
700 SW Harrison Street, 3<sup>rd</sup> Floor  
Topeka, KS 66603-3754  
(785) 296-6703  
[doria.watson@ks.gov](mailto:doria.watson@ks.gov)

Rhonda Harris, Director  
Kansas Department of Commerce  
Office of Minority & Women Business Development  
1000 SW Jackson, Suite 100  
Topeka KS 66612-1354  
(785) 296-3425  
[ronda.harris@ks.gov](mailto:ronda.harris@ks.gov)

The Uniform Certification Application form and documentation requirements are found in **ATTACHMENT 8**, DBE Certification Application Form, to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81      Unified Certification Program**

WAA is the member of a Unified Certification Program (UCP) administered by the Kansas Department of Transportation (KDOT). The UCP will meet all of the requirements of this section. See **ATTACHMENT 9**, Kansas UCP Agreement.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to WAA**

WAA understands that if it fails to comply with any requirement of this part, WAA 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.

### **Section 26.109 Information, Confidentiality, Cooperation and Intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties to the extent of Kansas Open Records Act K.S.A. 44-215 et seq.

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 USDOT 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 FAAs DBE program (including, but not limited to, recipients such as the WAA, 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 USDOT 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 vendor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

WAA, vendor, 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. WAA understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **Attachments**

Attachment 1	Regulations: 49 CFR Part 26, and link to website
Attachment 2	Organizational Chart of DBELO
Attachment 3	Vendor's List Collection Form
Attachment 4	KDOT DBE Directory Links
Attachment 5	Overall DBE Goal Methodology
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1 & 2
Attachment 7	DBE Monitoring & Enforcement Mechanisms
Attachment 7A	DBE Construction Specification Section
Attachment 7B	Consultant RFQ DBE Section
Attachment 7C	Sample Prime Vendor Contracts and Enforcement Forms
Attachment 8	DBE Certification Application Form
Attachment 9	Kansas UCP Agreement
Attachment 10	Small Business Element Program

**ATTACHMENT 1**

**REGULATIONS: 49 CFR WITH LINK TO WEBSITE**

**The following link will take the reader to the current electronic version of the federal regulations regarding the DBE Program.**

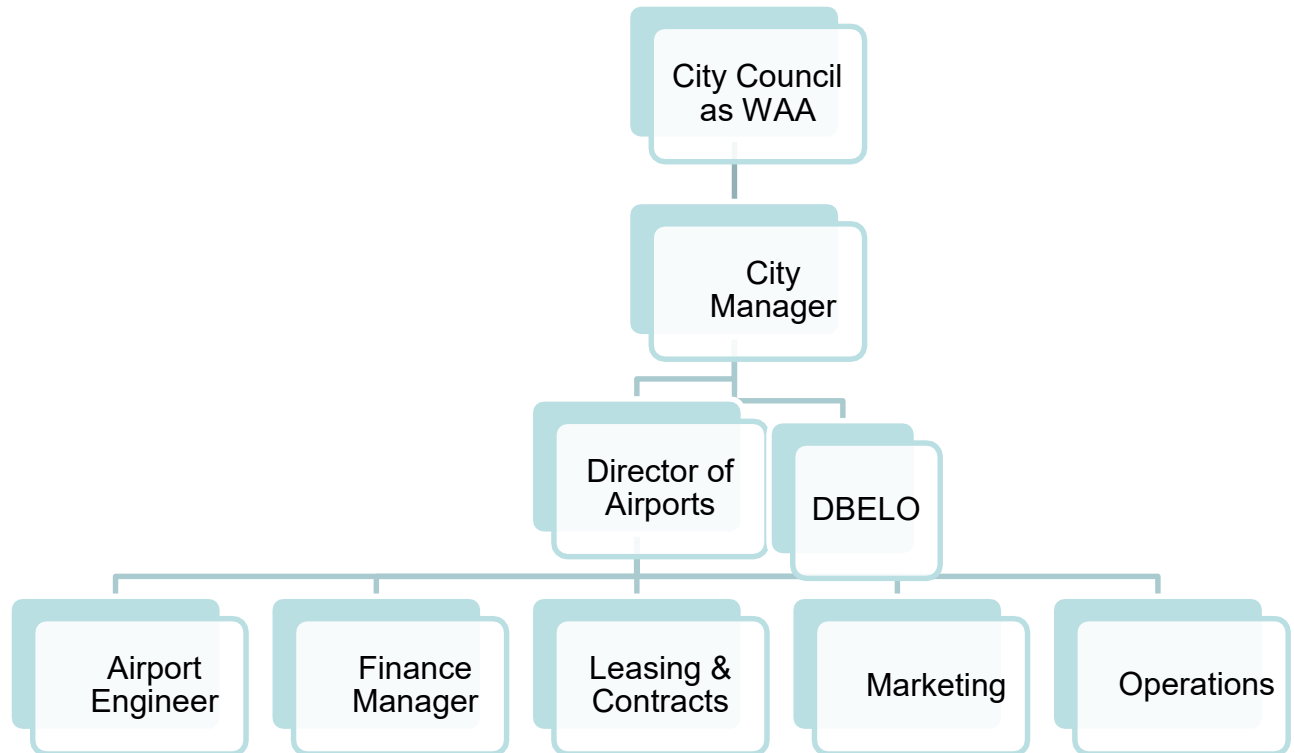
**[https://ecfr.io/Title-49/pt49.1.26#\\_top](https://ecfr.io/Title-49/pt49.1.26#_top)**

**ATTACHMENT 2**

**DBELO ORGANIZATIONAL CHART**

This page intentionally left blank.

# Wichita Airport Authority



### **ATTACHMENT 3**

#### **BID/PROPOSAL PARTICIPANTS LIST**

**All available information on the form shall be collected from every bidder/offerer who submits a quote/bid to the WAA and every potential sub-vendor who submitted a quote/bid to each bidder. Part 26.11 (c) requires the WAA to collect all available information from all bidders and subcontractors, including unsuccessful ones.**

## ATTACHMENT 3

Bidder/Offer Participants List

Firm Name	Firm Address/ Phone #	DBE or Non- DBE Status (Verify via KS UPC Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 mil <input checked="" type="checkbox"/> \$1 – 2 million <input checked="" type="checkbox"/> \$2 – 5 million <input checked="" type="checkbox"/> Greater than \$5 mil



## **ATTACHMENT 4**

### **KDOT/KDOC DBE DIRECTORY LINKS**

In order to view the Kansas Department of Transportation (KDOT) DBE Directory, please use the following process:

1. Go to the KDOT website. [www.ksdot.org/](http://www.ksdot.org/)
2. Under the Doing Business tab, click on Office of Contract Compliance.
3. Under the Disadvantaged Business Enterprises –click on the Directory of Disadvantaged Business Enterprises tab for the construction, manufacturing, supplier related DBE listing.

Please note, the only Certifying Agency in Kansas is KDOT. The Department of Commerce (KDOC) list contains some certified DBEs. If the firm is not also found on the KDOT list that firm is NOT counted toward DBE participation. Those firms found only on the KDOC list, if they wish to work on a construction project (or participate in Airport concessions as an ACDBE), should be encouraged to obtain KDOT certification before the date of bid opening or final fee submittal on negotiated contracts. The KDOC list contains small businesses certified as MBEs and WBEs in the state of Kansas and could be used for the Small Business Element of this DBE program.

In order to view the Kansas Department of Commerce (KDOC) Minority & Women Business Directory, please use the following process:

1. Go to the KDOC website. [www.kansascommerce.com](http://www.kansascommerce.com)
2. Under the Programs & Services tab, click on Minority and Women Business Development tab.
3. Click on the Kansas Minority & Women Business Directory. These firms may or may not be certified DBEs. There will be other firms on this list besides just construction.
4. View companies using the filters. Please note there are companies on this list not certified as DBEs. In order to count toward a DBE contract goal, firms must be certified in Kansas prior to bid opening or final fee submittal on negotiated contracts.

**ATTACHMENT 5**

**OVERALL DBE GOAL METHODOLOGY**

This page intentionally left blank.

## ATTACHMENT 5

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** *Wichita Airport Authority (WAA) owning Dwight D. Eisenhower National (ICT) Airport*

**Goal Period:** Federal FY-2021-2022-2023 – October 1, 2020 through September 30, 2023

<b>FAA eligible contract amount:</b>	FY-2021	\$ 0.00
	FY-2022	\$ 11,314,000
	FY-2023	\$ 178,000
	<b>Total</b>	<b>\$ 11,492,000</b>

**Overall Three-Year Goal of Eligible Contract Dollars:** 5.58%, to be accomplished through 4.58% Race Conscious (contract DBE goals) and 1.00% Race Neutral as reflected through a weighted average percentage. *WAA will spread these DBE dollars over the total project costs thereby dropping the DBE goal to 4.32% with 1% accomplished through Race Neutral means.*

**Approximate total eligible dollar amount to be expended on DBEs:**

$\$641,800 = \text{multiply goal } 5.58\% \times \text{DOT- assisted } \$11,492,000 \text{ amount. WAA will spread the DBE dollars over the total project dollars, } \$641,800 \text{ divided by } \$14,848,000 = 4.32\%$

**Describe the Number and Type of Contracts that the airport anticipates awarding:**

Contracts Fiscal Year #1 **NONE**

Contracts Fiscal Year #2 (eligible amounts)

1. General Aviation Reconstruction Engineering Inspection - \$2,699,000\*  
\*\$1,868,000 of this contract already let with 5% DBE goal met (\$831,000 remaining)
2. General Aviation Reconstruction Construction - \$8,614,000

Contracts Fiscal Year #3 (eligible amount)

1. Pavement Management Plan Update - \$178,000

**Market Area:** Sedgwick County and the surrounding counties of Butler, Cowley, Harper, Harvey, Kingman, Reno and Sumner have been used to narrow the focus to this geographical area in which the Airport spends the substantial majority of its contracting dollars. The Census Data for each of these counties by potential NAICS codes to be used was reviewed and tallied. (2020 NAICS Codes by County Excel spreadsheet is available upon request)

**Step 1. Actual relative availability of DBEs**

The base figure for the relative availability was calculated as follows:

Method: Use the Kansas DBE Directory from the Kansas UPC,  
<http://kdotapp.ksdot.org/dbecontractorlist/>  
and Census Bureau Data from

<https://data.census.gov/cedsci/table?q=United%20States&q=0100000US&tid=ACSDP1Y2018.DP05>

Unweighted Availability of DBE Firms:

2020 NAICS Codes by County Excel spreadsheet from the Census.gov business and Industry tables for the total number of Establishments in the state and regional counties listed above. The data source or demonstrable evidence used to derive the numerator was: Kansas Department of Transportation, Office of Civil Rights, Kansas UPC DBE Directory.

The data source or demonstrable evidence used to derive the denominator was: Census Bureau 2017 Business and Industry Tables by State, County and NAICS Codes.

Dividing the total number of Kansas certified DBEs in the included NAICS Codes by the total number of All State Firms in the given NAICS codes gives a base DBE availability figure of 2.91%.

Weighted Availability of DBE firms:

Fiscal Year #2

For FY-2022, award of the following is anticipated

<b>Contract Name</b>	<b>Trade Description</b>	<b>NAICS Description</b>	<b>NAICS</b>	<b>Trade (\$)</b>	<b>Census</b>	<b>Directory</b>	<b>DBE (%)</b>	<b>DBE (\$) (= Trade \$ x DBE %)</b>
GA Apron Rehab Construction	Asphalt, Concrete, Dust Control, Striping	Highway & Street Construction	237310	\$4,191,000	1137	69	6.1%	\$257,000
	Demolition, Excavation, Earthwork	Site Preparation	238910	2,736,000	287	19	6.7%	\$183,000
	Mobilization	Multiple		\$787,000	4732	42	0.9%	\$7,000
	Utility Piping	Water and sewer line and related structures	237110	\$466,000	850	39	4.7%	\$22,000
	Quality Control, Testing	Surveying, Mapping, Testing	541370 541380	\$285,000	110	17	15.8%	\$45,000
	Electrical	Electrical Contractors	238210	\$65,000	389	12	3.1%	\$2,000
	Temp. Erosion Control, Landscaping	Erosion Control Landscaping	561730	\$85,000	509	18	3.5%	\$3,000
<b>Total Contract #1</b>				<b>\$8,615,000</b>			<b>6%</b>	<b>\$519,000 (6 % of \$8,614,000)</b>
GA Apron Formulation Study	Project Study and Options	Engineering Services, Surveying, Testing	541330	\$548,000	646	37	5.7%	\$31,000
GA Apron Design & Bid	Engineering Services	Engineering Services	541330	\$1,319,000	520	20	3.85%	\$50,000
GA Apron	Construction	Engineering	541330	\$832,000	520	20	3.85%	\$32,000

Inspection Services	Related Services	Services						
<b>Total Contract #2</b>				<b>\$2,699,000</b>			<b>4.19%</b>	<b>\$113,000 (4.19% of \$2,699,000)</b>
<b>Total FY-2022</b>				<b>\$11,314,000</b>				<b>\$632,000 (5.58%)</b>

Fiscal Year #3  
For FY-2023, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Pavement Management Plan Update	Review ,costing, analysis	Engineering Services	541330	\$74,000	529	20	3.7%	\$2,800
	Geotech, mapping	Surveying & Mapping	541370	\$18,000	48	13	27%	\$4,800
	Database Update	Computer Design	541512	\$ 5,000	415	22	5.3%	\$ 300
	Photography	Commercial Photo.	541922	\$81,000	126	3	2.3%	\$1,900
<b>Total Contract #</b>				<b>\$178,000</b>			<b>5. 5%</b>	<b>\$9,800 (5.5% of \$178,000)</b>
<b>Total FY-2023</b>				<b>\$178,000</b>				<b>\$9,800 (5.5%)</b>

The base goal projection of available contracts after weighting is as follows:

- Total Weighted DBE Availability: 632,000+9,800 = \$641,800
- Total for All Trades: 11,314,000+178,000 = \$11,492,000

Dividing the weighted DBE totals by the total estimate for all trades gives a base weighted 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.

Base of DBE Goal: \$641,800 / \$11,492,000 = **5.58%** of the eligible project dollars. The total DBE dollars will be spread over the total estimated projects cost of \$14,848,000 for a Project Dollar DBE percentage of **4.32%**.

## PUBLIC PARTICIPATION

### Consultation:

In establishing the overall goal, WAA provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and

non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the WAA efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

Ninety-two contractors, subcontractors, DBEs, EBEs, state and local agencies were sent Attachment 5 Summaries for both airports along with project maps and meeting invitations. All were encouraged to submit questions before, during or after the meetings.

The consultations engaged in were teleconferences through Microsoft Teams which were held virtually on two separate days, September 28, 2020 at 1:30 p.m. and October 1, 2020 at 2:00 p.m. Attending the first meeting were Linda Turley, DBELO; Deidra Cronk, WAA Special Projects; Jon Benedick, Tactical Safety Solutions; Thomas Castor, APAC Kansas; Rhonda Harris, Kansas Department of Commerce; Teri Taylor, SBA; Monty Wade, Applied Pavement Technology and Chris Haislett, City Contract Compliance Officer. Attending the second meeting were Linda Turley, DBELO; Deidra Cronk, WAA Special Projects; John Oswald, WAA Airport Engineer; Jay Hinkle, Deputy City Attorney; Wayne Bell, SBA; Britt Club, Professional Engineering Consultants; Caleb Coltrane, Garver; Deb Dillmer, Kansas Department of Transportation; Tom Dondlinger, Dondlinger Construction; Joe Edmundson, Professional Engineering Consultants; Gene Kimble, SBA; Gen Long, Applied Pavement Technology; Matt Jacobs, Lochner; Curtis Mitchell, Shelly Electric; Luke Rogers; and Jimmy Wallis.

Attached is the script for the meetings along with the Questions and Comments at the end. Also attached are the emailed questions and answers.

A notice of the proposed goal was published on the WAA official website ([www.flywichita.com](http://www.flywichita.com)) before the methodology was submitted to the FAA.

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

Notwithstanding paragraph (f)(4) of §26.45, WAA proposed goals will not be implemented until this requirement has been met.

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** *Wichita Airport Authority (WAA) owning Colonel James Jabara (AAO) Airports*

**Goal Period:** Federal FY-2019-2020-2021 – October 1, 2018 through September 30, 2021

<b>FAA eligible contract amount:</b>	FY-2019	\$ <u>0</u>
	FY-2020	\$ <u>390,308</u>
	FY-2021	\$ <u>751,635</u>
	<b>Total</b>	<b>\$ <u>1,141,943</u></b>

**Overall Three-Year Goal of Eligible Contract Dollars:** 6.22%, to be accomplished through 5.22% Race Conscious (contract DBE goals) and 1.00% Race Neutral as reflected through a weighted average percentage. *WAA will spread these DBE dollars over the total projects costs thereby dropping the DBE goal to 4.70% with 1% accomplished through Race Neutral means.*

**Approximate eligible total dollar amount to be expended on DBEs:** \$70,996  
= multiply goal 6.22% x DOT- assisted \$1,141,943 amount. *WAA will spread the DBE dollars over the total project dollars, \$70,996/\$1,511,194 = **4.70%***

**Describe the Number and Type of Contracts that the airport anticipates awarding:**

Contracts Fiscal Year #1 **None**

Contracts Fiscal Year #2 (eligible amount)

1. Limited Airport Layout Plan/Pavement Management Plan Update - \$390,308

Contracts Fiscal Year #3 (eligible amount)

1. Taxiway A3 Design & Bid Phase Services - \$ 63,000
2. Taxiway A3 Construction Related Services - \$ 76,500
3. Taxiway A3 Construction - \$ 612,135

**Market Area:** Sedgwick County and the surrounding counties of Butler, Cowley, Harper, Harvey, Kingman, Reno and Sumner have been used to narrow the focus to this geographical area in which the Airport spends the substantial majority of its contracting dollars. The Census Data for each of these counties by potential NAICS codes to be used was reviewed and tallied. (2020 NAICS Codes by County Excel spreadsheet is available upon request)

**Step 1. Actual relative availability of DBEs**

The base figure for the relative availability was calculated as follows:

Method: Use the Kansas DBE Directory from the Kansas UPC,

<http://kdotapp.ksdot.org/dbecontractorlist/>

and Census Bureau Data from

<https://data.census.gov/cedsci/table?q=United%20States&q=0100000US&tid=ACS>

[DP1Y2018.DP05](#)

Unweighted Availability of DBE Firms:

2020 NAICS Codes by County Excel spreadsheet from the Census.gov business and Industry tables for the total number of Establishments in the state and regional counties listed above. The data source or demonstrable evidence used to derive the numerator was: Kansas Department of Transportation, Office of Civil Rights, Kansas UPC DBE Directory.

The data source or demonstrable evidence used to derive the denominator was: Census Bureau 2017 Business and Industry Tables by State, County and NAICS Codes.

Dividing the total number of Kansas certified DBEs in the included NAICS Codes by the total number of All State Firms in the given NAICS codes gives a base DBE availability figure of 2.91%.

Weighted Availability of DBE firms:

Fiscal Year #2

For FY-2020, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
Pavement Management Plan Update	<i>Review ,costing, analysis</i>	<i>Engineering Services</i>	541330	\$282,894	529	20	3.8%	\$10,695
	<i>Geotech, mapping</i>	<i>Surveying &amp; Mapping</i>	541370	\$ 97,425	189	47	25.7%	\$25,101
	<i>Database Update</i>	<i>Computer Design</i>	541512	\$ 9,989	415	22	5.3%	\$ 530
<b>Total Contract #</b>				<b>\$390,308</b>			<b>9.3%</b>	<b>\$36,326 (9.3% of \$390,308)</b>
<b>Total FY-2020</b>				<b>\$390,308</b>			<b>9.3%</b>	<b>\$36,326 (9.3%)</b>



Fiscal Year #3

For FY-2021, award of the following is anticipated

<b>Contract Name</b>	<b>Trade Description</b>	<b>NAICS Description</b>	<b>NAICS</b>	<b>Trade (\$)</b>	<b>Census</b>	<b>Directory</b>	<b>DBE (%)</b>	<b>DBE (\$) (= Trade \$ x DBE %)</b>
Taxiway A3 Construction	Asphalt, Concrete, Dust Control, Striping	Highway & Street Construction	237310	\$146,745	1137	71	6.4%	\$9,429
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$112,320	1385	84	6.1%	\$6,762
	Mobilization	Multiple		\$122,400	4732	75	1.6%	\$1,984
	Utility Piping	Water and sewer line and related structures	237110	\$120,105	850	39	4.6%	\$5,511
	Quality Control, Testing	Surveying, Mapping, Testing	541370 541380	\$18,000	117	17	14.4%	\$2,615
	Electrical	Electrical Contractors	238210	\$56,790	5075	164	3.2%	\$1,782
	Temp. Erosion Control, Landscaping	Erosion Control Landscaping	561730	\$35,775	2057	77	3.6%	\$1,312
<b>Total Contract #1</b>				<b>\$612,135</b>			<b>4.8%</b>	<b>\$29,395 (4.8 % of \$612,135)</b>
Taxiway A3 Design & Bid	Engineering Services	Engineering Services	541330	\$63,000	529	20	3.78%	\$2,382
Taxiway A3 Inspection Services	Construction Related Services	Engineering Services	541330	\$76,500	529	20	3.78%	\$2,892
<b>Total Contract #2 &amp; 3</b>				<b>\$139,500</b>			<b>3.78%</b>	<b>\$5,274 (3.78% of \$139,500)</b>
<b>Total FY-2021</b>				<b>\$751,635</b>			<b>4.61%</b>	<b>\$34,669 (4.61%)</b>

The base goal projection of available contracts after weighting is as follows:

- Total Weighted DBE Availability: 36,326+\$34,669 = \$70,995
- Total for All Trades: 390,308+\$751,635 = \$1,141,943

Dividing the weighted DBE totals by the total estimate for all trades gives a base weighted 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.

Base of DBE Goal:  $\$70,995 / \$1,141,943 = 6.22\%$  of the eligible project dollars. The total DBE dollars will be spread over the total estimated projects cost of \$1,511,194 for a Project Dollar DBE percentage of **4.70%**.

The next Jabara DBE Goal Period for Submittal FY2022-2024, will have no goal as there will only be one AIP funded project, Updated Pavement Management Plan, with only \$67,500 of AIP eligible funding which is below the \$250,000 threshold.

## **SAMPLE ADVERTISEMENT**

(Published on the [www.flyWichita.com](http://www.flyWichita.com) website)

### **NOTICE TO PUBLIC OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FAA FUNDING AT DWIGHT D. EISENHOWER NATIONAL AIRPORT, AND THE COLONEL JAMES JABARA AIRPORT, WICHITA, KANSAS.**

The Wichita Airport Authority (WAA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26 for Wichita Mid-Continent Airport. The WAA anticipates receiving Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the WAA will sign an assurance that it will comply with 49 CFR Part 26.

#### **DBE Goals 2021-2023**

##### **Wichita Dwight D. Eisenhower National Airport (ICT)**

October 1, 2020 – September 30, 2023

Overall Airport Goal – 4.32% including 1% Race Neutral

2021 Contracts NONE

2022 Contracts

General Aviation Reconstruction, CRS – 5%

General Aviation Construction – 6%

2023 Contracts

Pavement Management Plan Update – 5.5%

#### **DBE Goals 2019-2021**

##### **Colonel James Jabara Airport (AAO)**

October 1, 2018 – September 30, 2021

Overall Airport Goal – 4.7% including 1% Race Neutral

2019 Contracts NONE

2020 Contracts

Pavement Management Plan Update – 6.82%

Limited Airport Layout Plan (ALP) – 10.0%

2021 Contracts

Taxiway A3 Design & Bid Services – 3.78%

Taxiway A3 Construction Related Services – 3.78%

Taxiway A3 Construction – 4.8%

The DBE Program is available for public inspection on the [flywichita.com](http://flywichita.com) website.

There will be no Jabara DBE goal for the FY2022-2024 goal setting period as the anticipated projects are under the \$250,000 threshold.

## **ATTACHMENT 5**

### **Breakout of Estimated Race-Neutral and Race-Conscious Participation** **(Section 26.51, a-c)**

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

WAA 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. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and WAA estimates that in meeting the established DBE project overall goal of 4.32%, it will obtain 1.00% from RN participation and 3.32% through RC measures (contract goals).

This RN (Race Neutral) breakout is based on:

	2018 Amount	DBE %	Number of Vendors		2019 Amount	DBE %	Number of Vendors
Total City DBE Prime Paid Vendors	\$ 14,088,546.63	5.89%	17		\$ 14,626,310.52	6.11%	18
Total City Contract Payments	\$ 238,945,463.78		1,294		\$ 239,219,520.24		1,333
DBE Prime Construction Vendor		5.25%	1			5.16%	1
All Other DBE Prime Vendors		0.64%	16			0.95%	17

Due to the relatively small number of DBEs within the project NAICS codes in the

Metropolitan area, 34, and due to one DBE construction vendor skewing the normal race conscious numbers, the FAA concurred that the establishment of a 1% Race Neutral goal seemed appropriate.

WAA will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §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.

**ATTACHMENT 6**

**DEMONSTRATION OF GOOD FAITH EFFORTS – FORMS 1 & 2**

This page intentionally left blank.

# UTILIZATION STATEMENT Disadvantaged Business Enterprise

## SUMMARY OF DBE CONSTRUCTION LETTERS OF INTENT

	<u>Contract Amount*</u>	<u>DBE Amount</u>	<u>Contract Percentage</u>
Contractor is a DBE#	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Supplier	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturer	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Owner-Oper. Truck	\$ _____ x 1.00 =	\$ _____	_____ %
Total DBE Participation*		\$ _____	_____ %
DBE Goal		\$ _____	_____ .00 %

\*"Contract Amount" refers to the dollar amount the Bidder has contracted with all DBE subcontractors as of the time of the bid opening and is indicated here for the purpose of calculating the percentage that this sum represents in proportion to the base bid amount.

# If the Bidder is a DBE then the participation goal is presumptively met.

\*If the total proposed DBE participation is less than the established DBE contract goal, Bidder must provide, with the Bid submittal, the Good Faith Efforts as required by 49 CFR Part 26.

The undersigned Bidder has satisfied the requirements of the specification in the following manner.  
(Check one)

- ☐ The Bidder is submitting signed Letters of Intent totaling \_\_\_\_\_% DBE utilization on this Contract, thereby meeting or exceeding the contract goal of X.00 %.

OR

- ☐ The Bidder, while unable to meet the DBE contract goal of .00 %, is submitting signed Letters of Intent totaling \_\_\_\_\_% DBE utilization on this Contract and also submits documentation demonstrating Good Faith Efforts (GFE) as an attachment to the bid documents.

The Bidder assures that the information included herein is true and correct and that the DBE firms listed on the Letters of Intent have agreed to perform commercially useful functions of work noted on each DBE's Letter of Intent. The Bidder further understands that no changes to this Utilization Statement may be made without approval from the Wichita Airport Authority.

\_\_\_\_\_  
Bidder's Firm Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**LETTER OF INTENT CONSTRUCTION**  
**Disadvantaged Business Enterprise**  
(A separate form shall be submitted for each DBE firm)

**Bidder:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Firm:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

*Each DBE Firm shall submit evidence (such as a photocopy) of their KDOT certification.*

**DBE Classification:** ☐ Contractor ☐ Subcontractor ☐ Joint Venture  
(Check all that apply) ☐ Manufacturer ☐ Supplier ☐ Owner-Operator  
Trucking

Description of Work Item(s) to be performed by DBE	NAICS	Quantity	Estimated Dollar Value
			\$
			\$
			\$
			\$
			\$
			\$
<b>DBE CONTRACT GOAL TOTAL</b>			<b>\$</b>

The Bidder is committed to utilizing the above-named DBE firm for the work described above. The estimated participation percentage is as follows:

**AFFIRMATION:**

The above named DBE firm affirms that it will perform the portion of the Contract work described herein for the estimated dollar value as indicated, **contingent upon award** of the Contract to the aforementioned Bidder.

By: \_\_\_\_\_  
(DBE Signature) (Title) (Date)



# **UTILIZATION STATEMENT** **Disadvantaged Business Enterprise**

## **SUMMARY OF DBE CONSULTANT LETTERS OF INTENT**

	<u>Contract Amount*</u>	<u>DBE Amount</u>	<u>Contract Percentage</u>
Consultant is a DBE#	\$_____ x 1.00 =	\$_____	_____%
DBE Sub-vendor.	\$_____ x 1.00 =	\$_____	_____%
DBE Sub-vendor.	\$_____ x 1.00 =	\$_____	_____%
DBE Sub-vendor	\$_____ x 1.00 =	\$_____	_____%
DBE Sub-vendor	\$_____ x 1.00 =	\$_____	_____%
Total DBE Participation*		\$_____	_____%
DBE Goal		\$_____	_____.00 %

\*"Contract Amount" refers to the dollar amount the Consultant has contracted with all DBE subcontractors as of the time of the contract award and is indicated here for the purpose of calculating the percentage that this sum represents in proportion to the Consultant contract amount.

#If the Consultant is a DBE then the participation goal is presumptively met.

\*If the total proposed DBE participation is less than the established DBE contract goal, Consultant must provide, prior to the Contract Award, the Good Faith Efforts as required by 49 CFR Part 26.

The undersigned Consultant has satisfied the requirements of the contract in the following manner.  
*(Check one)*

☐ **The Consultant is submitting signed Letters of Intent totaling \_\_\_\_\_% DBE utilization on this Contract, thereby meeting or exceeding the contract goal of 5.00 %.**

**OR**

☐ **The Consultant, while unable to meet the DBE contract goal of .00 %, is submitting signed Letters of Intent totaling \_\_\_\_\_% DBE utilization on this Contract and also submits documentation demonstrating Good Faith Efforts (GFE) as an attachment to the contract documents.**

The Consultant assures that the information included herein is true and correct and that the DBE firms listed on the Letters of Intent have agreed to perform commercially useful functions of work noted on each DBE's Letter of Intent. The Consultant further understands that no changes to this Utilization Statement may be made without prior approval from the Wichita Airport Authority.

\_\_\_\_\_  
 Consultant's Firm Name

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date



## **ATTACHMENT 7**

### **MONITORING AND ENFORCEMENT MECHANISMS**

The WAA 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 d the Kansas Act Against Discrimination (Kansas Statutes Annotated 44-1001 et.seq., as amended);

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.

See **ATTACHMENT 7A** for detailed specification information.

#### **Monitoring Payments to DBEs and Non-DBEs**

WAA undertakes ongoing monitoring of Vendor payments to sub-vendors over the course of any covered contract. Such monitoring activities will be accomplished through the following methods:

1. Posting the Vendor payments to the web-based Diversity Management System (DMS) software (provided by B2Gnow) accessible to sub-vendors to alert them to the start of the seven-business-day clock for payment.
2. This automated system requires real time entry of payments to, and receipts by, Vendors and sub-vendors and regular monthly monitoring of that system.
3. All identified discrepancies must be cleared before next payment to Vendor. **No further progress payments** will be made until the previous month's certification audit reports are approved by the WAA including remedy of discrepancies.
4. Vendor must provide the WAA evidence of prompt and full payment of retainage held by the Vendor to the sub-vendor within 7 business days after the sub-vendor's work is satisfactorily completed. A sub-vendor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the WAA. When the WAA has made an incremental acceptance of a portion of a prime contract, the work of a sub-vendor covered by that acceptance is deemed to be 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 WAA. This applies to both DBE and non-DBE sub-vendors.

#### **Prompt Payment Complaints**

- Other penalties for failure to comply, up to and including termination of this Agreement, and disqualifying the Vendor from future airport and City of Wichita project bidding as non-responsible for a period of up to three (3) years.

The WAA has taken the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The WAA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The WAA will implement similar action under its own legal authorities, including responsibility determinations in future contracts. **ATTACHMENT 7** lists the regulations, provisions, and contract remedies available in the event of non-compliance with the DBE regulation by a participant in the DBE Program. City Purchasing has established a local debarment procedure for non-compliance with DBE regulations. **ATTACHMENT 7A** details the DBE section reflected in the construction project specifications. From time to time the WAA may modify **ATTACHMENT 7A** to address specific project requirements or regulatory changes. **ATTACHMENT 7B** details forms and processes for monitoring contracts and projects for DBE compliance.
3. The WAA has implemented 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.
  - a. When bids are submitted, the DBELO verifies that all DBEs listed in the bid documents are certified in the state of Kansas in the designated NAICS code against the KDOT list of certified DBEs, reviews all bid paperwork for accuracy in determining vendor utilization calculations, reviews all Good Faith Effort (GFE) documentation (if required), and contacts DBEs directly by phone for verifications. If all paperwork is in order, DBELO concurs with award to bidder.
  - b. When the Prime bidder is selected and notified, he will login to the Diversity Management System (DMS) software and enter the bid information, including: Prime Vendor Name, contact information, amount of bid, DBE commitment. All sub-vendor information for each DBE sub-vendor will be entered including DBE contract commitment amounts, start date, NAICS code(s) for committed work and a copy of the Kansas DBE certification for each DBE. This DBE Utilization plan will be accepted or rejected by the DBELO and saved as provisional until after contract award. During this period no changes do the accepted DBEs will be allowed without written approval of the DBELO. At contract award the Prime Vendor will enter all known sub-vendors and amount of each contract with NAICS codes, start dates and contact information into the system. If the complete Utilization Plan is accepted by the DBELO it will be attached to the contract in the system for monitoring. All contracts and subcontracts will be monitored for DBE participation and utilization on a monthly basis.
  - c. When contracts and subcontracts are received, the DBELO reviews each contract to assure all federal provisions are attached, bonds (if necessary) and insurance are attached, contract assurances and clauses contained, the federal Debarment list is checked and the retainage percentage is correct. DBELO notes verification date of each contract, subcontract and purchase order. At verification time, the DBE percentage and total subcontracting percentage are noted and compared with prime vendor utilization statements and notes findings on Project Contract chart and in the DMS software. Copies of all contracts will

be uploaded into the software system.

4. WAA 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 monitoring and enforcement may include, but is not limited to:
  - a. Observation at the job site of the work being accomplished by the DBE firms' employees by one or all of the following; DBELO, Airport Engineering & Planning Manager, Project Engineer or designated representatives. These observations can be accomplished visually on site or through phone interviews with the DBE personnel. The observations will be certified not less than quarterly on the DBE Commercially Useful Function Observation (CUF) form. See **ATTACHMENT 8**.
  - b. Maintain file of DBE and all sub-vendor contracts and/or purchase orders. Certify subcontract review and compliance as stated in 3b above. Verify payments by the Vendor to the sub-vendors in the Diversity Management System (DMS).
5. WAA has implemented a mechanism that will provide for a running 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.
  - a. Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award/ Verify monthly at time of pay application submittal.
  - b. Withhold payments to Vendor until Vendor certifies payments are made to each individual DBE sub-vendor and to each non-DBE firm.
  - c. Require Vendor to perform "good faith efforts" to locate replacement DBE firms if the original DBE cannot or will not perform the work.

**ATTACHMENT 7A**

**MONITORING AND ENFORCEMENT**

**DBE PROGRAM MANUAL**

(This page intentionally left blank)

## **ATTACHMENT 7A**

### **REGULATIONS, PROVISIONS AND CONTRACT REMEDIES**

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) SAMPLE SPECIFICATION**

##### **SECTION 5 from Project Manual (Revised 1-31-2021)**

a. **VENDOR RESPONSIBILITIES.** The Vendor shall agree to the below stated Department of Transportation policy and Disadvantaged Business Enterprise obligations and further agrees to insert the following Clauses, A and B in all subcontracts. See **Page 1** WAA DBE Policy Statement (Section 5,)

**A. Contract Assurance:** The Vendor, sub recipient or sub-vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Vendor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. After Contract award, failure by the Vendor 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 Owner deems appropriate.

**B. Prompt Payment:** The Vendor agrees to pay each sub-vendor, and/or sub recipient under this Contract for satisfactory performance of its contract no later than seven (7) calendar days from receipt of each payment the Vendor receives from the Owner. The Vendor agrees further to return retainage payments to each sub-vendor within seven (7) calendar days after the sub-vendor'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 sub-vendors.

As proof of prompt payment to DBEs and all sub-vendors, Vendor shall certify receipt of payment from Owner through the Diversity Management System (DMS) and verify payments to each sub-vendor of payment date and amount paid on each progress payment. Each sub-vendor will receive notification from DMS of payment from Vendor and will verify payment date and amount. If sub-vendor has third tier subs, the process will continue until all payments verified in DMS.

**NO PROGRESS PAYMENTS WILL BE MADE UNTIL THE PREVIOUS MONTH'S REPORTS ARE RECEIVED AND APPROVED BY THE OWNER.**

b. **DBE ADMINISTRATION.**

**A. DBE Contract Goal:** The Owner has established, in connection with this Contract, a DBE contract goal of **(Contract Goal)% for Dwight D. Eisenhower National Airport (ICT) and (Contract Goal)% for Colonel James Jabara Airport (AAO)** of the base bid amount for the utilization of small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). This percentage goal remains in effect throughout the life of the Contract. Should the Contract amount be altered from the base bid amount, the Vendor may be subject to additional Good Faith Efforts to meet the DBE contract goal. The Bidder shall make Good Faith Efforts, as defined by the Regulations of the Office of the Secretary of Transportation, to meet the DBE contract goal by subcontracting at least **(Contract Goal minus Race Neutral**

**Goal)% for ICT and (Contract Goal minus Race Neutral Goal)% for AAO** of the dollar value of the Contract to DBEs.

In the event the Bidder for this solicitation is a qualified DBE, certified by the Kansas Certifying Agency, the DBE contract goal shall be deemed to have been met.

- B. Eligibility of DBEs:** Prior to the time of bid opening, those firms certified as DBEs by the Kansas Department of Transportation (KDOT) are eligible to participate as DBEs on this Contract, except DBEs are not eligible to work on the construction of this project if already working for the Owner on this project in another capacity.

A list of the DBE firms shall be obtained from the KDOT website at the time of bid opening for Owner determination of the eligible certified DBEs.

- C. Counting DBE Participation Towards DBE Contract Goal:** DBE participation toward attainment of the DBE contract goal will be computed on the basis of the subcontract prices agreed to between the Vendor and sub-vendors for the contract items or portions of items being sublet, as shown on the signed DBE Letter of Intent submitted with the Bid. DBE credit will only be given for use of DBEs that are certified on the KDOT Directories at the time of bid opening. Commitment and Intent, when used in these specifications or attached forms, refer only to actual DBE obligations to perform defined work within the Project, and not to any expression of the Vendor's willingness to define and utilize DBE sub-vendors after bid opening. DBE participation shall be counted toward meeting the DBE contract goal in accordance with the following:

1. When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward the DBE contract goal.
  - a. Count the entire amount of that portion of a contract (or other contractual written agreement) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the Contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE sub-vendor purchases or leases from a non-DBE firm, including the Vendor or its affiliate.)
  - b. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a FAA-assisted contract, toward DBE goals, provided the Owner determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. When the successful Bidder is a DBE certified by the Kansas Certifying Agency, then the DBE contract goal is deemed met and no Good Faith Efforts are required.
  - d. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's sub-vendor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
2. When a DBE performs as a participant in a joint venture with a non-DBE, count a portion of the total dollar value of the Contract equal to the distinct, clearly defined



portion of the work of the Contract that the DBE performs with its own forces toward DBE contract goal.

3. Commercially Useful Function: The Owner shall count toward the DBE contract goal only those expenditures to DBEs that perform a commercially useful function on that Contract.

- a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine if a DBE is performing a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining the quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

The amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work will be evaluated to determine if a DBE is performing a commercially useful function.

- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, similar transactions, particularly those in which DBEs do not participate will be examined. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed the DBE is not performing a commercially useful function.
- c. When a DBE is presumed not to be performing a commercially useful function as provided herein, the DBE may present evidence to rebut this presumption to the Owner and a determination of commercially useful function will be made. The Owner's decisions on commercially useful function matters are subject to review by the FAA, but are not administratively appealable to the DOT.

d. Commercially Useful Function (CUF) Monitoring

- i. Conduct Certified Written reviews at least one per project for each DBE. The WAA will interview each DBE firm working on the project to ascertain if it is performing a Commercially Useful Function. Interview results will be signed and delivered to the DBELO for approval. Once approved, the interview will be uploaded into the B2Gnow Compliance software.
- ii. Contract Inspection. Each DBE contract will be submitted and reviewed by the DBELO prior to the start of work. Contract will be reviewed per FAA requirements.
- iii. DBELO will maintain a running tally of DBE participation throughout the project.

4. Owner-Operator Trucking: The following factors will be used to determine the DBE credit toward the DBE contract goal for the trucking operations:

- a. The DBE must be responsible for the management and supervision of the

entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- b. The DBE must itself own and operate at least one fully licensed, insured, and commercial truck used on the Contract. A commercial truck is defined as a gross vehicle weight rating or a gross combined weight rating of 10,001 pounds or more.
  - c. The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
  - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
  - e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. Leased trucks must display the name and identification number of the DBE. This lease will not count as DBE participation toward the DBE Contract goal.
5. Materials and Supplies: The Owner shall count toward the DBE contract goal the expenditures for materials and supplies obtained from DBE suppliers and manufacturers as described as follows. The DBEs must assume the actual and contractual responsibility for the provision of the materials and supplies:
- a. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications. Count 100% of the cost of the materials or supplies toward DBE contract goal.
  - b. If the materials or supplies are purchased from a DBE supplier, count 60% of the cost of the materials or supplies toward the DBE contract goal. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as the principal business and under its own name, in the purchase and sale or lease of the products in question.
    - i. A person may be a supplier in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of suppliers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
    - ii. Packagers, brokers, manufacturers' representatives, or other persons

who arrange or expedite transactions are not suppliers within the meaning of these paragraphs.

- c. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a supplier, count 100% of the fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward the DBE contract goal, provided it is determined the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward the DBE contract goal, however.
- d. No credit will be given toward the DBE contract goal, if the Vendor makes a direct payment to a non-DBE material supplier. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. By paying for the material itself, the DBE's own funds are used to pay for the material.
- e. Prior written approval from the WAA is required for Vendors and DBEs to use a joint check arrangement.
  - i. In the use of joint checks a Vendor and DBE shall provide documentation to the Owner showing that the funds used to pay the supplier in fact came from the DBE's own funds. Accounts receivable to the DBE from the Vendor for the costs of items procured by the DBE from the supplier generally must be regarded as representing the DBE's own funds.
  - ii. A written joint check agreement among the parties (including the suppliers concerned) providing full and prompt disclosure of the expected use of joint checks is required by the WAA. The agreement should contain all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.
  - iii. DBE shall attach to their invoice copies of supplier and/or subcontractor invoices and/or certifications of supplier and/or subcontractor payment. These will be reviewed by the Contractor, initialed for accuracy and attached to the Contractor progress payment request. Owner will have final review.
  - iv. Contractor and DBE subcontractors are to avoid exclusive relationships between the Contractor and one DBE concerning the use of joint checks. If a Contractor makes joint checks available to one (e.g., a DBE) subcontractor, the service should be made available to all subcontractors (DBEs and non-DBEs).
  - v. The use of joint checks should be focused on accomplishing the procurement of materials needed for a particular purpose at a particular time. Long-term or open-ended joint checking arrangements can suggest a lack of independence for the DBE involved, and are a basis for further scrutiny by the WAA. WAA may establish reasonable durational limits on the joint checking arrangement and are subject to periodic review and renewal to ensure that the arrangement is not operating in a way that compromises the independence of the DBE.
  - vi. The relationship between the Vendor and DBE will be periodically reviewed by the WAA to ensure the DBE has retained final decision-making

responsibility concerning the procurement of materials and supplies, even when joint checks are involved. That is, the relationship between the DBE and its suppliers should be established independently of and without interference by the prime contractor. The rights of parties to a joint check arrangement to terminate the arrangement should be consistent: for example, if the prime contractor has the right to terminate the arrangement unilaterally, so should a DBE subcontractor.

- vii. Joint checks issued by the Contractor are to be delivered or mailed to the DBE for presentment and payment to the DBE's suppliers. The prime contractor shall not make payment directly to the supplier.
- viii. For further guidance, see Official Questions & Answers DBE Program Regulation (49 Part CFR 26), Section 26.55(c)(1); 26.71(b).

- f. No credit toward the DBE contract goal will be given for the cost of materials or equipment used in a DBE firm's work when those costs are paid by a deduction from the Contractor's payment(s) to the DBE firm.

c. **BID DOCUMENTATION AND PROCEDURE.** A Bidder shall certify in their Bid their commitment to meet or exceed the established DBE contract goal using the Utilization Statement (BD1) and completed Letters of Intent (BD2) submitted at the time of Bid opening. See **Attachment 6** for forms. A Bidder shall demonstrate Good Faith Efforts if DBE Contract goal is not met. Failure of a DBE to sign a Letter of Intent or failure to submit that signed Letter of Intent (LOI) with the Bid will cause the letter not to be counted toward the DBE contract goal. Failure to submit a signed Utilization Statement or failure to demonstrate Good Faith Efforts, if required, will render a bid non-responsive.

**A. DBE Utilization Statement:** The Utilization Statement contains two parts; both parts must be completed, signed and submitted at time of bid opening. The commitment to meet or exceed the DBE Contract goal must be certified by selecting the appropriate statement and signing the Utilization Statement. The commitment is the Bidder's election to base its compliance with the DBE contract goal at the Bid opening on either actual satisfaction of the goal or on partial satisfaction of the DBE contract goal, combined with a demonstration of Good Faith Efforts. Whichever election is made through the commitment, the Utilization Statement's Summary of Letters of Intent must be supported by signed Letters of Intent, one from each subcontracted DBE. The sum of the submitted, signed Letters of Intent govern over the Utilization Statement summary if there is a discrepancy.

**B. Letter of Intent (LOI):** A Bidder must submit with their Bid completed and signed LOIs, one for each subcontracted DBE. The LOI represents the affirmation obligation of a DBE sub-vendor to perform a defined scope of work on the Project for a specific price. The DBE Contract Amount as shown on the LOI is the number used to calculate the summary on the Utilization Statement. The accuracy and authenticity of LOIs are subject to verification by the Owner.

**C. Good Faith Efforts:**

- 1. If a Bidder is unable to meet the DBE contract goal, the Bidder must submit with their Bid, at the time of bid opening, evidence of Good Faith Efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve the DBE contract goal which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even

if not fully successful. Good Faith Efforts conducted after the bid opening will not be considered. Good Faith Efforts may include, but are not limited to:

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, hosting workshops, advertising and/or written notices in general circulation media, trade association publications and disadvantaged-focus media concerning subcontracting opportunities, personal contact, phone calls, e-mail blasts) the interest of all DBEs who have the capability to perform work on the Project. A Bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation and to conduct follow-up negotiations. A Bidder must determine, with certainty, if DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE contract goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Vendor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to the solicitation.
- d. Negotiating in good faith with interested DBEs. It is a Bidder's responsibility to make a portion of the work available to DBE sub-vendors and suppliers and to select those portions of the work or material needs consistent with the available DBE sub-vendors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes, but is not limited to, the following:
  - (1) Names, addresses and telephone numbers of DBEs that were initially contacted, the dates of initial and follow-up contacts made to determine with certainty if the DBEs were interested. Personal or phone contacts are expected; dated logs and contemporaneous notes shall be demonstrated regarding each contact.
  - (2) Description of the information provided to the DBEs regarding the plans, specifications and estimated quantities for the work to be subcontracted;
  - (3) Individual statements as to why an agreement with each DBE was not reached; and
  - (4) Information on each DBE contacted but rejected and the reason(s) for the rejection. A Bidder using good business judgment would consider a number of factors in negotiating with sub-vendors, including DBE sub-vendors, and would take a firm's price and capabilities as well as the DBE contract goal into consideration. However, the fact that there may be additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's failure to meet the DBE contract goal, as long as such additional costs are reasonable. Also, the ability or desire of a Vendor to perform the work of a contract with its own organization does not relieve a Bidder of the responsibility to make Good Faith Efforts. A Bidder is not, however, required to accept higher quotes from DBEs if the price difference is excessive and unreasonable.

- (5) Documentation establishing a Bidder's persistent efforts to determine the availability and qualifications of interested DBEs.
  - e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations or association and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the DBE contract goal.
  - f. Making efforts to assist interested DBEs in obtaining bonding, insurance, or lines of credit.
  - g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - h. Effectively using the services of minority/women community organizations; minority/women vendor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in recruitment and placement of DBEs.
2. The documented demonstration of Good Faith Efforts by a Bidder must prove a Bidder actively and aggressively sought out DBEs to participate in the Project. Bidders will find guidance on determining whether Good Faith Efforts have been employed at 49 CFR Part 26 Appendix A: Guidance Concerning Good Faith Efforts. **See Attachment 1.**

05-04 OWNER EVALUATION: The Owner will make a fair and reasonable judgment whether a Bidder that did not meet the DBE contract goal made adequate Good Faith Efforts. The quality, quantity and intensity of the different kinds of efforts will be considered. The efforts employed by the Bidder should be those that one could reasonably expect a Bidder to take if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not Good Faith Efforts to meet the DBE contract goal. Determination concerning the sufficiency of the Bidder's Good Faith Efforts is a judgment call. In selecting the lowest responsible Bidder, the Owner will evaluate the DBE information provided with the Bid. The Owner may request additional DBE information and allow the Bidder no more than 7 calendar days after receipt of written notification from the Owner, to supplement or re-submit information concerning the Bidder's proposed DBE participation. Prior to awarding the Contract, the Owner will verify verbally and/or in writing that the information submitted by the apparent successful Bidder is accurate and complete.

#### 5-5 CONSTRUCTION PHASE COMPLIANCE.

- A. If the Contract is awarded on less than full satisfaction of the DBE contract goal, the Vendor is not relieved of the responsibility to make a determined effort to meet the full DBE contract goal during the life of the Project. In such a case, the Vendor shall continue Good Faith Efforts throughout the life of the Project to increase the DBE participation to meet the DBE contract goal. This Good Faith Effort documentation shall be retained by the Vendor for three (3) years post-construction as DBE compliance records.
- B. The Vendor shall enter into subcontracts or other contractual written agreements with the DBEs identified on the Letters of Intent submitted with the Bid for the work of the kind

and amount specified therein. All the subcontracting requirements of the Contract shall apply. A fully executed Contract or other contractual written agreement with each DBE must be delivered to the Owner and approved by the Owner before any product is supplied or any work is performed by that DBE firm.

- C. If a DBE is unwilling or unable to perform the work indicated the Vendor shall request from the Owner relief from the obligation to use that DBE by submitting a Subcontractor Change Request through the DMS. This change shall be noted as pending until the WAA has approved the change in writing. Efforts shall be made by the Vendor to acquire from the DBE a letter which states the reason the DBE is unwilling or unable to complete its obligations.

If this lack of performance results in a DBE contract goal shortfall, the Vendor shall immediately take steps to obtain another DBE to perform an equal to or greater dollar value of allowable credit. If a new DBE cannot be found, the Vendor shall submit evidence of Good Faith Efforts within 14 business days of the request for sub-vendor change. The Vendor shall continue Good Faith Efforts and report on these efforts monthly until such time as the contract goal is met or exceeded. The Vendor shall submit the new DBE's name, address, work items and the dollar amount of each item. The Owner and the FAA shall approve the new DBE before the DBE starts work.

a. DBE Termination Process (Per CFR 49 26.53)

- i. Vendor may not terminate a DBE without the prior written consent of the DBE Liaison Officer (DBELO). The DBELO may only provide consent if it is determined that the Vendor has "good cause" to terminate the DBE.
- ii. Vendor must give notice to the DBE, with a copy to the DBELO, of its intent to request to terminate and/or substitute the DBE including the reason(s) for the request.
- iii. Vendor must give the DBE 5 business days to respond to the Vendor's notice and advise the DBELO and the Vendor of the objections to the proposed termination and why the DBELO should not approve the request. (Response period may be less if request is due to a matter of public necessity (e.g., safety).
- iv. DBELO will review all information presented and reserves the right to ask that additional information be provided. After a thorough review, the DBELO will concur or deny the Vendor request by sending a written response to both the Vendor and the DBE.

- D. If the DBE participation should change during the course of a project due to change orders, the Vendor shall submit a Request for Subcontractor Change through the DMS detailing changes to all subcontracts. If the change order is approved, and increases the contract value, additional DBE work may be required to meet the DBE contract goal. If additional DBEs cannot be found resulting in a DBE contract goal shortfall, Good Faith Efforts must be submitted monthly, starting from the date of change order submission. This requirement to obtain additional DBE participation in response to change order modifications in the work shall be enforced under the provisions of 5-04E below.

- E. If the DBE contract goal is not met, the Vendor shall submit evidence showing either how the Vendor intends to meet the DBE contract goal, or what circumstances have changed affecting the DBEs' participation. If the Owner is not satisfied with the evidence, then the Vendor shall revise and resubmit how the Vendor intends to meet DBE contract goal. If the Vendor is unable to satisfy the Owner with its mitigation efforts, then Owner may, at any time, declare the Vendor's efforts to be insufficient, and treat and enforce this

deficiency as a material breach of contract.

**F. Reporting:**

- a) All contract and payment tracking for this project will be completed through the WAA Diversity Management System (DMS). All contractors and subcontractors will need to login to review and update their vendor profile, including Company name, address, Tax ID number, phone number, contact person(s) with email addresses (can be multiple), any certifications, etc.
- b) The Contractor shall submit its Utilization Plan through the DMS detailing bid information, all known subcontractors with contract amounts and start dates, notation of DBE subcontractors, upload a copy of a blank proposed subcontract for approval and certifying signature. After this report is approved by the DBELO, the subcontractor information will be uploaded to the contract for tracking purposes. At that time copies of all signed subcontracts should be uploaded into the system. Should new subcontractors be added at a later date, the Contractor shall update the Contract within the DMS with the new information and repeat the process.
- c) During the course of construction should any subcontractor (not just DBE subcontractors) have a change of contract amount either up or down, the Contractor will request a subcontractor change request through the DMS. Once accepted by the DBELO, the information will be reflected in the Contract for tracking.
- d) The Contractor will be notified of payment by the WAA through the DMS software, this is called an Audit Report. The Contractor will certify payment received and enter payment amounts for all subcontractors paid on that progress payment. All paid subcontractors will certify payment received from the Contractor through the DMS software. Once all certifications are entered, the audit cycle is complete. If there is a discrepancy, all parties will be notified to recertify and correct the issue. This process will be followed up to and including the final pay application. Should the DBE contract goal not be met, evidence of Good Faith Efforts must accompany each such report until the DBE contract goal has been met or exceeded. **NO MADE UNTIL THE PREVIOUS MONTH'S REORT IS RECEIVED AND ACCEPTED BY THE OWNER.**

**5-05 POST CONSTRUCTION.** The Vendor shall retain DBE compliance records for a minimum of three years after receiving final payment and all other pending matters are closed. The records shall include but are not limited to:

- **DBE Participation:** The Vendor shall include the names of ALL sub-vendors (not just DBE sub-vendors), suppliers, manufacturers, consultants and service agencies; the type of work or materials or services performed on or incorporated in the project; and the actual value of such work.
- **Good Faith Efforts:** Documentation of all efforts throughout the life of the Contract made to seek out DBEs for work on this Project.
- **Final DBE Certification:** The Vendor shall submit the following Project close-out documentation. **FINAL PAYMENT TO THE VENDOR WILL NOT BE PROCESSED UNTIL THESE DOCUMENTS HAVE BEEN RECEIVED AND APPROVED BY THE OWNER:**
  - 1. Contractor and Subcontractor Final Payment Reports. These reports shall be sent from the DMS and shall be emailed or uploaded upon completion of this Project, along with the Kansas Tax Exempt Project Completion Certificate. The Subcontractor Final Payment Report shall be fully completed for ALL sub-vendors (not just DBE



sub-vendors).

2. Conditional Waiver of Release on Final Payment (CCD-1).
3. DBE Project Accomplishment Close Out Statement (Pg. CCD-2). This Project closeout document shall be completed and signed by the Vendor and shall accompany the signed DBE Acknowledgement forms, one for each DBE sub-vendor. If the DBE contract goal was not met an explanation will be required along with any supporting documentation.
4. DBE Acknowledgement (CCD-3). This Project closeout document shall be completed and signed by the DBE and verified with signature by the Vendor at the end of the Project. If there is a discrepancy between the DBE initial contract amount and the actual amount paid an explanation will be required.

**ATTACHMENT 7B**  
**MONITORING AND ENFORCEMENT**  
**CONSULTANT RFQ**

(This page intentionally left blank.)

## **ATTACHMENT 7B**

### **REGULATIONS, PROVISIONS AND CONTRACT REMEDIES**

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) SAMPLE RFQ**

- A. The Owner has established, in connection with this Contract, a DBE contract goal of **XX.0% for Dwight D. Eisenhower Airport (ICT) and XX.0% for Colonel James Jabara Airport (AAO)** of the negotiated fee amount for the utilization of small business entities owned and controlled by socially and economically disadvantaged individuals (DBEs), as defined in 49 CFR Part 26. This percentage goal remains in effect throughout the life of the Contract, including any Supplemental Agreements. The Offerer shall make Good Faith Efforts, as defined by the Regulations of the Office of the Secretary of Transportation, to meet the DBE contract goal by subcontracting at least **XX.0% for ICT and XX.0% for AAO** of the dollar value of the Contract to DBEs.

In the event the Offerer for this solicitation qualifies as a DBE, certified by the Kansas Department of Transportation (KDOT) the Kansas Certifying Agency, the DBE contract goal shall be deemed to have been met and no Good Faith Efforts are required.

- B. DBE participation toward attainment of the DBE contract goal will be computed on the basis of the subcontract prices agreed to between the Consultant and sub-consultants for the contract items or portions of items being sublet, as shown on the signed DBE Letter of Intent submitted with the fee submittal. DBE credit will only be given for use of DBEs that are certified on the KDOT Directory at the time of fee submittal. Commitment and Intent, when used in this solicitation or attached forms, refer only to actual DBE obligations to perform defined work within the Project, and not to any expression of the Consultant's willingness to define and utilize DBE sub-consultants after fee submittal. DBE participation shall be counted toward meeting the DBE contract goal in accordance with the following:
1. When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward the DBE contract goal.
    - a. Count the entire amount of that portion of a contract (or other contractual written agreement) that is performed by the DBE's own forces.
    - b. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a FAA-assisted contract, toward DBE goals, provided the Owner determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
    - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
    - d. When a DBE performs as a participant in a joint venture with a non-DBE, count a portion of the total dollar value of the Contract equal to the distinct, clearly

defined portion of the work of the Contract that the DBE performs with its own forces toward DBE contract goal.

2. Commercially Useful Function: The Owner shall count toward the DBE contract goal only those expenditures to DBEs that perform a commercially useful function on that Contract.
  - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine if a DBE is performing a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining the quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work will be evaluated to determine if a DBE is performing a commercially useful function.
  - b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, similar transactions, particularly those in which DBEs do not participate will be examined. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed the DBE is not performing a commercially useful function.
  - c. When a DBE is presumed not to be performing a commercially useful function as provided herein, the DBE may present evidence to rebut this presumption to the Owner and a determination of commercially useful function will be made. The Owner's decisions on commercially useful function matters are subject to review by the FAA, but are not administratively appealable to the DOT.
  - d. Commercially Useful Function (CUF) Monitoring
    - i. Conduct Certified Written reviews at least one per project for each DBE. The WAA will interview each DBE firm working on the project to ascertain if it is performing a Commercially Useful Function. Interview results will be signed and delivered to the DBELO for approval. Once approved, the interview will be uploaded into the B2Gnow Compliance software.
    - ii. Contract Inspection. Each DBE contract will be submitted and reviewed by the DBELO prior to the start of work. Contract will be reviewed per FAA requirements.
    - iii. DBELO will maintain a running tally of DBE participation throughout the project.
- C. FEE SUBMITTAL DOCUMENTATION AND PROCEDURE. An Offerer shall certify in their Fee Submittal their commitment to meet or exceed the established DBE contract goal using the Utilization Statement (RFQ1) and completed Letter(s) of Intent (RFQ2) submitted at the time of Fee submittal (See ATTACHMENT 6 for forms). An Offerer shall demonstrate Good Faith Efforts if DBE Contract goal is not met. Failure of a DBE to sign a Letter of Intent or failure to submit that signed Letter of Intent with the Fee Submittal will cause the letter not to be counted toward the DBE contract goal. Failure to submit a signed Utilization Statement

or failure to demonstrate Good Faith Efforts, if required, will render a Fee submittal non-responsive.

**A. DBE Utilization Statement:** The Utilization Statement contains two parts; both parts must be completed, signed and submitted at time of Fee Submittal. The commitment to meet or exceed the DBE Contract goal must be certified by selecting the appropriate statement and signing the Utilization Statement. The commitment is the Offerer's election to base its compliance with the DBE contract goal at the Fee Submittal on either actual satisfaction of the goal or on partial satisfaction of the DBE contract goal, combined with a demonstration of Good Faith Efforts. Whichever election is made through the commitment, the Utilization Statement's Summary of Letters of Intent must be supported by signed Letters of Intent, one from each subcontracted DBE. The sum of the submitted, signed Letters of Intent govern over the Utilization Statement summary if there is a discrepancy.

**B. Letter of Intent (LOI):** An Offerer must submit with their Fee Submittal completed and signed LOIs, one for each subcontracted DBE. The LOI represents the affirmation obligation of a DBE subcontractor to perform a defined scope of work on the Project for a specific price. The DBE Contract Amount as shown on the LOI is the number used to calculate the summary on the Utilization Statement. The accuracy and authenticity of LOIs are subject to verification by the Owner.

1. If an Offerer is unable to meet the DBE contract goal, the Offerer must submit with Fee Submittal, evidence of Good Faith Efforts. This means that the Offerer must show that it took all necessary and reasonable steps to achieve the DBE contract goal which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts conducted after the Fee Submittal will not be considered. Good Faith Efforts may include, but are not limited to:
  - a. Soliciting through all reasonable and available means (e.g. hosting workshops, advertising and/or written notices in general circulation media, trade association publications and disadvantaged-focus media concerning subcontracting opportunities, personal contact, phone calls, e-mail blasts) the interest of all DBEs who have the capability to perform work on the Project. An Offerer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation and to conduct follow-up negotiations. An Offerer must determine, with certainty, if DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE contract goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Consultant might otherwise prefer to perform these work items with its own forces.
  - c. Providing interested DBEs with adequate information about the project scope and requirements of the Contract in a timely manner to assist them in responding to the solicitation.
  - d. Negotiating in good faith with interested DBEs. It is an Offerer's responsibility to make a portion of the work available to DBE subcontractors and to select those portions of the work consistent with the available DBE subcontractors, so as to facilitate DBE participation. Evidence of such negotiation includes, but is not limited to, the following:
    - (1) Names, addresses and telephone numbers of DBEs that were initially contacted, the dates of initial and follow-up contacts made to determine with certainty if the DBEs were interested. Personal or phone contacts are

expected; dated logs and contemporaneous notes shall be demonstrated regarding each contact.

- (2) Description of the information provided to the DBEs regarding the project and scope for the work to be subcontracted;
  - (3) Individual statements as to why an agreement with each DBE was not reached; and
  - (4) Information on each DBE contacted but rejected and the reason(s) for the rejection. An Offerer using good business judgment would consider a number of factors in negotiating with subconsultants, and would take a firm's price and capabilities as well as the DBE contract goal into consideration. However, the fact that there may be additional costs involved in finding and using DBEs is not in itself sufficient reason for an Offerer's failure to meet the DBE contract goal, as long as such additional costs are reasonable. Also, the ability or desire of a Consultant to perform the work of a contract with its own organization does not relieve an Offerer of the responsibility to make Good Faith Efforts. An Offerer is not, however, required to accept higher quotes from DBEs if the price difference is excessive and unreasonable.
  - (5) Documentation establishing an Offerer's persistent efforts to determine the availability and qualifications of interested DBEs.
- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations or association and political or social affiliations are not legitimate causes for the rejection or non-solicitation in the Offerer's efforts to meet the DBE contract goal.
  - f. Making efforts to assist interested DBEs in obtaining bonding, insurance, or lines of credit.
  - g. Making efforts to assist interested DBEs in obtaining related assistance or services.
  - h. Effectively using the services of minority/women community organizations; minority/women contractor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in recruitment and placement of DBEs.

2. The documented demonstration of Good Faith Efforts by an Offerer must prove an Offerer actively and aggressively sought out DBEs to participate in the Project. Offerers will find guidance on determining whether Good Faith Efforts have been employed at 49 CFR Part 26 Appendix A: Guidance Concerning Good Faith Efforts.

- D. OWNER EVALUATION:** The Owner will make a fair and reasonable judgment whether an Offer that did not meet the DBE contract goal made adequate Good Faith Efforts. The quality, quantity and intensity of the different kinds of efforts will be considered. The efforts employed by the Offerer should be those that one could reasonably expect an Offerer to take if the Offerer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not Good Faith Efforts to meet the DBE contract goal. Determination concerning the sufficiency of the Offerer's Good Faith Efforts is a judgment call. In selecting the Consultant, the Owner will evaluate the DBE information provided with the Fee Submittal. The Owner may request additional DBE information and allow the Offerer no more than three (3) business days after written notification from the Owner, to supplement or re-submit information concerning the Offerer's proposed DBE participation. Prior to awarding the Contract, the Owner will verify verbally and/or in writing that the information submitted by the apparent successful Offerer is accurate and complete.

#### **E. CONTRACT COMPLIANCE**

1. If the Contract is awarded on less than full satisfaction of the DBE contract goal, the Consultant is not relieved of the responsibility to make a determined effort to meet the full DBE contract goal during the life of the Project. In such a case, the Consultant shall continue Good Faith Efforts throughout the life of the Project to increase the DBE participation to meet the DBE contract goal. This documentation shall be submitted monthly with the progress payment documentation until the goal is met or exceeded. This Good Faith Effort documentation shall also be retained by the Consultant for three (3) years post-construction as DBE compliance records.
2. The Consultant shall enter into subcontracts or other contractual written agreements with the DBEs identified on the Letters of Intent submitted with the Fee Submittal for the work of the kind and amount specified therein. All the subcontracting requirements of the Contract shall apply. A fully executed Contract or other contractual written agreement with each DBE must be delivered to the Owner at least fifteen (15) business days before start of work. The subcontract must be approved by the Owner before any product is supplied or any work is done by that DBE firm.
3. If a DBE is **unwilling** or **unable** to perform the work indicated, the Consultant shall request from the Owner relief from the obligation to use that DBE by submitting a Subcontractor Change Request through the B2Gnow DBE Compliance software. This change shall be noted as pending until the WAA has approved the change in writing. Efforts shall be made by the Consultant to acquire from the DBE a letter which states the reason the DBE is unwilling or unable to complete its obligations.

If this lack of performance results in a DBE contract goal shortfall, the Consultant shall immediately take steps to obtain another DBE to perform an equal to or greater dollar value of allowable credit. If a new DBE cannot be found, the Consultant shall submit evidence of Good Faith Efforts within fourteen (14) business days of the subcontractor change request. The Consultant shall continue Good Faith Efforts and report on these efforts monthly until such time as the contract goal is met or exceeded. The Consultant shall submit the new DBE's name, address, work items and the dollar amount of each item. The Owner and the FAA shall approve the new DBE before the DBE starts work.

- a. DBE Termination Process (Per CFR 49 26.53)
  - i. Consultant may not terminate a DBE without the prior written consent of the DBE Liaison Officer (DBELO). The DBELO may only provide consent if it is determined that the Consultant has "good cause" to terminate the DBE.
  - ii. Consultant must give notice to the DBE, with a copy to the DBELO, of its intent to request to terminate and/or substitute the DBE including the reason(s) for the request.
  - iii. Consultant must give the DBE five (5) business days to respond to the Consultant's notice. The DBE must advise the DBELO and the Consultant of the objections to the proposed termination and why the DBELO should not approve the request. (Response period may be less if request is due to a matter of public necessity (e.g., safety).
  - iv. DBELO will review all information presented and reserves the right to ask that additional information be provided. After a thorough review, the DBELO will concur or deny the Consultant request by sending a written response to both the Consultant and the DBE.
4. If the DBE participation should change during the course of the project due to Supplemental Agreements, the Consultant shall submit a Request for Subconsultant

Change through the B2Gnow Compliance software detailing changes to all current subcontracts. If the Supplemental Agreement is approved, and increases the Contract value, additional DBE work may be required to meet the DBE contract goal. If additional DBEs cannot be found resulting in a DBE contract goal shortfall, Good Faith Efforts must be submitted monthly, starting from the date of the Supplemental Agreement submission. This requirement to obtain additional DBE participation in response to total contract modifications in the work shall be enforced under the provisions of Paragraph 5 below.

5. If the DBE contract goal is not met, the Consultant shall submit evidence showing either how the Consultant intends to meet the DBE contract goal, or what circumstances have changed affecting the DBEs' participation. If the Owner is not satisfied with the evidence, then the Consultant shall revise and resubmit how the Consultant intends to meet DBE contract goal. If the Consultant is unable to satisfy the Owner with its mitigation efforts, then Owner may, at any time, declare the Consultant's efforts to be insufficient, and treat and enforce this deficiency as a material breach of contract.

**A. Reporting:**

- a. All contract and payment tracking for this project will be completed through the B2Gnow Compliance software, WAA Diversity Management System (DMS). All consultants and sub-consultants will need to login to review and update their vendor profile, including Company name, address, Tax ID number, phone number, contact person(s) with email addresses (can be multiple), any certifications, etc.
- b. The Consultant shall submit its Utilization Plan through the DMS detailing fee information, all known sub-consultants with contract amounts and start dates, notation of DBE sub-consultants, upload a copy of a blank proposed subcontract for approval and certifying signature. After this report is approved by the DBELO, the sub-consultant information will be uploaded to the contract for tracking purposes. At that time copies of all signed subcontracts should be uploaded into the system. Should new sub-consultants be added at a later date, the Consultant shall update the Contract within the DMS with the new information and repeat the process.
- c. During the course of the contract should any sub-consultant (not just DBE sub-consultants) have a change of contract amount either up or down, the Consultant will request a sub-consultant change request through the DMS. Once accepted by the DBELO, the information will be reflected in the Contract for tracking.
- d. The Consultant will be notified of payment by the WAA through the DMS software, this is called an Audit Report. The Consultant will certify payment received and enter payment amounts for all sub-consultants paid on that progress payment. All paid sub-consultants will certify payment received from the Consultant through the DMS software. Once all certifications are entered, the audit cycle is complete. If there is a discrepancy, all parties will be notified to recertify and correct the issue. This process will be followed up to and including the final pay application. Should the DBE contract goal not be met, evidence of Good Faith Efforts must accompany each such report until the DBE contract goal has been met or exceeded. **NO PROGRESS PAYMENTS WILL BE MADE UNTIL THE PREVIOUS MONTH'S REPORT IS RECEIVED AND ACCEPTED BY THE OWNER.**

**POST CONSTRUCTION.** The Consultant shall retain DBE compliance records for a minimum of three (3) years after receiving final payment and all other pending matters are closed. The records shall include but are not limited to:

- A. DBE Participation:** The Consultant shall include the names of ALL sub-consultants (not just DBE sub-consultants), suppliers, manufacturers, consultants and service agencies; the type of work or materials or services performed on or incorporated in the project; and the actual



value of such work. These amounts will be used to verify the calculated DBE Participation.

**B. Good Faith Efforts:** Documentation of all efforts throughout the life of the Contract made to seek out DBEs for work on this Project.

**C. Final DBE Certification:** The Consultant shall submit the following DBE Project close-out documentation. **FINAL PAYMENT TO THE CONSULTANT WILL NOT BE PROCESSED UNTIL THESE DOCUMENTS HAVE BEEN RECEIVED AND ACCEPTED BY THE OWNER:**

1. Consultant and sub-consultant **Final Payment Reports**. These reports will be sent from the B2Gnow Compliance software and shall be emailed or uploaded upon completion of this Project.
2. Conditional Waiver and Release on Final Payment (Page RFQ3).(See ATTACHMENT 7C for copies of the forms.)
3. DBE Project Accomplishment Close Out Statement (Pg. RFQ4).(See ATTACHMENT 7C for copies of the forms.) This Project closeout document shall be completed and signed by the Consultant and shall accompany the signed DBE Acknowledgement forms, one for each DBE sub-consultant. If the DBE contract goal was not met an explanation will be required along with any supporting documentation.
4. DBE Acknowledgement (Pg. RFQ5). (See ATTACHMENT 7C for copies of the forms.) This Project closeout document shall be completed and signed by the DBE and verified with signature by the Consultant at the end of the Project. If there is a discrepancy between the DBE initial contract amount and the actual amount paid an explanation will be required.

**ATTACHMENT 7C**

**FORMS FOR DEMONSTRATION OF DBE MONITORING**

This page intentionally left blank.

## **ATTACHMENT 7C**

### **DBE Sample and Monitoring Forms**

1. WAA DBE Policy statement signed by Director of Airports (See page 0)
  - a. Inserted into each AIP eligible Project Manual and Request for Qualifications
2. Contract forms submitted with Contract
  - a. Sample construction contract with attachments
  - b. Sample Consultant contract with attachments
3. Contract Certification Process
  - a. Contract certification form example
4. Pay Estimate Review Process
5. CUF Observation form
6. Project Closeout
  - a. Release of Claims and Lien Affidavit
  - b. DBE Project Accomplishment
  - c. DBE Acknowledgement

# CONSTRUCTION CONTRACT AGREEMENT – 7C-2a

## WICHITA AIRPORT AUTHORITY

AIP Project No. 3-20-0088-0XX-YEAR

(May 10, 2019)

**THIS AGREEMENT**, made as of {Insert Effective Date of Agreement} is

### BY AND BETWEEN

the OWNER:                      Wichita Airport Authority  
   2173 Air Cargo Road  
   Wichita, Kansas 67209

And the CONTRACTOR:      *{Insert Name and Address of contracting office}*

*{Insert Name and Address of office for remittance}*

### WITNESSETH:

WHEREAS it is the intent of the OWNER to make improvements at Dwight D. Eisenhower National Airport generally described as follows:

#### PROJECT DESCRIPTION

hereinafter referred to as the Project.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth, OWNER and CONTRACTOR agree as follows:

#### Article 1 - Work

It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the CONTRACTOR by the OWNER, CONTRACTOR shall faithfully furnish all necessary labor, equipment, and material (unless specifically identified to be provided by others) and shall fully perform all necessary work to complete the Project in strict accordance with this Agreement and the Contract Documents.

## **Article 2 – Contract Agreement Documents**

CONTRACTOR agrees that the Contract Documents consist of the following: this Agreement, Bidding Documents, General Provisions, Technical Specifications, Drawings, Addenda, Bid and associated attachments, Subcontracting and Affidavit forms, Performance and Maintenance Bond, Statutory Bond, ADA/504 Contractor Assurance of Compliance, Insurance Certificates, documents incorporated by reference, documents incorporated by attachment and all OWNER authorized change orders issued subsequent to the date of this Agreement. All documents comprising the Contract Documents are complementary to one another and together establish the complete terms, conditions and obligations of the CONTRACTOR. All said Contract Documents are incorporated by reference into this Agreement as if fully rewritten herein or attached thereto.

## **Article 3 – Contract Price**

In consideration of the faithful performance and completion of the Work by the CONTRACTOR in accordance with the Contract Documents, OWNER shall pay the CONTRACTOR an amount equal to:

\$\_\_\_\_\_ (Amount in Written Words)

\$\_\_\_\_\_ (Amount in Numerals)

subject to the following:

- a. Said amount is based on the schedule of prices and estimated quantities stated in CONTRACTOR'S Bid, which is attached to and made a part of this Agreement;
- b. Said amount is either the lump sum or the aggregate sum of the result of the CONTRACTOR'S stated unit prices multiplied by the associated estimated quantities, as applicable;
- c. CONTRACTOR and OWNER agree that said estimated quantities are not guaranteed and that the determination of actual quantities shall be made by the OWNER;
- d. Said amount is subject to modification for additions and deductions as provided for within the General Provisions.

## **Article 4 – Payment**

Upon the completion of the Work, and acceptance by the OWNER, all sums due the CONTRACTOR by reason of faithful performance of the Work, taking into consideration additions to or deductions from the Contract price by reason of alterations or modifications of the original Contract or by reason of "Extra Work" authorized under this Agreement, will be paid to the CONTRACTOR by the OWNER after said completion and acceptance.

The acceptance of final payment by the CONTRACTOR shall be considered a release, in full, of all claims against the OWNER, arising out of, or by reason of, the work completed and materials furnished under this Agreement.

OWNER shall make progress payments to the CONTRACTOR in accordance with the terms set forth in the General Provisions. Progress payments shall be based on estimates prepared

by the OWNER or representative for the value of Work stored, performed/accepted and materials completed in place in accordance with the Contract Documents.

Progress payments are subject to retainage requirements as set forth in the General Provisions.

#### **Article 5 – Contract Time**

The CONTRACTOR agrees to commence work within five (5) calendar days of the date specified in the OWNER's Notice-to-Proceed. CONTRACTOR further agrees to complete said work within the timeframe of the commencement date stated within the Notice-to-Proceed, unless modified by Change Order. Notice to Proceed #1 will be issued for administrative purposes, Notice to Proceed #2 will be issued for access to the site for the various phases of Work:

- a) **Substantial Completion: Specified Date.**
- b) **Final Acceptance: Specified Date.**
- c) **Close Out: Specified Date.**

It is expressly understood and agreed the stated Contract Time is reasonable for the completion of the Work, taking all factors into consideration. Furthermore, extensions of the Contract Time shall only be permitted by execution of formal modifications to this Agreement in accordance with the General Provisions and as approved by the OWNER.

#### **Article 6 – Liquidated Damages**

The CONTRACTOR and OWNER understand and agree that time is of essence for completion of the Work and the OWNER will suffer additional expense and financial loss if said Work is not completed within the authorized Contract Time. Furthermore, the CONTRACTOR and OWNER recognize and understand the difficulty, delay, and expense in establishing the exact amount of actual financial loss and additional expense. Accordingly, in place of requiring such proof, the CONTRACTOR expressly agrees to pay the OWNER, as liquidated damages, the non-penal sum stated herein for each calendar day or contract time day required in excess of the authorized Contract Time.

Furthermore, the CONTRACTOR understands and agrees;

- a. the OWNER has the right to deduct from any moneys due the CONTRACTOR, the amount of said liquidated damages, and such satisfaction of liquidated damages shall not be considered retainage under Kansas statutes.
- b. the OWNER has the right to recover the amount of said liquidated damages from the CONTRACTOR, SURETY or both.
- c. The liquidated damages for this Project, which shall bear interest of 18% annually, are:

<b>Work Desc.</b>	<b>Liquidated Damages Cost</b>	<b>Allowed Construction Time</b>	<b>Final Completion Date/Time</b>
<b>Substantial Completion</b>	<b>\$X,XXX / day</b>	<b>XXX Calendar Days</b>	<b>Date/Time</b>
<b>Final Acceptance</b>	<b>\$XXX / day</b>	<b>XXX Calendar Days</b>	<b>Date/Time</b>
<b>Closeout</b>	<b>\$XXX/day</b>	<b>XXX Calendar Days</b>	<b>Date/Time</b>

- d. Contractor acknowledges payment of liquidated damages be set off from retainage avoids interest charges, is to its advantage, and is hereby authorized should an instance arise triggering liquidated damages, in the opinion of Owner. Such set off shall thereafter not be considered retainage, but rather an equitable obligation which may be challenged, if required, only as an independent obligation, separate and distinct from the public construction contract.

#### **Article 7 – CONTRACTOR’S Representation**

The CONTRACTOR understands and agrees all representations made by the CONTRACTOR within its Bid (Proposal) shall apply under this Agreement as if fully rewritten herein.

#### **Article 8 – CONTRACTOR’S Certification**

The CONTRACTOR understands and agrees that all certifications made by the CONTRACTOR within the Bid shall apply under this Agreement as if fully rewritten herein. The CONTRACTOR further certifies the following:

#### **Article 9 - CONTRACTOR Responsibilities**

The CONTRACTOR agrees to the following Department of Transportation (DOT) policy and Disadvantaged Business Enterprise (DBE) obligations and further agrees to insert the following clauses, “a.” and “b.” in all subcontracts.

- a. Contract Assurance Clause (Assurance 26.13(b): The OWNER will ensure that the following clause is included in each agreement signed with a CONTRACTOR and each subcontract the 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 Agreement. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.”

- b. Prompt Payment Clause (26.29): “The CONTRACTOR agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) business days from receipt of each payment the CONTRACTOR receives from the OWNER. The CONTRACTOR agrees further to return retainage payments to each subcontractor within seven (7) business days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the preceding 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.”

1) Prompt Payment Compliance Procedures

- a. CONTRACTOR will attach copies of all subcontractor invoices due with progress payment.
- b. As proof of prompt payment to all subcontractors, CONTRACTOR shall verify, through the OWNER’S DBE Compliance Management (Diversity Management System – DMS) software, every progress payment received and report the payments made to every subcontractor within fourteen (14) business days from notice of payment. Every subcontractor paid shall certify its payment from the CONTRACTOR via the OWNER’S DBE Compliance Management software within seven (7) business days from notice of payment.
- c. The OWNER will hold 5% retainage from the CONTRACTOR and provide for prompt and regular incremental acceptances of portions of the Agreement, pay retainage to CONTRACTOR based on these acceptances, and require the prompt payment contract clause obligating the CONTRACTOR to pay all retainage owed to a subcontractor for satisfactory completion of the accepted work within seven (7) business days after OWNER’S payment to the CONTRACTOR. The OWNER will consider a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been satisfactorily completed and documented per the Contract Documents. When the OWNER has made an incremental acceptance of a portion of the Agreement, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- d. The OWNER proactively reviews contract payments to subcontractors monthly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to subcontractors is equivalent to the amounts reported to the OWNER by the CONTRACTOR. The OWNER undertakes ongoing monitoring of CONTRACTOR payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through, but are not limited to, the following method(s):
  - i. Posting CONTRACTOR payments to a website, database, or other place accessible to subcontractors to alert them to the start of the seven (7)-business day clock for payment.
  - ii. Use of an automated system that requires real time entry of payments to, and receipts by the CONTRACTOR and subcontractors and regularly monitoring that system.



- e. Prompt Payment Complaint – A complaint by a subcontractor regarding the prompt payment requirements is handled according to the following procedure:
  - i. If affected subcontractor is not comfortable contacting the CONTRACTOR directly regarding payment or unable to resolve payment discrepancies with the CONTRACTOR, subcontractor should contact Disadvantaged Business Enterprise Liaison Officer (DBELO) to initiate complaint.
  - ii. The DBELO will facilitate meeting(s) between CONTRACTOR and affected subcontractor, with OWNER and representatives attending, as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including authority to take enforcement action.
  - iii. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action to resolve a prompt payment dispute, affected subcontractor may, as the next step regarding a resolution, contact the Federal Aviation Administration, Central Region.
- f. The CONTRACTOR shall maintain records and documents of payments to all subcontractors for a minimum of three (3) years after final closeout, unless otherwise provided by applicable record retention requirements for the OWNER's financial assistance agreement, whichever is longer. These records shall be made available for inspection, upon request, by any authorized representative of the OWNER or DOT. This reporting requirement includes all subcontractors, both DBE and non-DBE.

## 2) Prompt Payment Enforcement Procedures

- a. Failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the OWNER deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Disqualifying the CONTRACTOR from future airport project bidding (4) Disqualifying the CONTRACTOR from future City of Wichita project bidding as non-responsible. The disqualifications listed herein may exist for up to three (3) years.
- b. **No further progress payments** will be made until the previous month's certification audit reports are approved by the OWNER including remedy of discrepancies.

- c. OWNER will 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.
- d. Pay subcontractors directly and deduct this amount from the retainage owed to the CONTRACTOR.
- e. Issue a stop-work order until payments are released to subcontractors, specifying in this Agreement that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
- f. Other penalties for failure to comply, up to and including termination of this Agreement, and disqualifying the CONTRACTOR from future OWNER and City of Wichita project bidding as non-responsible for a period of up to three (3) years.
- g. OWNER will actively implement the prompt payment enforcement actions.
- h. Alternative Dispute Resolution
  - i. In the event of a dispute arising out of or relating to this Agreement, each party agrees not to commence legal proceedings without first attempting, in good faith, to resolve the dispute amicably and speedily in accordance with the following dispute resolution procedures.
  - ii. Any such dispute shall be referred in the first instance to the main individuals responsible for administering this Agreement within the OWNER'S and CONTRACTOR'S businesses respectively.
  - iii. If the dispute is not resolved in accordance with Article 9.b.2(a-gi, it shall be referred at the written consent of either party to the Director of Airports representing the OWNER and the owner of the company representing the CONTRACTOR. These Managing Directors may delegate their responsibilities and authority to representatives of their organizations.
  - iv. If the dispute is not resolved within fourteen (14) business days of being referred to the Managing Directors (or such longer period as the parties may mutually agree), the parties will attempt to settle by mediation through a neutral mediator selected by the Parties.
  - v. If mediation is unsuccessful, this Alternative Dispute Resolution procedure shall be considered terminated as

regards the dispute in question and either party may proceed to litigation.

- vi. This Alternative Dispute Resolution shall not prevent a party to this Agreement from taking immediate injunctive action necessary to preserve its interests.
- vii. As a condition for the issuance of the Notice to Proceed #2, the CONTRACTOR shall submit to the OWNER, for approval, a detailed Alternative Dispute Resolution plan, if different from this one.

#### **Article 10 – Non-Discrimination/Affirmative Action Program**

The CONTRACTOR, in performing the work required under this Agreement, agrees to comply with the provisions of the Non-Discrimination Equal Employment Opportunity/Affirmative Action Program requirements of the City of Wichita attached hereto as Exhibit A and incorporated herein by reference.

#### **Article 11– Anti-Trust Provisions**

For good cause, and as consideration for executing this Agreement, the CONTRACTOR, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the OWNER all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the OWNER pursuant to this Agreement.

#### **Article 12 – Hold Owner Harmless**

The OWNER shall be held harmless for any and all breaches of Federal Aviation Administration, Transportation Security Administration or OWNER'S security rules and/or regulations arising out of or resulting from any conduct or omission by the CONTRACTOR. In the event a penalty is imposed for one or more security violations the penalty(s) shall be paid by the CONTRACTOR.

The parties agree that each party will save, hold harmless and indemnify the other against all suits, claims, damages and losses for injuries to third parties or their property or to the other party and its property arising out of or resulting from its intentional and negligent acts, errors or omissions and those of its officers, employees, agents, and subcontractors occurring in the performance of its services under this Agreement.

#### **Article 13 – No Arbitration**

The CONTRACTOR further agrees notwithstanding anything to the contrary contained in the Contract Documents or the Agreement to be awarded the OWNER shall not be subject to arbitration and any clause relating to arbitration contained in the documents or in the Agreement to be awarded herein between the two parties shall be null and void.

## **Article 14 – Miscellaneous**

- a. CONTRACTOR understands that it shall be solely responsible for the means, methods, techniques, sequences and procedures of construction in connection with completion of the Work;
- b. The rights of each party under this Agreement shall not be assigned or transferred to any other person, entity, firm or corporation without prior written consent of both parties unless identified within the Contract Documents;
- c. OWNER and CONTRACTOR each bind itself, their partners, successors, assigns and legal representatives to the other party in respect to all covenants, agreements, and obligations contained in the Contract Documents;
- d. CONTRACTOR understands all Contract Documents are the property of the OWNER and shall not be used by the CONTRACTOR for any purpose other than the Work to be performed under this Agreement;
- e. The failure of any party to enforce, at any time, the provisions of this Agreement or the failure to exercise any option which it provides shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any of its terms, or the right of any party to enforce each and every provision of this Agreement or the right to exercise any option provided within this Agreement terms. Neither waiver of any breach nor waiver of multiple breaches of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement are cumulative and are in addition to every other remedy provided by operation of law;
- f. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113) and the Budget Law (K.S.A. 79-2935) of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the parties shall at all times remain in conformity with such laws;
- g. The signatory for each party represents that it has the requisite agency authority, lawfully conveyed from his or her respective principal, and that his or her signature on this Agreement is fully effective to bind the principal to its terms;
- h. The CONTRACTOR agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended (504) and the Americans with Disability Act of 1990.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed copies of this Agreement on the day and year first noted herein.

OWNER:

WICHITA AIRPORT AUTHORITY  
2173 AIR CARGO ROAD  
WICHITA, KANSAS 67209

By: \_\_\_\_\_ By: \_\_\_\_\_  
Karen Sublett, City Clerk Jeff Longwell, President  
"OWNER"

By: \_\_\_\_\_  
Victor D. White, Director of Airports

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Jennifer Magaña, City Attorney and Director of Law

CONTRACTOR:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
  - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of

compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

## PERFORMANCE AND MAINTENANCE BOND 7C-2a

(January 5, 2019)

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
of \_\_\_\_\_ as principal, and \_\_\_\_\_ a corporation  
authorized under the laws of the State of \_\_\_\_\_ with general offices in  
\_\_\_\_\_ and authorized to transact business in the State of  
\_\_\_\_\_ as surety, are held and firmly bound unto the Wichita Airport  
Authority, Wichita, Kansas, in the penal sum of \_\_\_\_\_ (\$  
\_\_\_\_\_) lawful money of the United States, for the payment of which sum, well and truly to be  
made said principal and surety bind themselves, their heirs, administrators, executors, successors and assigns,  
jointly and severally, firmly by these presents.

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 202X

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT WHEREAS, said principal has entered into a written Contract with the Wichita Airport Authority, Wichita, Kansas, dated \_\_\_\_\_, 202X for the furnishing of all material and labor and doing of all the work of whatever kind necessary to construct certain improvements for the Wichita Airport Authority, Wichita, Kansas, including maintenance and repair thereof, all in accordance with the detailed plans and the specifications for such work on file in the office of the Director of said Authority and in accordance with said Contract, a copy of which is, or may be attached hereto and which is by reference made a part hereof.

NOW THEREFORE, if said principal shall well and truly perform all of the covenants, conditions and obligations of said Contract on the part of said principal to be performed, and shall hold the Authority harmless against all claims, losses or damage which it may sustain or suffer by reason of any breach of said Contract by said principal, and if said principal shall well and truly in good sufficient and workmanlike manner and to the satisfaction of the Wichita Airport Authority, Wichita, Kansas, perform and complete the work required, including such requirements of maintenance and repair as are set out in the Contract and other documents related to said work, then this obligation shall be void; otherwise to remain in full force and effect.

If the principal shall fail or neglect to pay any person, firm or corporation for labor bills, including the hire, rental or lease of equipment or machinery and the operators thereof, used on the work, or materials employed or used in carrying forward, performing and completing said Contract, within thirty (30) days after the same becomes due and payable, such persons, firms or corporations entitled to such pay may sue on this bond to recover from said principal and surety or either of them the amount so due and unpaid.



The said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

IN TESTIMONY WHEREOF, said principal has duly executed these presents and said surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed, by its duly authorized agent or agents, all as of the day and year first above written. This document is executed in triplicate.

\_\_\_\_\_  
Company or Firm (Seal)

By \_\_\_\_\_

Title \_\_\_\_\_

Principal \_\_\_\_\_

\_\_\_\_\_  
Surety (Seal)

\_\_\_\_\_  
Surety Address

\_\_\_\_\_  
Surety Phone Number

By \_\_\_\_\_  
Attorney-in-fact

(An original Agent's Power of Attorney must be attached hereto.)

**STATUTORY BOND 7C-2a  
(KSA 60-1111)**

(January 5, 2019)

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ of \_\_\_\_\_ as principal, and \_\_\_\_\_ a corporation authorized under the laws of the State of \_\_\_\_\_ with general offices in \_\_\_\_\_ authorized to transact business in the State of \_\_\_\_\_ as Surety, are held and firmly bound unto the State of Kansas in \_\_\_\_\_ the \_\_\_\_\_ penal \_\_\_\_\_ sum \_\_\_\_\_ of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made said principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT, said principal has entered into written Contract with the Wichita Airport Authority, Wichita, Kansas dated \_\_\_\_\_, **202X** for the furnishing of all materials and labor and doing all the work of whatever \_\_\_\_\_ kind \_\_\_\_\_ necessary \_\_\_\_\_ to \_\_\_\_\_ construct \_\_\_\_\_ certain \_\_\_\_\_ improvements for the Wichita Airport Authority, Wichita, Kansas, all in accordance with the detailed plans and specifications for such work on file in the office of the Director of said Authority, and in accordance with said Contract, a copy of which is or may be attached hereto and which is by reference made a part hereof.

NOW THEREFORE, if the said principal or the subcontractor or subcontractors of said principal shall pay all indebtedness incurred for supplies, materials or labor furnished, used or consumed in connection with or in or about the construction or making of the above described improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

IN TESTIMONY WHEREOF, said principal has duly executed these presents, and said Surety has caused these presents to be executed in its name, and its corporate seal is to be hereunto affixed, by its duly authorized agent or agents, all as of the day and year first above written.

Company or Firm (Seal)

By \_\_\_\_\_

Title \_\_\_\_\_

Principal

\_\_\_\_\_  
Surety (Seal)

\_\_\_\_\_  
Surety Address

\_\_\_\_\_  
Surety Phone Number

By \_\_\_\_\_  
Attorney-in-fact

(An original Agent's Power of Attorney must be attached hereto.)

(To be filed with the Clerk of the District Court)

# ADA/504 Contractor Assurance of Compliance 7C-2a

(May 3, 2019)

## **Assurance of Compliance Form**

All individuals or organizations that contract directly with the Wichita Airport Authority, or subcontract with a direct contractor for the purpose of constructing, altering, or adding to Wichita Airport Authority buildings or facilities must complete, sign and return this form with your contract. If you require this material in an alternate format, please contact the City of Wichita's ADA Coordinator. Hearing- and/or speech-impaired persons using a TDD/TTY may contact us through the Kansas Relay Center at 1-800-766-3777 or 711.

## **ADA/504 General Information**

Federal and state laws prohibit discrimination based on disability. Section 504 of the Rehabilitation Act of 1973, as amended (504), and the Americans with Disabilities Act of 1990 (ADA), as amended, require that the Wichita Airport Authority and all organizations or firms contracting with the Wichita Airport Authority, except those providing tangible goods, comply with ADA/504 accessibility requirements.

## **Contractor Assurance of Compliance**

As a contractor or funding recipient from the Wichita Airport Authority, I understand that federal and state laws prohibit discrimination in public accommodations and employment based solely on disability. In addition, I recognize that Section 504 requires recipients of federal funds (either directly or through contracting with a local governmental entity receiving federal funds) to make their programs, services, and activities, when viewed in their entirety, accessible to qualified and/or eligible people with disabilities. I agree to comply with, and to require that all subcontractors comply with, ADA/504 requirements. I understand that reasonable accommodation is required in both program services and employment, except where to do so would cause an undue hardship or burden. I also agree that all new construction, alterations, or additions to Wichita Airport Authority buildings or facilities, performed by my organization or its subcontractors, must comply with all city, state, and federal laws, including related building guidelines/codes, and specifically the Americans with Disabilities Accessibility Guidelines (ADAAG).

I agree that any violation of the specific provisions of the ADA or 504 which are applicable to work my organization is currently performing or has performed at Wichita Airport Authority buildings or facilities, shall be deemed a breach of the material provision of my Contract between the Wichita Airport Authority and my organization. Such a breach shall be grounds for cancellation, termination or suspension, in whole or in part, of my organization's Contract by the Wichita Airport Authority, or for demand and enforcement of remedial Contract requirements.

---

Signature of authorized signatory

---

Date

---

Typed or Printed name of authorized signatory

Title

---

Telephone

---

Typed or printed legal name of business entity

CONTRACT **7C-2b**  
for  
CONSULTING SERVICES  
Between the  
WICHITA AIRPORT AUTHORITY

and

**VENDOR**

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, party of the first part, hereinafter called the "OWNER" and **VENDOR NAME and ADDRESS**, party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That,

WHEREAS the OWNER is engaged in the operation of the and **NAME OF Airport**; and whereas it is the desire of both parties that the CONSULTANT furnish consulting services in conjunction with the **AIRPORT and NAME of PROJECT** (PROJECT); and whereas all of the aforesaid being located within the corporate limits of the City of Wichita, Sedgwick County, Kansas, and

WHEREAS that this Agreement and all subconsultant agreements shall be governed by the laws of the State of Kansas.

WHEREAS the OWNER is authorized by law to employ a consultant to provide professional consulting services NOW, THEREFORE, the parties hereto do mutually agree as follows:

**ARTICLE I - SCOPE OF SERVICES**

The Scope of Services to be performed by the CONSULTANT shall be as outlined in EXHIBIT A, with the Site Plan in EXHIBIT B.

**ARTICLE II - THE CONSULTANT AGREES:**

- A. To provide the professional services, equipment, material and transportation to perform the tasks as outlined in ARTICLE I, SCOPE OF SERVICES.
- B. To designate a project manager who will coordinate all work and be the point of contact for communications and to submit qualifications of a proposed project manager change to the OWNER in advance of the Notice to Proceed. The OWNER reserves the right to withhold the Notice to Proceed until a qualified project manager is designated. The OWNER shall concur with any changes to this assignment.
- C. To submit to the OWNER, in a timely manner, editable, electronic files of all surveys and drawings in AutoCAD format, and specifications in Microsoft Word. Each submittal shall be in a single, organized file that mimics the plans and specifications.
- D. To save and hold OWNER harmless against all suits, claims, damages and losses for injuries to third parties or their property or to the OWNER and its property arising from or caused by negligent acts, errors or omissions of CONSULTANT, its agents, servants,

employees, or sub-consultants occurring in the performance of its services under this Agreement.

- E. To maintain all books, documents, papers, accounting records and to make such material available at the CONSULTANT'S office at reasonable times during the contract period, and for three years from the date of final payment under the Agreement, for inspection and/or duplication by the OWNER or authorized representatives.
- F. It will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONSULTANT assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The CONSULTANT assures that it will require that their covered sub-organizations provide assurances to the OWNER that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- G. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work described in EXHIBIT A.
- H. To submit billings to the OWNER for the Services performed as required by this Agreement. Billings shall not exceed progress of work as evidenced by deliverables submitted by the CONSULTANT and approved by the OWNER. During the progress of work covered by the Agreement, partial payment requests may be made at intervals of not less than four weeks. The progress billings shall be supported by documentation acceptable to the OWNER, which shall include a record of the percentage completion evidenced by approved deliverables, of the number of days allocated for completion of the work, the number of days that have elapsed, and the number of days that remain to complete the work. Progress billings shall also include copies of sub-consultant invoices to the CONSULTANT for the same billing period. Payment to sub-consultants, for satisfactory performance, shall be made within 7 days of receipt of payment. Any delay or postponement of payment from the referenced time frame may occur only for good cause and following written approval of the OWNER.
- I. To insert following two clauses 1) and 2) in all subcontracts.
  - 1) Contract Assurance Clause (Assurance 26.13b): "The CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts."
  - 2) Prompt Payment Clause (26.29): "The CONSULTANT agrees to pay each sub-consultant under this Agreement for satisfactory performance of its contract no later than seven (7) business days from receipt of each payment the CONSULTANT receives from the OWNER with no retainage withheld. Any delay or postponement of payment from the preceding 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."
  - 3) Prompt Payment Compliance Procedures:

- a. CONSULTANT will attach copies of all sub-consultant invoices due with progress payment.
  - b. As proof of prompt payment to all sub-consultants, CONSULTANT shall verify, through the OWNER'S Diversity Management System (DMS), every progress payment received and report the payments made to every sub-consultant within fourteen (14) business days from notice of payment. Every sub-consultant paid shall certify its payment from the CONSULTANT via the OWNER'S DMS within seven (7) business days from notice of payment.
  - c. The OWNER proactively reviews contract payments to sub-consultants monthly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to sub-consultants is equivalent to the amounts reported to the OWNER by the CONSULTANT. The OWNER undertakes ongoing monitoring of CONSULTANT payments to sub-consultants over the course of any covered contract. Such monitoring activities will be accomplished through, but are not limited to, the following method(s):
    - i. Posting CONSULTANT payments to a website, database, or other place accessible to sub-consultants to alert them to the start of the seven (7) business day clock for payment.
    - ii. Use of an automated system that requires real time entry of payments to, and receipts by the CONSULTANT and sub-consultants and regularly monitoring that system.
- 4) Prompt Payment Complaint – A complaint by a sub-consultant regarding the prompt payment requirements is handled according to the following procedure:
- a. If affected sub-consultant is not comfortable contacting the Consultant directly regarding payment or unable to resolve payment discrepancies with the Consultant, sub-consultant should contact Disadvantaged Business Enterprise Liaison Officer (DBELO) to initiate complaint.
  - b. The DBELO will facilitate meeting(s) between CONSULTANT and affected sub-consultant, with OWNER and representatives attending, as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including authority to take enforcement action.
  - c. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action to resolve a prompt payment dispute, affected sub-consultant may, as the next step regarding a resolution, contact the Federal Aviation Administration, Central Region.
  - d. The CONSULTANT shall maintain records and documents of payments to all sub-consultants for a minimum of three (3) years after final closeout, unless otherwise provided by applicable record retention requirements for the OWNER'S financial assistance agreement, whichever is longer. These records shall be made available for inspection, upon request, by any authorized representative of the OWNER or DOT. This reporting requirement includes all sub-consultants, both DBE and non-DBE.

5) Prompt Payment Enforcement Procedures:

- a. Failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the OWNER deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Disqualifying the CONSULTANT from future airport project work (4) Disqualifying the CONSULTANT from future City of Wichita project work as non-responsible. The disqualifications listed herein may exist for up to three (3) years.
- b. No further progress payments will be made until the previous month's certification audit reports are approved by the OWNER including remedy of discrepancies.
- c. OWNER will 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 this Agreement.
- d. Pay subcontractors directly and deduct this amount from the amount owed to the CONSULTANT.
- e. Issue a stop-work order until payments are released to sub-consultants, specifying in this Agreement that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
- f. Other penalties for failure to comply, up to and including termination of this Agreement, and disqualifying the CONSULTANT from future OWNER and City of Wichita project bidding as non-responsible for a period of up to three (3) years.
- g. OWNER will actively implement the prompt payment enforcement actions.
- h. Alternative Dispute Resolution:
  - i. In the event of a dispute arising out of or relating to this Agreement, each party agrees not to commence legal proceedings without first attempting, in good faith, to resolve the dispute amicably and speedily in accordance with the following dispute resolution procedures.
  - ii. Any such dispute shall be referred in the first instance to the main individuals responsible for administering this Agreement within the OWNER'S and CONSULTANT'S businesses respectively.
  - iii. If the dispute is not resolved in accordance with Article II, Paragraph h. i. and ii, it shall be referred at the written consent of either party to the Director of Airports representing the OWNER and the owner of the company representing the CONSULTANT. These Managing Directors may delegate their responsibilities and authority to representatives of their organizations.



- iv. If the dispute is not resolved within 14 business days of being referred to the Managing Directors (or such longer period as the parties may mutually agree), the parties will attempt to settle by mediation through a neutral mediator selected by the Parties.
  - v. If mediation is unsuccessful, this Alternative Dispute Resolution procedure shall be considered terminated as regards the dispute in question and either party may proceed to litigation.
  - vi. This Alternative Dispute Resolution shall not prevent a party to this Agreement from taking immediate injunctive action necessary to preserve its interests.
  - vii. As a condition for the issuance of the Notice to Proceed the CONSULTANT shall submit to the OWNER, for approval, a detailed Alternative Dispute Resolution plan, if different from this one.
- J. To complete and deliver plans to the OWNER within the time allotted for the work as stipulated herein; except that the CONSULTANTS shall not be responsible or held liable for the time required for reviews for the approving parties or other delays occasioned by the actions or inactions of the OWNER or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT. The schedule is in EXHIBIT A.
- K. To be responsible for the professional and technical accuracy and the coordination of all drawings or other work or material furnished by the CONSULTANT under this Agreement in accordance with the reasonable and sound practices ordinarily used by members of CONSULTANT'S profession practicing under similar condition in the same time and locale.

All specifications and bid documents prepared in accordance with the work required by this Agreement shall contain a clause that provides the following:

"Notwithstanding anything to the contrary contained in these bid documents or the contract to be awarded herein, the OWNER shall not be subject to arbitration and any clause relating to arbitration contained in these bid documents or in the contract to be awarded herein shall be null and void."

- L. To procure and maintain such professional liability insurance as will protect the CONSULTANT from damages resulting from negligent acts and/or omissions of the CONSULTANT, its agents, officers, employees and sub-consultants in an amount not less than \$2,000,000 per claim, subject to deductible of the greater of \$10,000 or such amount that the CONSULTANT can demonstrate to OWNER'S satisfaction is financially prudent. The CONSULTANT shall be responsible for payment of all deductible amounts without reimbursement by OWNER.

In addition, CONSULTANT will provide either:

\_\_\_\_\_ tail coverage on the same terms extending for 3 years after project completion, or

\_\_\_\_\_ agree, by this provision, to continuously maintain professional liability insurance on a claims made basis at an equal or greater level of coverage to that described above for a period extending for 3 years after project completion.

To procure and maintain a Worker's Compensation policy with coverage amounts sufficient to meet statutory requirements. This policy shall contain a non-monopolistic states endorsement. In addition, an Employers Liability policy with coverage in the sum of not less than \$1,000,000 shall be provided and maintained. This policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law. The CONSULTANT shall maintain such insurance through the duration of the PROJECT.

To procure and maintain a commercial general liability policy for the duration of the PROJECT that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the OWNER or other persons (other than CONSULTANT'S employees) or damage to property of the OWNER or other persons or other liability loss arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees, or sub-consultants in the performance of CONSULTANT services under this Agreement.

The liability limit shall not be less than \$1,000,000 per occurrence for bodily injury, death and property damage. The Wichita Airport Authority, Wichita, Kansas; the City of Wichita; their officers, employees and agents shall be named as additional insureds under the terms of the policy with respect to the named insurer's operations. Satisfactory Certificates of Insurance shall be filed with the OWNER prior to the time CONSULTANT starts any work under this Agreement. The CONSULTANT shall maintain such insurance through the duration of the Project. In addition, insurance policies applicable hereto shall contain a provision that provides that the OWNER shall be given written notice by the insurance company equal to that owed to the insured under the policy terms before such policy is substantially changed or cancelled.

Its agents, employees and subcontractors, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in effect and which apply to its activities on Airport property, including such rules, regulations, orders and/or restrictions that may be adopted, enacted or amended during the term of this Agreement.

- M. To employ Disadvantaged Business Enterprise (DBE) businesses of at least **X.XX%** of the total contract amount encumbered by this Agreement and related Supplemental Agreements or demonstrate good faith effort that the DBE goal cannot be obtained as per 49 CFR Part 26, Appendix A.

The DBE commitment made through the Utilization Statement and associated Letters of Intent submitted with the negotiated fees comprise the percentage of DBE commitment on this Contract. DBE sub-consultants cannot be removed or replaced without written approval of the DBELO. DBE commitment will be monitored through the DMS by the OWNER. Should sub-consultant contract amounts change (either up or down) during the course of the Contract, CONSULTANT shall report changes through the DMS with OWNER approval.

- N. All information provided by the OWNER and/or developed for the PROJECT shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of OWNER, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided, however, that the limitation shall not apply to any information or portion thereof, which is:

1. Within the public domain at the time of its disclosure.
  2. Required to be disclosed by a court of competent jurisdiction or Government order.
  3. Approved by the OWNER for publicity.
  4. Required to be communicated in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.
- O. The project documents are exclusive property of the Wichita Airport Authority. The use of the project documents, including the Drawings, Specifications, Shop Drawings, all material in electronic format and project record documents, for any other purpose or project is prohibited, without the expressed written consent of the Wichita Airport Authority.
- P. It and its sub-consultants will work exclusively for the OWNER on all aspects of this Project.
- Q. To review, approve and forward undisputed requests for payment to the OWNER within seven business days of receipt from the contractor.
- R. Should CONSULTANT, its sub-consultants and/or agents cause any violation of Federal, State and/or local law, regulation or ordinance, and should OWNER be cited for a fine or penalty for such violation, CONSULTANT agrees to reimburse OWNER for any monetary fine or penalty which may be imposed on OWNER. However, nothing herein shall prevent the CONSULTANT from contesting the legality, validity or application of such fine or penalty to the full extent CONSULTANT may lawfully be entitled, nor require OWNER to pursue such a contest on CONSULTANT'S behalf. OWNER agrees to cooperate in CONSULTANT'S content of the validity of such fine or penalty, at CONSULTANT'S expense.

### ARTICLE III - THE CONSULTANT CERTIFIES:

- A. It has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the CONSULTANT) to solicit or secure this Agreement.
- B. It has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
- C. By acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by and Federal department or agency. It further agrees by submitting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach and explanation to this Agreement.
- D. The CONSULTANT and its sub-consultant's overhead rates used in this Agreement are certified by audit and comply with Federal cost principles contained in 48 CFR, Part 31, and that the CONSULTANT will provide to the OWNER such certifications prior to the execution of the Agreement. Should such certifications not be available from the CONSULTANT or its sub-consultant(s) at the time of the execution of this Agreement the CONSULTANT shall be responsible to the OWNER for all costs deemed not AIP eligible that would have otherwise been eligible but for a lack of such certification. In addition to any other legal remedies available, CONSULTANT authorizes OWNER to collect any amount due under this provision for ineligible costs by set-off against fees that the OWNER owes to the CONSULTANT on any other contract, whether or not related to this Agreement. This provision survives termination of this Agreement. Should CONSULTANT or sub-consultant provide certified overhead rates per 48 CFR, Part 31 subsequent to the execution of this Agreement the Agreement may be amended to reflect that change.
- E. It will comply with the pertinent Federal statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the ground of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
- F. It will comply with pertinent statutes regarding the Airport and Airways Improvement Act of 1982, Section 520 (General Civil Rights Provisions), Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- G. It will comply with all pertinent Federal statutes, Executive orders, such rules as published by the Federal Aviation Administration, the Federal Contract Provisions for A/E Agreements as attached in (EXHIBIT C), and the City of Wichita Mandatory Contractual Provisions Attachment (EXHIBIT E.1) and the City of Wichita Mandatory Independent Contractor Addendum (EXHIBIT E.2).

### ARTICLE IV - THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT available to the OWNER. All data shall be considered confidential unless otherwise noted.
- B. To provide standards, as available, for the PROJECT.
- C. To pay the CONSULTANT for services in accordance with the requirements of this Agreement within thirty (30) working days from the date of receipt of invoice and upon satisfactory performance of service in accordance with the industry standard of care.
- D. To provide the right of entry into secured areas for CONSULTANT'S personnel, subject to all rules and regulations of the OWNER, the Transportation Security Administration and Federal Aviation Administration regarding airfield safety and security.
- E. To pay all applicable design phase fees, unless otherwise stated herein.
- F. To abate asbestos, as needed, within the work zone.
- G. To indemnify and hold the CONSULTANT harmless against OWNER'S negligent acts and errors.

#### ARTICLE V – PAYMENT PROVISIONS:

- A. Payment to the CONSULTANT for performance of the specified services shall be on the basis of a lump sum fee of **\$XX,XXX.00** for design phase services and a lump sum fee of **\$X,XXX.00** for bid phase services for a total lump sum fee of **\$XX,XXX.00** as allowed in Chapter 4, Federal Aviation Administration Advisory Circular 150/5100-14D. The fee summaries are provided in EXHIBIT D.
- B. During the course of the Agreement any scope changes anticipated or detected by the CONSULTANT shall immediately, and in writing, be brought to the attention of the OWNER along with an estimate of actual costs and impact to the schedule. The CONSULTANT shall give the OWNER the opportunity to mitigate any and/or all impacts of the proposed scope changes. For potential scope changes initiated by the OWNER, the OWNER shall provide to the CONSULTANT, in writing, the known details of the proposed scope change and the CONSULTANT shall proceed to provide a timely response. In no case shall additional work be performed nor shall additional compensation be paid except on the basis of an executed supplemental agreement.
- C. Final payment shall not occur until all work is complete and approved by the OWNER.

#### ARTICLE VI - THE PARTIES HERETO MUTUALLY AGREE:

##### A. TERMINATION OF CONTRACT

- 1. The OWNER may, by written notice to the CONSULTANT, terminate this Agreement for its convenience and without cause or default on the part of CONSULTANT as provided for in the attached the Federal Contract Provisions For A/E Agreements (EXHIBIT C).

2. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of this Agreement as provided for in the attached Federal Contract Provisions for A/E Agreements (EXHIBIT C).
- B. The specifications, plans and other deliverables shall become the property of the OWNER upon delivery or termination of the Services in accordance with this Agreement. The OWNER shall not hold the CONSULTANT and sub-consultants liable upon the OWNER'S reuse of any part of deliverables, and there shall be no restriction or limitation on their further use by the OWNER. CONSULTANT'S seal and name shall not be reproduced on such documents if reused by the OWNER.
- C. The services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the OWNER.
- D. In the event of unavoidable delays in the progress of the work, reasonable extensions in the time will be granted by the OWNER, provided, however, that the CONSULTANT shall request extensions in writing giving the reason therefore.
- E. Unless otherwise provided in this Agreement, the CONSULTANT and agents, servants, employees, or sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- F. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- G. For good cause, and as consideration for executing this Agreement, the CONSULTANT, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the OWNER all right, title, and interest in and to all causes of action it may now or hereafter require under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the OWNER pursuant to this Agreement.
- H. Neither the OWNER'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- I. This agreement does not create nor allow enforcement of any third party beneficiary rights.
- J. The CONSULTANT and the OWNER shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in any proposal or contract documents is deemed void.
- K. The failure of any party to enforce, at any time, the provisions of this Agreement or the failure to exercise any option which it provides shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any of its terms, or the right of any party to enforce each and every provision of this Agreement or the right to exercise any option provided within this Agreement terms. Neither waiver of any breach nor waiver of multiple breaches of this Agreement shall be held to be a waiver of any other or

subsequent breach. All remedies available under this Agreement are cumulative and are in addition to every other remedy provided by operation of law.

- L. OWNER shall not be responsible for discovering deficiencies in the technical accuracy of the CONSULTANT'S services. CONSULTANT shall correct deficiencies in technical accuracy without any increase in the existing authorized fees hereunder, unless such corrective action is directly attributable to deficiencies in OWNER-furnished information where the CONSULTANT was not able to independently verify information upon receipt of such information.
- M. Notwithstanding any provision to the contrary herein, CONSULTANT's (including its sub-consultants, agents, assignees, affiliates and vendors) total aggregate liability under this Agreement shall be limited to the greater of two million dollars (\$2,000,000.00) or available insurance proceeds including required deductibles.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this Agreement as of the date first written above.

OWNER

WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By: \_\_\_\_\_  
Karen Sublett, City Clerk

By: \_\_\_\_\_  
Brandon J. Whipple, President

By: \_\_\_\_\_  
Victor D. White, Director of Airports

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_  
Jennifer Magaña, City Attorney and Director of Law

CONSULTANT

**Consultant Name**  
**Consultant Address**  
**City, State Zip**

By: \_\_\_\_\_

\_\_\_\_\_  
(date)

Title: \_\_\_\_\_

ATTACHMENTS: EXHIBIT A – Scope of Services and Design Phase Schedule  
EXHIBIT B – Site Plan  
EXHIBIT C – Federal Contract Provisions for A/E Agreements  
EXHIBIT D – Fee Sheet  
EXHIBIT E.1: - City of Wichita Mandatory Contractual Provisions  
EXHIBIT E.2: - City of Wichita Mandatory Independent Contractor Addendum



**EXHIBIT E.1 7C- 2b**  
**CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS**  
**ATTACHMENT**

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration. Damages. Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.  
City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City

employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto. Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total \$5,000 or less during the City's fiscal year. You will be contacted if you are the successful vendor and do not have a current EEO/AA submittal on file with the Purchasing Office and/or have not REGISTERED VIA THE CITY'S WEB SITE: '1'-==u.....;=,;:.....c=:.....:==>:.....· Questions about the City of Wichita's EEO/AA submittal requirements should be directed to (316) 268-4417.
14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the

written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

10/22/2019

**EXHIBIT E.2 7C-2b**  
**CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR**  
**ADDENDUM**

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

## **Construction Contract/ Subcontract Verification Process 4-9-2021 7C-3**

1. Prepare contract for Vendor signature using sample Contract from Project Specification Manual after Board of Bids and FAA (if required) award approval.
  - a. Complete amount per bid documents
  - b. Attach Performance/Maintenance Bond
  - c. Attach Statutory Bond with extra copy
  - d. Letter requesting 10 day turnaround of all documents, including insurance certificates and Surety signatures.
2. Signed Contract received from Prime Vendor. Verify attachments:
  - a. Performance/Maintenance Bond
  - b. Statutory Bond filed with receipt
  - c. Insurance Certificates
  - d. ADA Compliance form signed.
  - e. Buy American paperwork (if required)
3. Obtain necessary signatures.
  - a. Director of Airports
  - b. Law
  - c. Purchasing Manager, City Manager or Mayor (depending on amount of contract)
  - d. City Clerk
4. Contractor to enter Utilization Plan into Diversity Management System (DMS) software, including:
  - a. Company name, address
  - b. Project contact information
  - c. Amount of contract
  - d. Subcontractors: Company name & address, Company contact information, NAICS codes, amount of subcontracts, DBE status, upload sample subcontract.
5. Send executed contract to Vendor with copies to:
  - a. FAA
  - b. Resident Engineer
  - c. File
  - d. Purchasing (with PO request and approval minutes)
6. Certify FAA contract requirements and date on Contract Tracking Spreadsheet
7. Set up Administrative meeting with Prime Vendor and all Sub-vendor administrative and payroll staff and Resident Engineer to review all DBE and Certified Payroll processes.
8. Contractor uploads signed copies of all subcontracts into DMS.
9. Verify subcontracts:
  - a. Amount
  - b. Work to be performed
  - c. Prompt payment days
  - d. Amount of retainage
  - e. Bonds, Insurance
  - f. FAA clause requirements (if required)
10. Certify on Contract Tracking Spreadsheet (See attached example)

## **Consultant Contract/ Subcontract Verification Process 4-9-2021 7C-3**

1. After Vendor selection through the City Staff Screening Selection Process, begin scope and fee negotiations.
  - a. Meet with Vendor to discuss project scope. Vendor develops scope without fees. Once scope concurrence with Vendor, Airport and FAA, then consultant develops fee spreadsheet. Airport Engineer develops an Independent Fee Estimate (required for FAA).
  - b. Consultants sends their fee development, differences negotiated. Fee development includes signed Utilization Statement and DBE Letters of Intent, Bidder/Offerer Participants List (**ATTACHMENT 3**)
2. Prepare contract for Vendor signature using sample Contract from Request for Qualifications solicitation.
  - a. Complete amount from final fee negotiations.
  - b. Attach fee sheets and schedule.
  - c. Letter requesting turnaround of all documents, including insurance certificates.
3. Signed Contract received from Prime Vendor. Verify attachments:
  - a. Signatures
  - b. Insurance Certificates
4. Obtain necessary signatures.
  - a. Director of Airports
  - b. Law
  - c. If contract value (or cumulative future value) over \$150,000, Staff Screening Selection Process to be approved by City Auditor and City Manager.
  - d. Purchasing Manager, City Manager (depending on amount of contract)
  - e. If WAA approval required, Green sheet prepared and contract sent for approval two weeks into future.
  - f. City Clerk
5. Vendor to enter Utilization Plan into Diversity Management System (DMS) software, including:
  - a. Company name, address
  - b. Project contact information
  - c. Amount of contract
  - d. Subcontractors: Company name & address, Company contact information, NAICS codes, amount of subcontracts, DBE status, upload sample subcontract.
6. Send executed contract to Vendor with copies to:
  - a. FAA
  - b. Resident Engineer
  - c. File
  - d. Purchasing (with PO request and approval minutes)
7. Certify FAA contract requirements and date on Contract Tracking Spreadsheet
8. Vendor uploads signed copies of all subcontracts into DMS.
9. Verify subcontracts:
  - a. Amount
  - b. Work to be performed
  - c. Prompt payment days
  - d. Insurance

- e. FAA clause requirements (if required)
10. Certify on Contract Tracking Spreadsheet (See attached example)



## **Pay Estimate Review Process 4-9-2021 7C-4**

1. Pay application submitted for review to Resident Engineer by Vendor. Resident Engineer certifies progress or work complete, quantities and attachments on pay application.
2. Pay application submitted to WAA.
3. Pay application logged into review process tracking process.
4. Capital Program Administrator (DBELO) reviews pay application for accuracy with regard to amounts shown, change order amounts & budget remaining on Purchase Order. Pay Application coded and submitted for payment into City Finance system. Payment typically made to Vendor within 30 days.
5. DBELO notifies Vendor of Payment through Diversity Management System (DMS) and starts the Payment Audit Process:
  - a. Within 14 days Vendor logs into DMS system and verifies payment amount and date from City Finance System. Certifies payments to all sub-vendors paid on this pay application with date and amount of payment.
  - b. All sub-vendors log into DMS system and verify payment amount and date of payment. If lower tier sub-vendors have been paid, then sub-vendor certifies payments to all lower tier sub-vendors with date and amount of payment.
  - c. If all audits in agreement, audit complete. If discrepancies, DBELO monitors and provides corrective action. When all audits and discrepancies corrected and accepted by DBELO, audit complete. DBE running tally updated by DMS.
6. DBELO reviews Request for Subcontractor change (when submitted)
  - a. Verify math calculations in agreement with DBELO records.
  - b. Verify reasons for change in DBE utilization, if any.
  - c. Ask for additional information or documentation as necessary. Vendor uploads copy of subcontract into DMS system.
  - d. Subcontract checked for proper FAA clauses, verbatim language, bonds, insurance, retainage, payment dates, DBE status (if necessary). Accepts subcontract in DMS system.
7. DBELO reviews DBE invoices to Vendor including supplier invoices submitted to the Vendor on a quarterly basis.
  - a. Verify DBE paying for supplies and materials used on the project.
  - b. Verify DBE employee listed as invoice point of contact.
8. Refer pay application to Construction Superintendent for approval.
9. Refer pay application to Airport Engineer for approval.
10. Pay Application entered into MUNIS accounting system for review and payment.
11. Per City of Wichita guidelines, Vendor paid within 30 days of receipt from Resident Engineer.

<b>WEEKLY DBE COMPLIANCE REVIEW REPORT</b>		Period Beginning/Ending 0
		Grant Number FAA 3-20-00XX-0XX-20XX
Airport Name		Contractor's Name
Project Description		
Operations on Project (List all operations being performed on project, i.e., earthwork, asphalt paving, lighting, etc.)		
DBEs Working on Project (If there is no DBE activity, then state, "No DBE activity on project during this period.")		
Work Performed by DBE Contractor(s)		
Additional Comments		
<b>SPONSOR'S INSPECTOR OR REPRESENTATIVE</b>		
Date	Typed or Printed Name and Title:	Reviewed By:

## **ATTACHMENT 7C-6 DBE CLOSEOUT PROCESS 4-13-2021**

- 1.** Vendor completes closeout documents and submits to Owner:
  - a.** Final Pay Application
  - b.** Final Lean Waiver Affidavit
  - c.** Completed DBE Acknowledgement form
  - d.** DBE Acknowledgement forms from each DBE

# CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT 7C-6a

(May 9, 2019)

NOTICE THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

## Identifying Information:

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

This document waives and releases lien, stop payment notices, and payment bond rights the claimant has for labor and services provided, and equipment and material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

## Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

## Signature

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## DBE Project Accomplishment **7C-6b** Close Out Statement

Project Name \_\_\_\_\_ FAA Grant No. \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Original Contract Amount \$ \_\_\_\_\_

Change Order or Supplemental Agreement Amount \$ \_\_\_\_\_

Final Contract Amount \$ \_\_\_\_\_

DBE Contract Goal \_\_\_\_\_ % DBE Commitment at Bid \_\_\_\_\_ %  
(From Utilization Statement)

### DBE Accomplishment (Amount Paid to DBEs)

<u>DBE Company Name</u>	<u>Amount Paid</u>	
	\$	DBE Acknowledgement attached? Y/N
	\$	DBE Acknowledgement attached? Y/N
	\$	DBE Acknowledgement attached? Y/N
	\$	DBE Acknowledgement attached? Y/N
	\$	DBE Acknowledgement attached? Y/N
Total Paid to DBEs	\$	

DBE Utilization on Contract \_\_\_\_\_ % (DBE total paid/completed Contract amount)

I, \_\_\_\_\_, \_\_\_\_\_, acknowledge the above amounts are  
Printed Name Title

correct. If the DBE contract goal was not met, provide explanation along with supporting documentation.

---

---

---

---

---

\_\_\_\_\_  
Contractor Authorized Signature

\_\_\_\_\_  
Date

## DBE Acknowledgement 7C-6c

Project Closeout Documentation  
(Submit for each DBE that worked on the Project)

Project Name \_\_\_\_\_ FAA Grant No. \_\_\_\_\_

**Contractor:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Subcontractor:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**DBE Initial Contract Amount:** \$ \_\_\_\_\_

**Actual Amount Paid to DBE:** \$ \_\_\_\_\_

**Explanation of Discrepancy, if any:** \_

---

---

---

---

---

---

\_\_\_\_\_  
Contractor Company Name

\_\_\_\_\_  
DBE Company Name

\_\_\_\_\_  
Authorized Contractor Signature

\_\_\_\_\_  
Authorized DBE Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT 8**  
**DBE CERTIFICATION APPLICATION FORM**

This page intentionally left blank.

Dwight D. Eisenhower State Office Building 700 S.W. Harrison Street  
Topeka, KS 66603-3745 *Office of Civil Rights Compliance*  
Julie L. Lorenz, Secretary Doria Watson, Chief  
Phone: 785-296-7940  
Fax: 785-296-0723  
kdot#publicinfo@ks.gov <http://www.ksdot.org> Laura Kelly, Governor



---

## KANSAS STATEWIDE CERTIFICATION PROGRAM

Thank you for your interest in being certified as a disadvantaged business with the State of Kansas. The Kansas Statewide Certification Program (KSCP) is a joint effort between the Department of Transportation, Office of Civil Rights Compliance, and the Department of Commerce, Office of Minority and Women Business Development

To be certified as a Disadvantaged Business Enterprise (DBE) an applicant must meet the following criteria:

- iv. The disadvantaged owner must be a citizen of the United States or have been lawfully admitted as a permanent U.S. resident.
- v. The applicant firm must meet USDOT size standards and be an independent and viable for-profit business.
- vi. Fifty-one percent of the business must be owned and controlled by a socially and economically disadvantaged person. To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed \$1.32 million.

To properly evaluate eligibility, the firm must provide a current financial statement and the most recent three years tax return for both the company and the majority owner(s).

A completed, signed and notarized USDOT Uniform Certification Application should be submitted with all required supporting documentation. A list of required documentation is included with the application. It is important that each question is answered completely or, if not applicable, designated "N/A." If required information is not provided, a written explanation must be included. Upon receipt of the application and all supporting documents, the applicant will be contacted concerning an on-site interview.

If the applicant business is located out-of-state, and the company is certified through their home state, a copy of the certification must be submitted with the application.\* Our office will secure a copy of the most recent on-site report from the home state certifying agency. A completed application, and supporting documents, are required for all out-of-state applicants' initial certification. In lieu of completing a new application, we will accept a copy of the application package submitted to the home state if all information is current and correct. A telephone interview may be deemed necessary after receipt and review of the home-state on-site report.

Notification of acceptance or denial will be mailed to the applicant. If accepted, the certification is valid until the firm graduates the program or is removed for non-compliance. Annual updates are required, and every three years new on-site interviews will be conducted. Certified businesses are listed in a directory that is available on the Department of Transportation website at [www.ksdot.org/divadmin/civilrights/](http://www.ksdot.org/divadmin/civilrights/). Please be advised that certification does not guarantee additional business or contracts.



MAIL COMPLETED APPLICATION AND REQUIRED DOCUMENTATION TO:

**CONSTRUCTION RELATED FIRMS NON-CONSTRUCTION RELATED FIRMS**

Kansas Department of Transportation Kansas Department of Commerce Office of Contract  
Compliance Office of Minority & Women Development

700 SW Harrison Street, 3<sup>rd</sup> Floor West 1000 SW Jackson, Suite 100 Topeka, KS 66603-3754

Topeka, KS 66612-1354 785-296-7940 785-296-5298

\*In some instances, a business may not be certified in their home-state and such information should be provided when the application is submitted.



OMB  
APPROVAL NO:  
2105-0510

Appendix F

**UNIFORM CERTIFICATION APPLICATION**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) /AIRPORT CONCESSION**  
**DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**  
**49 C.F.R. Parts 23 and 26**

**1. Should I apply?**

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

**2. How do I apply?**

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

**3. Where can I send my application? [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]**

- 4. Who will contact me about my application and what are the eligibility standards?** A transportation agency in your state that performs certification functions will contact you. The agency is a member of a statewide Unified Certification Program (UCP), which is required by the U.S. Department of Transportation. The UCP is a one-stop certification program that eliminates the need for your firm to

obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

#### **5. Where can I find more information?**

U.S. DOT—<https://www.transportation.gov/civil-rights> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).


Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 C.F.R. Parts 180 and 1200, No procurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Use the following link to obtain the latest version of the DBE Certification Application form

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>

**ATTACHMENT 9**  
**KANSAS UCP AGREEMENT**

This page intentionally left blank.



# Kansas State Wide Certification Program



For All Kansas Agencies, Counties, Cities, Local Agencies And  
Disadvantaged Business Enterprises.

# KANSAS STATEWIDE CERTIFICATION PROGRAM

## Unified Certification Process

---

**Revised September 2018**

Certification Agency

*Kansas Department of Transportation*

Certification Partner

Kansas Department of Commerce

Funding Source Agencies

Federal Highway Administration

Federal Transit Administration

Federal Aviation Administration

## Table of Contents

Unified Certification Process Development.....	1
The Partnership.....	1
USDOT Direct Recipient Partners in Kansas .....	2
Impact on Recipient Partners .....	3
Communication.....	3
Reciprocity .....	3
Agreement Process .....	4
Process Review .....	4
Data Requirements .....	4
NAICS Codes .....	4
Agency Compliance .....	5
Training .....	6
Supportive Services .....	6
Implementation.....	6
DBE Program Policy Statement .....	7

Attachments  
Table of Contents

Attachment A	49 CFR Part 26.81 .....	A-1
Attachment B	Sample Information Letter.....	A-3
Attachment C	Sample Certification Letter.....	A-4
Attachment D	Sample Certificate .....	A-5
Attachment E	Request for NAICS Code Modification Directions ..	A-6
Attachment F	NAICS Code Modification Request Form.....	A-7
Attachment G	Executive Order No.94-169.....	A-8

# *Unified Certification Process Development*

## *The Partnership*

On August 11, 1994, Governor Joan Finney signed Executive Order 94-169 which created a single-source DBE certification program in Kansas (Attachment H). This program is a partnership between the Kansas Department of Transportation (KDOT) and the Kansas Department of Commerce (KDOC). It replaced all local Kansas DBE certification programs with one centralized certification and supportive service center. This Executive Order is still in effect and the joint program has been processing certifications statewide since October 1, 1994. Both KDOT and KDOC accept and process applications. All certification decisions are issued by KDOT.

The 1999 Disadvantaged Business Enterprise (DBE) requirements contained in 49 CFR Part 26 (Attachment A) include a provision for a "one-stop" certification process to be developed by each USDOT funding recipient. The regulation required that the process be defined and submitted to the Secretary of Transportation for approval within three years of publication, i.e. March 2002. Failure to develop and execute a Unified Certification Process (UCP) agreement would have resulted in a loss of USDOT funding.

KDOT identified the U.S. Department of Transportation (USDOT) funding partners, as well as the direct recipients and sub-recipient partners of the agency. A direct recipient is an agency or government unit which receives federal funds directly from a USDOT agency. A sub-recipient is an agency or government unit which receives federal funds from another Kansas entity. A Kansas Statewide Certification Program (KSCP) Partner is any direct recipient or sub-recipient of USDOT funding and the KDOC.

To reflect the new federal requirements, it was agreed to rename the existing program the Kansas Statewide Certification Program (KSCP). The USDOT direct recipient partners and sub-recipient partners joined KDOT and KDOC in the KSCP which incorporated EO 94-169 & 49 CFR Part 26. This agreement governs all DBE operations of all recipient partners and sub-recipient partners involved in projects funded by the USDOT.



**The USDOT eligible direct recipient partners in Kansas include:**

▶ Abilene Municipal	▶ Lyons-Rice County Municipal
▶ Allen County	▶ Manhattan Regional
▶ Amelia Earhart	▶ Mark Hoard Memorial
▶ Anthony Municipal	▶ Marysville Municipal
▶ Atkinson Municipal	▶ McPherson
▶ Atwood-Rawlins County City-County	▶ Meade Municipal
▶ Augusta Municipal	▶ Medicine Lodge
▶ Belleville Municipal	▶ Miami County
▶ Blosser Municipal	▶ Mid-America Regional Council
▶ Chanute Martin Johnson	▶ Moritz Memorial
▶ Cheyenne County Municipal	▶ Ness City Municipal
▶ Cimarron Municipal	▶ New Century Aircenter
▶ City of Lawrence	▶ Newton-City-County
▶ Clay Center Municipal	▶ Norton Municipal
▶ Coffey County	▶ Oakley Municipal
▶ Coffeyville Municipal	▶ Oberlin Municipal
▶ Colonel James Jabara	▶ Osage City Municipal
▶ Dodge City Regional	▶ Oswego Municipal
▶ El Dorado/Captain Jack Thomas Memorial	▶ Ottawa Municipal
▶ Elkhart-Morton County	▶ Philip Billard Municipal
▶ Ellsworth Municipal	▶ Phillipsburg Municipal
▶ Emporia Municipal	▶ Pratt Regional
▶ Flint Hills Regional Transit Administration	▶ Renner Field/Goodland Municipal
▶ Forbes Field	▶ Rooks County Regional
▶ Fort Scott Municipal	▶ Russell Municipal
▶ Freeman Field	▶ Sabetha Municipal
▶ Garden City Regional	▶ Salina Regional
▶ Gardner Municipal	▶ Satanta Municipal
▶ Garnett Municipal	▶ Scott City Municipal
▶ Great Bend Municipal	▶ Shalz Field
▶ Hays Regional	▶ Smith Center Municipal
▶ Herington Regional	▶ Stanton County Municipal
▶ Hill City Municipal	▶ Strother Field
▶ Hugoton Municipal	▶ Syracuse-Hamilton County Municipal
▶ Hutchinson Regional	▶ Topeka Metropolitan Transit Authority
▶ Independence Municipal	▶ Trego Wakeeney
▶ Johnson County	▶ Tribune Municipal
▶ Johnson County Transit	▶ Tri-City
▶ Kansas Department of Transportation	▶ Ulysses
▶ Kingman Airport-Clyde Cessna Field	▶ Unified Government of Wyandotte
▶ Lakin	▶ County/Kansas City Kansas
▶ Larned-Pawnee County	▶ Wellington Municipal
▶ Lawrence Municipal	▶ Wichita Area Metropolitan Planning Organization
▶ Liberal Mid-America Regional	▶ Wichita Dwight D Eisenhower National
▶ Lt William M Milliken	▶ Wichita Metropolitan Transit Authority

## *Impact on Recipient Partners*

All KSCP partners are required to sign the UCP agreement. DBE certifications issued by the Statewide UCP will be binding on all direct and sub-direct recipients.

The UCP will not establish, recommend, or alter any partner's overall DBE Program, other than to supplement an approved program, DBE goal or goal methodology. DBE goal development, administration, monitoring and reporting remains the sole responsibility of the partner with a USDOT approved DBE Program in accordance with 49 CFR Part 26 and is subject to any oversight requirements of the lead agency. Any partner that elects not to establish a DBE program as set forth in the regulation will be required to adopt and implement the lead agency's program. The lead partner in Kansas is the funding partner for the majority of the recipient's USDOT federal funds or KDOT.

## *Communication*

Sharing information on any matter related to the operation of the UCP is a core element of the process. All KSCP partners agree to, and shall continue to, communicate openly amongst each other. Communication may take the form of, but is not limited to, telephone conversations, conference calls, meetings, correspondence, electronic transmittals and/or discussion databases.

If any KSCP partner is in receipt of information that is necessary or critical to determining DBE eligibility, the KSCP partner shall notify and submit the appropriate information to KDOT. Each KSCP partner shall be notified of all status changes affecting certification by KDOT. All KSCP partners shall be notified of all certification and denial actions of each KSCP partner.

## *Reciprocity*

The KSCP partners may elect to enter into an informal agreement with USPs in other states or regions. All reciprocity agreements must be approved by the Kansas Department of Transportation, Office of Civil Rights Compliance.

## *Agreement Process*

The KSCP became fully operational on April 1, 2002 and provides "one-stop shopping" to applicants for DBE certification in Kansas. All certifications by the KSCP will be made prior to a firm being utilized to meet a DBE goal.

All KSCP partners must sign and comply with the UCP agreement. Failure to sign the agreement may result in the loss of federal funds. Once the partners have finalized and executed the agreement all subrecipients of any of the direct recipients will receive a signed copy of the agreement. The agreement is binding on all subrecipients.

The KSCP will follow all certification procedures and standards of 49 CFR Part 26 and fully cooperate with oversight, review & monitoring of the activities of DOT and its operating administrations. In addition, KSCP shall implement DOT directives and

guidance concerning certification matters and commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

The KSCP shall make all certification decisions on behalf of all DOT recipients in Kansas with respect to participation in the DBE program. The certification decisions shall be binding on all KSCP partners.

## *Process Review*

The certification partners agreed to the name "Kansas Statewide Certification Program" or KSCP. Program members developed an application letter, approval or denial notification correspondence and certificates for newly certified DBE partners. The letterhead and certificate include the logos of the various funding sources and the certification partners as well as contact information (Attachments B, C, D & G). A copy of the federal application is also included.

## *Data Requirements*

A directory of certified DBE vendors is updated on-line daily and is available on the KDOT website at <https://kdotapp.ksdot.org/dbcontractorlist>.

## *NAICS Codes*

The certification partners agree to certify all firms in compliance with 49 CFR Part 26 including designating specific work types. The partners agree to use the NAICS codes for those designations. All certified firms will be informed of the specific codes and a short narrative description of that designation.

Any firm may request modification and/or additions to their approved NAICS codes by making a written request to the certification partner. That request must include the equipment and work experience indicating the firm's ability to perform the work type. In addition, the firm must submit documentation of past contracts on which the firm has performed the specific type of work being requested. (Attachment E)

## *Agency Compliance*

The certification partners agree there are many agency-specific issues related to their agency's certification processes. The primary areas of concern are:

- vii. Political Influence or Interference in Certification Decisions
- viii. Incomplete or Inadequate Definition of Processes
- ix. Non-Compliance with 49 CFR Part 26
- x. Quality of Decisions

For the UCP to succeed and the partners to maintain the level of trust needed to effectively comply with the UCP requirements it is necessary to implement minimum requirements for

compliance, as well as a process for dealing with any agency that is found to be in non-compliance. The specific minimum requirements are:

- All decisions related to certification must be made in compliance with 49 CFR Part 26. This requires the political independence to make decisions based upon the specific eligibility requirements.
- All appeals or hearings ***must*** be decided by a third party who was not involved in the determination or was a direct or indirect supervisor of the party involved in the decision.
- Outside entities such as construction boards or other politically mandated organizations cannot be involved in the certification determination, investigations of 3<sup>rd</sup> party challenges, or any administrative reconsideration.
- Each KSCP partner must have an approved program in place that clearly defines the role of the administrative staff. In addition, each partner must have clearly defined processes and procedures related to administration of the program, applications and certification decisions.
- Any KSCP partner with a DBE program administered in conjunction with an MBE/WBW program of another entity must have the procedures and policies for the DBE program clearly defined and separated. This includes eligibility requirements, data tracking, and removal/denial of certification.
- All partners agree that there is no "emergency" certification, nor is there a provision within 49 CFR Part 26 for "conditional" certification. The eligibility requirements are to be determined with the factors present at the time of application and the decision is to be made in compliance with Part 26.

## *Training*

All KSCP partners recognize the need for continued training for staff members as well as recipients and agency management personnel. The KSCP will seek the assistance of the USDOT, FTA, FHWA, FAA and any other agency to provide guidance and training. The KSCP will also embark upon ongoing in-service opportunities to continue to update the partners as well as the staff members. Many of these opportunities may be in conjunction with other UCPs, states, or entities.

## *Supportive Services*

The KSCP partners recognize the need for improved technical and business supportive services. It was agreed that the efforts of all the agencies could be combined to provide additional and meaningful training and support to all the certified firms. The partners will develop a communication effort to ensure that all agencies are notified of the upcoming training and given an opportunity to assist in the training and development activities.

## *Implementation*

Seeing that Kansas has had a sole source DBE program since 1994, the transition to the KSCP was completed as soon as approval was received from the USDOT on March 30, 2004.

## *DBE Program Policy Statement*

The Kansas Department of Transportation (KDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations Part 26. KDOT has received federal financial assistance from the U.S. Department of Transportation (USDOT) and, as a condition of receiving this assistance, KDOT has signed an assurance that it will comply with 49 CFR Part 26. Further, KDOT has participated in the establishment of, and fully supports, the Kansas State Certification Program as the required unified certification program in Kansas.

It is the policy and commitment of KDOT that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field to participate in the performance of contracts financed in whole, or in part, with federal funds.

Through the use of KSCP DBE certification procedures, KDOT will ensure that only fully eligible firms are permitted to participate in the narrowly tailored DBE program. KDOT will remove barriers to the participation of these eligible firms. KDOT will assist in the development of eligible firms to make them competitive both within and outside of the DBE Program.

The Secretary of Transportation for KDOT maintains overall responsibility for the administration of the DBE Program. To carry out these responsibilities the Secretary has designated a DBE liaison officer in the Office of Civil Rights Compliance. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligation incurred with USDOT funds.

Every three years KDOT shall submit to the Federal Highway Administration (FHWA) it's overall goal for the participation of DBE firms. In addition, at the end of each FHWA fiscal year, KDOT will analyze DBE participation to assure the goal is being met.

This Policy will be circulated throughout KDOT; notification will be published in the Kansas Register and made known to certified DBEs, DBE organizations, non-minority businesses, community and contractor organizations.

Richard Carlson  
Secretary of Transportation

Date: 9-7-18

## ATTACHMENT A

### *49 CFR Part 26*

#### *§26.81 What are the requirements for Unified Certification Programs?*

1. You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).
  6. Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.
  7. The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
  8. Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
  9. The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.
  10. If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.
2. The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.
  - a. Certification decisions by the UCP shall be binding on all DOT recipients within the state.

- b. The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
  - c. All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
- 3. All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- 4. A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- 5. Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
- 6. Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.
- 7. Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.
- 8. Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

# ATTACHMENT B

Department of Transportation  
Office of Civil Rights Compliance  
Dwight D. Eisenhower State Office Building  
700 S.W. Harrison Street  
Topeka, KS 66603-3745  
Doria Watson, Chief

## STATE OF KANSAS



GOVERNOR JEFF  
COLYER, M.D.  
RICHARD CARLSON,  
SECRETARY

Phone: 785-296-7940  
Fax: 785-296-0723  
ksdot#publicinfo@ks.gov  
<http://www.ksdot.org>

### KANSAS STATEWIDE CERTIFICATION PROGRAM

Thank you for your interest in being certified as a disadvantaged business with the State of Kansas. The Kansas Statewide Certification Program (KSCP) is a joint effort between the Department of Transportation, Office of Civil Rights Compliance, and the Department of Commerce, Office of Minority and Women Business Development

To be certified as a Disadvantaged Business Enterprise (DBE) an applicant must meet the following criteria:

1. The disadvantaged owner must be a citizen of the United States or have been lawfully admitted as a permanent U.S. resident.
2. The applicant firm must meet USDOT size standards and be an independent and viable for-profit business.
3. Fifty-one percent of the business must be owned and controlled by a socially and economically disadvantaged person. To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed \$1.32 million.

To properly evaluate eligibility, the firm must provide a current financial statement and the most recent three years tax return for both the company and the majority owner(s).

A completed, signed and notarized USDOT Uniform Certification Application should be submitted with all required supporting documentation. A list of required documentation is included with the application. It is important that each question is answered completely or, if not applicable, designated "N/A." If required information is not provided, a written explanation must be included. Upon receipt of the application and all supporting documents, the applicant will be contacted concerning an on-site interview.

If the applicant business is located out-of-state, and the company is certified through their home state, a copy of the certification must be submitted with the application. \* Our office will secure a copy of the most recent on-site report from the home state certifying agency. A completed application, and supporting documents, are required for all out-of-state applicants' initial certification. In lieu of completing a new application, we will accept a copy of the application package submitted to the home state if all information is current and correct. A telephone interview may be deemed necessary after receipt and review of the home-state on-site report.

Notification of acceptance or denial will be mailed to the applicant. If accepted, the certification is valid until the firm graduates the program or is removed for non-compliance. Annual updates are required, and every three years new on-site interviews will be conducted. Certified businesses are listed in a directory that is available on the Department of Transportation website at [www.ksdot.org/divadmin/civilrights/](http://www.ksdot.org/divadmin/civilrights/). Please be advised that certification does not guarantee additional business or contracts.

#### MAIL COMPLETED APPLICATION AND REQUIRED DOCUMENTATION TO:

##### CONSTRUCTION RELATED FIRMS

Kansas Department of Transportation  
Office of Contract Compliance  
700 SW Harrison Street, 3rd Floor  
West Topeka, KS 66603-3754  
785-296-7940

##### NON-CONSTRUCTION RELATED FIRMS

Kansas Department of Commerce  
Office of Minority & Women Development  
100 SW Jackson, Suite 100  
Topeka, KS 66612-1354  
785-296-5298

\*In some instances, a business may not be certified in their home-state and such information should be provided when the application is submitted.



# ATTACHMENT C

Department of Transportation  
Office of Civil Rights Compliance  
Dwight D. Eisenhower State Office Building  
700 S.W. Harrison Street  
Topeka, KS 66603-3745  
Doria Watson, Chief

## STATE OF KANSAS



Phone: 785-296-7940  
Fax: 785-296-0723  
kdot#publicinfo@ks.gov  
<http://www.ksdot.org>

GOVERNOR JEFF COLYER, M.D.  
RICHARD CARLSON, SECRETARY

DATE

Name  
Company  
Address  
City, ST Zip

Dear

The Kansas Statewide Certification Program (KSCP) is pleased to notify you that your firm has met the requirements for certification as a bona fide «Type» in accordance with KSCP policies and procedures, and Title 49 Part 26 of the Code of the Federal Regulations. Your firm will be listed with the following work type(s). If you wish to expand your scope of business, you must make a written request to the KSCP for review and determination.

NAICS Code/Work Type(s):

Attached is the KSCP DBE certificate that reflects the effective date of your certification. To maintain your certification with the KSCP, you must submit an annual update. Notification will be sent to you at least 30 days prior to the renewal date of your certification. It is *your responsibility* to ensure that your certification is kept up to date by submitting the required documentation as necessary.

If there is any change in the ownership or control of your firm, you must notify the certifying agency immediately. Failure to report any of these changes to this office or violation of the rules of the DBE Program may result in the revocation of your certification or other possible legal actions as set forth by Title 49 Part 26 of the Code of Federal Regulations.

Your firm's name will appear in the KSCP DBE directory. This directory is distributed to all KSCP joint agencies, outside agencies, developers, general contractors, and suppliers. The directory can also be accessed via the internet at: [www.ksdot.org](http://www.ksdot.org).

Sincerely,

Doria Watson  
Civil Rights Administrator  
Attachment

ATTACHMENT D

# KANSAS STATEWIDE CERTIFICATION PROGRAM

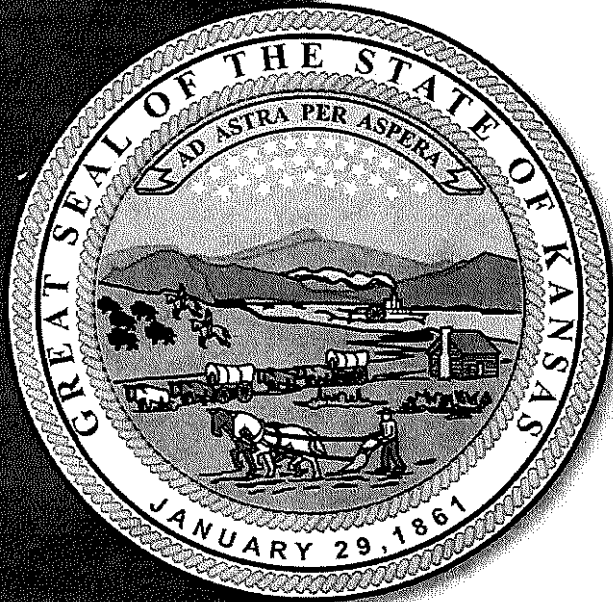
## CERTIFIES


Company Name

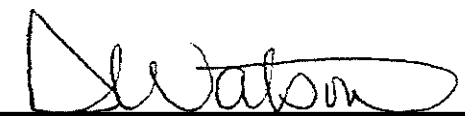
*Certification Type*

NAICS Code/Work type(s):

\_\_\_\_\_  
Effective Date



  
Rhonda Harris, Director  
Office of Minority & Women Business  
Kansas Department of Commerce

  
Doria Watson, Administrator  
Office of Civil Rights Compliance  
Kansas Department of  
Transportation

## REQUEST FOR NAICS CODE MODIFICATION

**Be advised that your request to add NA/CS codes is subject to review.**

*Copies of the documents listed below are **required** and must be submitted with the Request Form. If*

*you do not have any of the necessary information, provide a written statement explaining why, if additional NA/CS codes are being sought, the applicant owner of the firm must complete and sign the Request Form and submit it with the following documents. The applicant owner must also demonstrate control with respect to the code(s) being requested.*

*If a state or federal license is required to sell a product or perform a service, provide a current copy of the required license held by the applicant owner.*

### **Required Document Checklist for All**

- ☐ Brief explanation of how the firm qualifies for each requested code,
- ☐ List of equipment used to perform the requested service(s), including specialized software,
- ☐ Copies of contracts, purchase orders, bids, proposals, or invoices verifying the performance of the requested service(s),
- ☐ Copies of special license(s) pertaining to the requested service(s).

**If you are requesting codes in the following categories, additional required documents are:**

#### **Supplier Firms:**

- ☐ Current list of inventories,
- ☐ Proof and description of warehouse/storage facilities,
- ☐ Vendor agreements or copies of invoices from vendors for products that are retailed.

#### **Wholesale/Broker Firms:**

- ☐ Wholesale/Distributor agreements,
- ☐ Copies of invoices from vendors for products being wholesale.

#### **Trucking Firms:**

- ☐ Kansas permit for each truck owned and/or operated by the firm, Commercial Driver's License (CDL) for all drivers,
- ☐ Insurance Agreements for each truck owned and/or operated by the firm,
- ☐ Title(s) and registration certificate(s) for each truck owned and/or operated by the firm.

**Include the documentation with a completed NAICS Code Modification Request Form and email the information to [kdotCivilRights@ks.gov](mailto:kdotCivilRights@ks.gov).**

## ATTACHMENT F

NAICS CODE MODIFICATION REQUEST FORM

<b>Firm's Name:</b>	<b>Applicant Owner's Name:</b>
<b>Address (Street/City/State/Zip):</b>	<b>Email:</b>
<b>Phone Number:</b>	<b>Fax Number:</b>
<b>3yr. Average of Annual Gross Receipts:</b>	<b>Number of Employees:</b>

*The 2017 North American Industry Classification System (NA/CS) Manual can be found at  
<https://www.census.gov/leoss/www/naics/>.*

Please **ADD** the following NAICS code(s) to our certification. Our firm is providing the services and/or products covered by these codes, as demonstrated by the provided documentation. (Attach additional sheets if needed.)

<b>NAICS Code #1:</b>	<b>NAICS Code #2:</b>	<b>NAICS Code #3:</b>	<b>NAICS Code #4:</b>
-----------------------	-----------------------	-----------------------	-----------------------

Please **REMOVE** the following NAICS code(s) from our certification.

<b>NAICS Code #1:</b>	<b>NAICS Code #2:</b>	<b>NAICS Code #3:</b>	<b>NAICS Code #4:</b>
-----------------------	-----------------------	-----------------------	-----------------------

*I hereby make the above request and affirm the information I am providing is true and correct. I understand Requests for NA/CS Code Modifications are subject to review by the Kansas Department of Commerce.*

---

Applicant's Signature title

---

Date

ATTACHMENT  
G

STATE OF KANSAS



OFFICE OF THE GOVERNOR

JOAN FINNEY, *Governor*  
*State Capitol, 2nd Floor*  
*Topeka, KS 66612-1590*

913-296-3232  
1-800-432-2487  
TDD# 1-800-992-0152  
FAX# (913) 296-7973

**EXECUTIVE ORDER NO. 94-169**  
**DESIGNATING A SINGLE SOURCE CERTIFICATION**  
**OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

**WHEREAS**, the revised 49 Code of Federal Regulations to be published in 1994 mandated each state to designate a uniform certification program accepted and utilized by all U.S. Department of Transportation federal aid recipients in the State; and

**WHEREAS**, the 13 Code of Federal Regulations applies to all disadvantaged businesses and is similar to the 49 CFR certification process; and

**WHEREAS**, a single source certification would reduce costs and time for businesses owned by minorities and women; and

**WHEREAS**, a single source certification would eliminate the need for duplicate applications to several government agencies; and

**WHEREAS**, other governmental agencies utilizing federal funds require a list of certified minority and women owned businesses; and

**WHEREAS**, private industry requires certified DBE's for their affirmative action programs; and

**WHEREAS**, the Kansas Department of Transportation and the Kansas Department of Commerce and Housing have jointly taken the lead in providing service and support to minority and women owned businesses; and

**WHEREAS**, the Kansas Department of Transportation has had an established certification program and process since 1979 with a fully trained staff.

**NOW THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby declare that on and after August 1, 1994, the Kansas Department of Transportation to be the single source certifying agency for the State of Kansas for minority and women owned businesses. for any governmental agencies or private companies utilizing federal funds.

1. This will be a cooperative effort with the Kansas Department of Commerce and Housing assisting in several aspects of the process.
2. All decisions to certify a minority or woman owned business will be made by the staff of the Kansas Department of Transportation.
3. All appeals of decisions will be heard by an inter-agency review committee.
4. Support services to minority and women owned businesses will be a joint effort by the Kansas Department of Commerce and Housing, the Kansas Department of Transportation and other agencies when appropriate.

This document shall be filed with the Secretary of State as Executive Order No. 94-169 and shall become effective on or after August 1, 1994.

## THE GOVERNOR'S OFFICE

By the Governor

*Jean Finney*

Date: 8-11-94

**FILE  
D**

**AUG 11  
1994**

**BILL  
GRAVES**

**SECRETARY OF STATE.**

*Bill Graves*

Secretary of State

*Ken [Signature]*  
Assistant Secretary of State

**Attachment 10**

**SMALL BUSINESS ELEMENT**

This page intentionally left blank.

## **Small Business Element**

### **Objective/Strategies**

The Wichita Airport Authority (WAA) Small Business Enterprise (SBE) Program is a race and gender-neutral program designed to provide select contracting opportunities to small, economically disadvantaged businesses. This program runs concurrently with our Disadvantaged Business Enterprise (DBE) Program on federally funded projects.

The Airport will meet its objectives using at least one or a combination of the following methods and strategies:

- Establishing a race-neutral small business set-aside for prime contracts over a stated amount (e.g., \$1 million).
- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- To meet the portion of the overall goal projected to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

### **Definition**

By definition, DBE firms are small businesses; the WAA seeks to implement a small business element into its current DBE policy in accordance with applicable law. The WAA is including this element to facilitate competition by and expand opportunities for small businesses. The WAA is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime vendors or sub-vendors.

- DBE firms will be identified in the Small Business element of the WAA's DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.



- All businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

### **Verification**

The WAA will diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.

The WAA will accept the City of Wichita, the Kansas Department of Transportation, and the Kansas Department of Commerce' DBE program participants as eligible for the program for participation in the small business element of the WAA's DBE Program. For the purposes of the small business element of the WAA's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification.

### **Monitoring/Record Keeping**

The WAA will closely monitor the SB element in accordance with all other contracts to prevent fraud. A log of this monitoring will be documented. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

### **Implementation Timeline**

The WAA will amend and incorporate this small business element into its DBE Program within ninety (90) days after approval of the element by the FAA.

### **Assurance**

The WAA makes the following assurances:

- a. The DBE Program, including its small business element , is not prohibited by state law;
- b. Certified DBEs that meet the size criteria established under the DBE Program are, presumptively, eligible to participate in the small business element of the DBE Program;
- c. There are no geographic, local preferences, or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
- d. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
- e. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- f. Steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

