

2023-2025

# City of Austin DISADVANTAGED BUSINESS ENTERPRISE PROGRAM



CITY OF AUSTIN



**CITY OF AUSTIN  
DBE PROGRAM – 49 CFR PART 26  
Fiscal Years 2023 - 2025**

**POLICY STATEMENT**

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

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

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

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

*Edward Campos* has been delegated as the DBE Liaison Officer. *Tamela Saldana, Felecia Shaw, Elton Price* and *Jolene Cochran* will serve as DBELO Program Designees in perspective roles. In that capacity, the DBELO Program Designee are 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 City in its financial assistance agreements with the Department of Transportation.

*The City* has disseminated this policy statement to the City Manager, Austin City Council, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting the Program on City of Austin websites.

Signature on file.

\_\_\_\_\_  
Jesus Garza, Interim City Manager

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The City will use terms in this program that have the meaning defined in Section 26.5.

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

The City 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 City 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: 26.11**

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2016 reports due December 1, 2016.

#### **Bidders List: 26.11(c)**

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

The City of Austin’s Capital Contracting Office (“contracting office”) maintains records of all

bidders which includes names, addresses, DBE and non-DBE status. The City of Austin's Small & Minority Business Resources Department and the Department of Aviation maintain records of all DBE firms which includes annual gross receipts.

**What records do recipients keep and report: 26.11 (d) & (e)**

As a certifying agency, City of Austin will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. We understand that these records must be retained in accordance with applicable record retention requirements of our financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for our financial assistance agreement, whichever is longer.

The City of Austin as a member of the Texas UCP established pursuant to § 26.81 of this part will report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of Texas certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

**Section 26.13 Federal Financial Assistance Agreement**

The *City of Austin* has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement the *City* signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The *City of Austin* 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 *City* 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 *City's* DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the *City* of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.* ).

Contract Assurance: 26.13b – *The City of Austin* will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the *City of Austin* 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 contractor from future bidding as non-responsible.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

The *City of Austin* 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. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program 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)**

We have designated the following individual as our DBE Liaison Officer:

*Edward Campos*  
*Director, Small & Minority Resources Department*  
*505 Barton Springs, Austin, Texas 78704*  
*Phone: 512-974-2156*  
*Fax: 512-974-9163*  
*Edward.Campos@austintexas.gov*

*Jolene Cochran*  
*Program Compliance Coordinator, DBELO Program Designee*  
*4201 Ed Bluestein Blvd, Austin, Texas 78721*  
*Phone: 512-974-7673*  
*Fax: 512-974-9163*  
*Jolene.Cochran@austintexas.gov*

In that capacity, the DBELO/DBELO Program Designee to include the executive management team; Tamela Saldana, Felecia Shaw and Elton Price are responsible for implementing all aspects of the DBE program and ensuring that the City of Austin complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the *City Manager* concerning

DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO/DBELO Program Designee is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of thirty-one (31) full time employees, one (1) DBELO Program Designee to assist with daily responsibilities and one legal representative, to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals 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 the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid/proposal/response meetings.
8. Advises the City Executives, Austin City Council and affected departments on DBE matters and achievement.
9. Serves as DBE liaison for the City of Austin's Small and Minority Program's Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The City has not identified financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. However, the City will on an annual investigate the availability of such financial institutions.

### **Section 26.29 Prompt Payment Mechanisms**

The *City* has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to the prime contractor.

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

- (1) Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

*The City* will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the *City of Austin*. When the *City* has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

*The City* will provide appropriate means to enforce the requirements of this section. These means are detailed in Attachment 7.

The City of Austin will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the prime contractor receives from *City*. The prime contractor agrees further to return retainage payments to each subcontractor within *ten (10) days* after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Austin. This clause applies to both DBE and non-DBE subcontractors.

#### Monitoring Payments to DBEs

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

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

#### **Section 26.31 Directory**

The *City of Austin* uses the State of Texas DBE directory, also known as the Diversity Management System, maintained by the State.

The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. Attachment 4

The Texas UCP revises the Directory daily. The Directory may be found at <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?XID=7322&TN=txdot>

### **Section 26.33 Over-concentration**

*The City of Austin* has not identified that over-concentration exists in the types of work that DBEs perform.

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

The City of Austin has established a Small Business Program to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The mission of the Small Business Program (SBP) is to foster job creation and support the growth of new and existing businesses by providing capacity building information, tools, and resources. The SBP provides counseling and assistance to small businesses with a focus to develop and empower small businesses in order to strengthen their business capability and survivability. SBP's main objective is to provide assistance and business solutions to emerging small businesses. To achieve this goal, SBP makes its own resources available to small business owners, as well as provide points of contact to outside resources beyond the scope of what is provided by the SBP. Information regarding SBP can be found on their website at <http://www.austintexas.gov/department/small-business-development-program>.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. The City's monitoring and enforcement mechanisms are included in Attachment 7.



5. We will implement 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.

**Section 26.39 Fostering small business participation.**

The *City* has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The *City’s* small business element is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

The *City of Austin* will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City of Austin will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2021 (2022/2023/2024)	August 1, 2022 (2023/2024/2025)

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

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use Census Bureau Data and Texas Unified Certification Program data as a method to determine our base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on

past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

Methodology 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 our market. We understand 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the City of Austin will provide 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 City's 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, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the *[Recipient's]* goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the City of Austin will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site at [www.austintexas.gov/snbr](http://www.austintexas.gov/snbr) and may be posted in any other sources (e.g., department websites and trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office located at 505 Barton Springs, Austin, Texas 78704 and that the City of Austin and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed.

The names of the media used and the category of the media will be listed specifically in the goal calculation attachment, Attachment 5

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

We will begin using our overall goal on October 1 of the reporting period unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

*If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and 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 should 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 your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.*

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### Section 26.45(f) - Prior Operating Administration Concurrent

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

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

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

The *City* will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;

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

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

## **Section 26.51(d-g) Contract Goals**

The City of Austin will arrange 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.

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

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

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

## **Section 26.53 Good Faith Efforts Procedures**

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

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

The DBELO/Program Designee is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as *responsive*.

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

### Information to be submitted (26.53(b))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or proposers will be required to submit the following information ("DBE Compliance Plan") in Attachment 6 to the recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of DBE and non-DBE firms that will participate in the contract; including contract information and name and address of the prime contractor;

- (ii) A description of the work that each DBE and non-DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS and commodity code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE and non-DBE firm participating;
  - (iv) Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation ("Letter of Intent (LOI)" from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). 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) We will require that the bidder/proposer present the information required by paragraph (b)(2) of this section: *[Select either responsiveness or responsible option]*

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/proposer may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration (26.53(d))

Within 7 business days [of being informed by City of Austin that it is not *responsive* because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing to the following reconsideration official:

James Scarboro, Purchasing Officer  
124 West 8<sup>th</sup> Street, Suite 300  
Austin, Texas 78701  
512-974-2050  
[James.Scarboro@austintexas.gov](mailto:James.Scarboro@austintexas.gov)

The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

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

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

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

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

- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

If the contractor fails or refuses to comply in the time specified, our contracting office may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting office may issue a termination for default proceeding. Additional administrative remedies are detailed in Attachment 7.

The City of Austin will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. 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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the *City of Austin* to practice

nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/proposers, including those who qualify as a DBE. A DBE contract goal of 15.77 percent as determined in the goal calculation in Attachment 5 has been established for this contract. The bidder/proposer shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/proposer will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm 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; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; (6) if the contract goal is not met, evidence of good faith efforts.

### **Section 26.55 Counting DBE Participation**

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

If the 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, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The City of Austin will use the certification standards and procedures of Subpart D & E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

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

*Small & Minority Business Resource Certification Division*  
505 Barton Springs Road  
Austin, Texas 78704  
512-974-7645  
[Smbrcertification@austintexas.gov](mailto:Smbrcertification@austintexas.gov)

Our certification application forms and documentation requirements are found in Attachment 8 to this program.



## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Texas Unified Certification Programs**

City of Austin is the member of the Texas Unified Certification Program (TUCP) administered by the Texas Department of Transportation (TXDOT). The TUCP will meet all of the requirements of this section. The signed TUCP agreement (MOA) can be found in Attachment 9.

### **Section 26.83 Procedures for Certification Decisions**

We will ensure the TUCP reviews the eligibility of DBEs that we certify under this section participate as DBEs in our program. We will take the required steps outlined in 26.83(c) in determining whether a DBE firm meets the standards of subpart D of this part.

The firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility annually. These reviews will include the following components: an application, verification of small business size, and on-site visit. Other documents may be requested on a case-by-case basis to determine continued eligibility.

Once we have certified a DBE, it shall remain certified until and unless we have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.

We will not require DBEs to reapply for certification or undergo a recertification process. However, we may conduct a certification review of a certified DBE firm, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to our attention that leads us to question the firm's eligibility, we may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

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

The TUCP requires all DBEs owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with [Recipient's] application for certification.

The TUCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the City of Austin under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The TUCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts (e.g., submission of federal tax returns).

The TUCP will notify all currently certified DBE firms of these obligations [*program should state how and when*]. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

### **Section 26.85 Interstate Certification**

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

### **Section 26.86 Denials of Initial Requests for Certification**

If we deny a firm's application or decertify it, it may not reapply until 12 months have passed from our action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of our decision to the Department pursuant to § 26.89 does not extend this period.

### **Section 26.87 Removal of a DBE's Eligibility**

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail.

To ensure separation of functions in a de-certification, the TUCP have determined that each certifying partner will appoint an independent hearing officer to serve as the decision-maker in de-certification proceedings. The TUCP have established an administrative "firewall" to ensure that an independent hearing officer will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

The City of Austin has established a DBE Committee comprised of individuals who have not participated in any way in the decertification proceeding against the firm. Appeals to the DBE Committee should be directed to:

DBE Committee c/o Nona Adam  
124 West 8<sup>th</sup> Street, Suite 308  
Austin, Texas 78701  
512-974-2079  
[nona.adam@austintexas.gov](mailto:nona.adam@austintexas.gov)

### **Section 26.88 Summary Suspension of Certification**

The City of Austin shall follow the procedures consistent with 26.88 of this Part regarding suspending a DBEs certification.

We shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

We will immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

When a firm is suspended pursuant to 26.88 (a) or (b), the City of Austin will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the City of Austin information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, we will either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If we commence a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under paragraph 26.88 (a) or (b) is not appealable to the U.S. DOT.

The failure the City of Austin to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. DOT under § 26.89 of this part, as a constructive decertification.

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal our decision in a certification matter to U.S. DOT. A firm that wants to file an appeal, must send a letter to the U.S. DOT 90 days of the date of the *City's* final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
1200 New Jersey Ave., S.E.  
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

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

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

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

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The City of Austin is subject to the Texas Public Information Act, Texas Government Code, Title 5, Chapter 552.

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

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

The *City of Austin*, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

## ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link (26.53)
- Attachment 2 Organizational Chart (26.25)
- Attachment 3 Bidder's List Collection Form (26.11)
- Attachment 4 DBE Directory or link to DBE Directory (26.31)
- Attachment 5 Overall Goal Calculations (26.45- 26.51)
- Attachment 6 Demonstration of DBE Participation & Good Faith Efforts  
DBE Compliance Plan Appendix A-C (26.53)
- Attachment 7 DBE Monitoring and Enforcement Mechanisms (26.29; 26.37; 26.53(d))
- Attachment 8 DBE Certification Application Form (26.61-26.73)
- Attachment 9 Texas UCP Agreement (MOA) (26.81)
- Attachment 10 Small Business Element Program (26.39)
- Appendix A Good Faith Effort Process/Checklist (26.53)
- Appendix B Uniform Report of DBE Awards (26.11)
- Appendix C Small Business Development Program Affidavit (26.35)

# ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website  
(See Electronic Code of Federal Regulations attached)

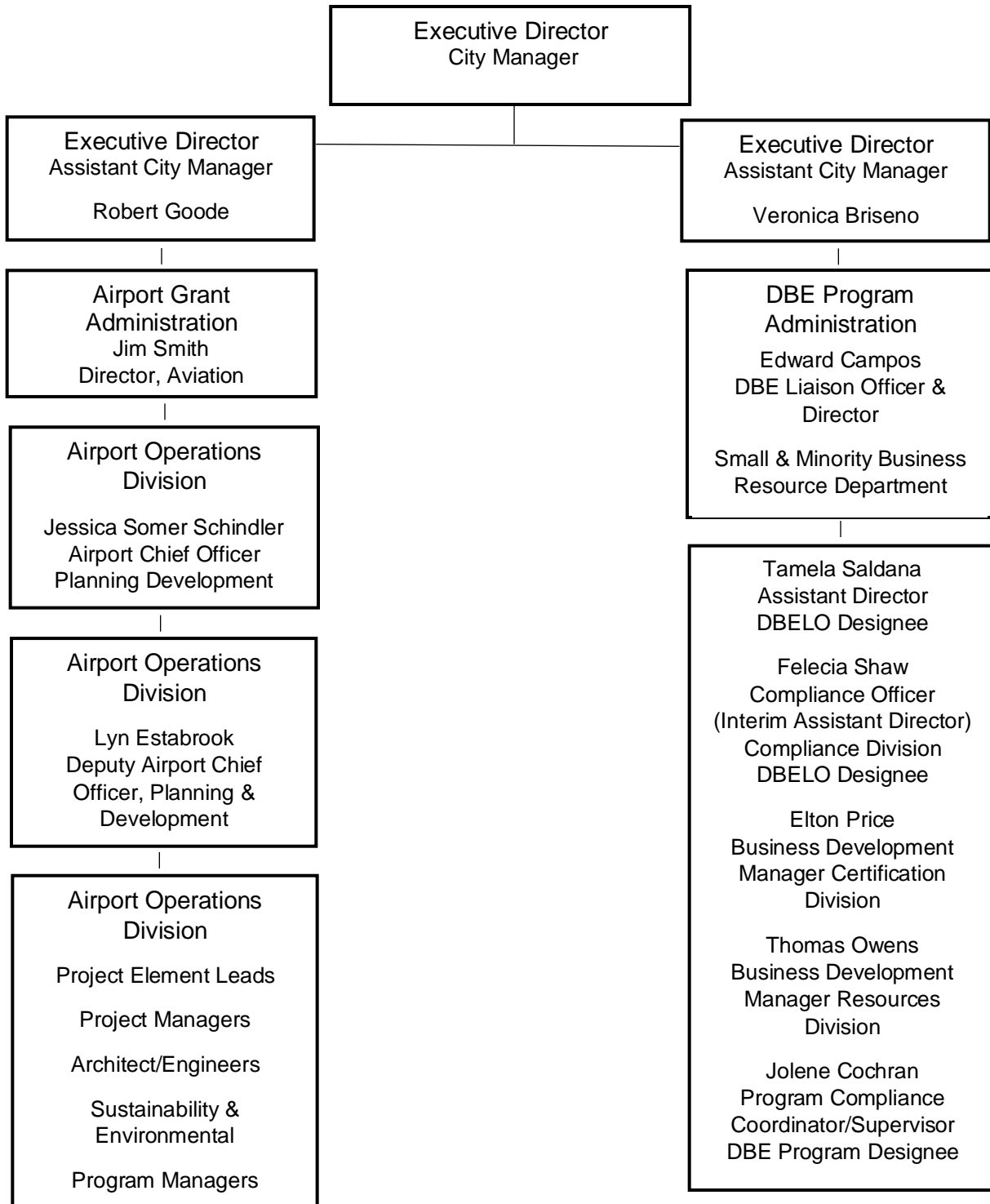
<https://www.ecfr.gov/cgi-bin/text-idx?SID=7cb3aa4d674ea473df201dbd44120a9e&mc=true&node=pt49.1.26&rgn=div5>

The screenshot shows a web browser window with the URL [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/pt49\\_1\\_26\\_main\\_0201.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/pt49_1_26_main_0201.tpl). The page features a header with the e-CFR logo and a navigation sidebar on the left. The main content area displays the title "Electronic Code of Federal Regulations" and a notice that the data is current as of November 16, 2018. Below this, a breadcrumb trail shows the path: Title 49 → Subtitle A → Part 26. The page lists the following hierarchy: TITLE 49—Transportation, Subtitle A—OFFICE OF THE SECRETARY OF TRANSPORTATION, PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, and Subpart A—GENERAL. A table of contents for Subpart A is provided:

Section	Description
§26.1	What are the objectives of this part?
§26.3	To whom does this part apply?
§26.5	What do the terms used in this part mean?

**ATTACHMENT 2**

**Organizational Chart**



**ATTACHMENT 3**  
Bidder's List Collection Form

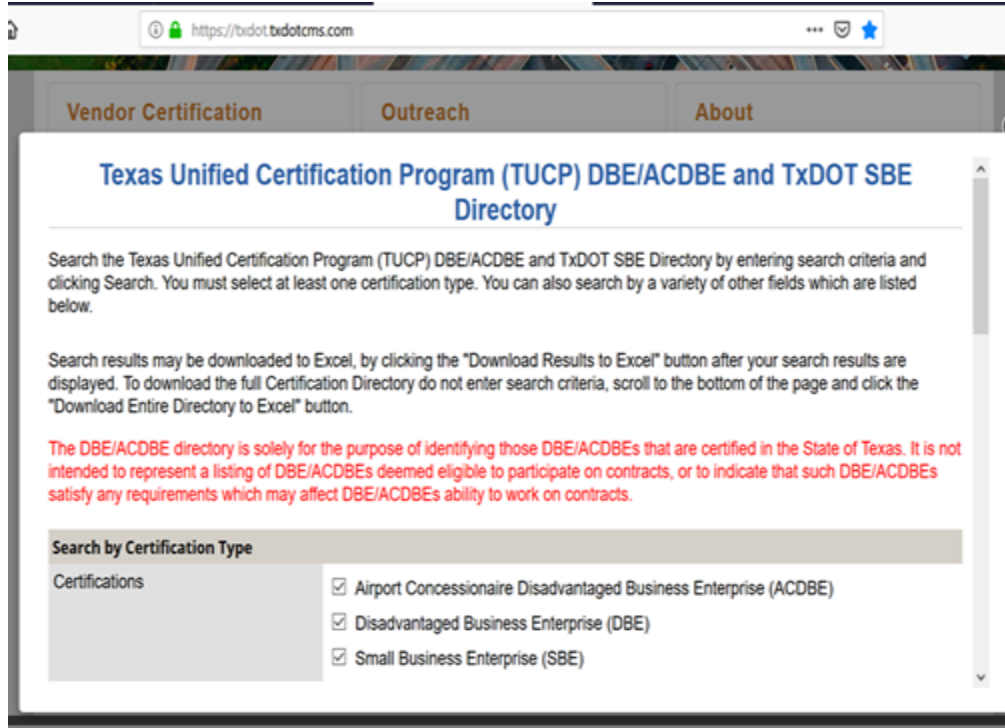
The City of Austin's Capital Contracting Office maintains records of all bidders which include names, addresses, DBE and non-DBE status. The City of Austin's Small & Minority Resources Department maintains records of all DBE firm's project selection detail, original contract values and participation records.

Proposed



## ATTACHMENT 4

Texas Department of Transportation's UCP DBE Directory web link to DBE directory is located at <https://txdot.txdotcms.com/>



PROPR

# **Attachment 5**

## **Overall Disadvantaged Business Enterprise Triennial Goal for the Federal Aviation Administration**

**Fiscal Years 2023-2025**

**City of Austin**

## Section 26.45: Overall DBE Three-Year Goal Methodology

**Name of Recipient:** City of Austin, Texas

**Goal Period:** FY-2023-2024-2025– October 1, 2022, through September 30, 2025

**DOT assisted contract amount:** FY 2023-2025 \$2,678,217,933.

**Overall Three-Year Goal:** 11.95%, with 11.95% to be accomplished through race-conscious measures and 0.00% to be accomplished through race-neutral measures.

**Total dollar amount to be expended with DBEs:** \$442,535,726.

**Below are the projects that the Airport anticipates awarding using FAA funds:**

New Central Utility Plant (CUP B) for Concourse B  
BJT Optimization, Pkg. 1: FIS Improvements  
BJT Optimization, Pkg. 2  
PFAS Long-Term Management  
BJT Optimization, Pkg. 4  
Concourse B Gates, Phase 1

The City of Austin’s DBE goal methodology consists of two steps:

1. Establishing the base figure for the relative availability of DBEs and
2. Adjusting the base figure to reflect available data.

The City of Austin commissioned a Disparity Study from Colette Holt & Associates (“CHA”), attached hereto as Exhibit B. A disparity study is an approved method for establishing the triennial goal under 49 C.F.R. §26.45 (c). CHA determined the base figure of DBE availability and provided data relevant to determine whether to adjust the base figure. The data and results are discussed below.

### Step 1 Base Figure Analysis of the Relative Availability of DBEs

To determine the geographic market area, the Study applied the national standard of identifying the firm locations that account for at least 75% of contract and subcontract dollar payments in the Final Contract Data File (“FCDF”).<sup>1</sup> Firm location was determined by zip code and aggregated into counties as the geographic unit. Contracts awarded to firms located in the State of Texas accounted for 90.0% of all dollars during the study period. The 19 counties within the four larger metropolitan areas in the state – Austin, San Antonio, Dallas-Fort Worth, and Houston – captured 92.2% of the state dollars and 82.9% of the entire FCDF. Therefore, these 19 counties were determined to be the geographic market for the City.

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<sup>1</sup> National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> (“*National Disparity Study Guidelines*”), at p. 29.

CHA next determined the dollar value of the City's utilization of Minority-owned Business Enterprises ("MBEs") and Woman-owned Business Enterprises ("WBEs") as measured by payments to prime firms and subcontractors and disaggregated by race and gender. These results are presented in Table 1-3 of Exhibit B.

CHA next determined the unweighted availability of MBE/WBEs in the City's geographic and product markets using the modified "custom census" approach to estimating availability and the further assignment of race and gender using the FCDF, the Master M/W/DBE Directory created by CHA for the Study and other sources. Table 4-8 presents these data. For further explanation of the role of unweighted and weighted availability and how these are calculated, please see Appendix D to the Study.

To estimate the base figure, the City weighted the Study's availability estimates by six-digit North American Industry Classification System codes by the anticipated scopes of work of the six projects that will receive FAA funding. Please see Exhibit C for the breakdown of those projects. The result is an overall step one base figure of 16.5% DBE availability. The breakdown of the goal setting is provided in Exhibit D.

## **Step 2 Analysis of Possible Adjustments to Step 1 base figure**

Once the base figure has been calculated, the City must examine all evidence available in its jurisdiction to determine if an adjustment is necessary to reflect the level of DBE participation expected absent the effects of discrimination. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on the City's FAA assisted contracts, as measured by the volume of work DBEs performed in recent years, and evidence from disparity studies conducted anywhere within the City's jurisdiction, to the extent not already accounted for in the base figure. If available, the City also must consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding, and insurance required to participate in the Program, and data on employment, self-employment, education, training, and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought." §26.45(d)(3).

### **Past DBE Utilization**

The City considered the current capacity of DBEs to perform work on its FAA assisted projects, as measured by the amount of work performed by certified DBEs on FAA funded contracts over the past five years.

- DBE Participation FY 2018: 7.75%
- DBE Participation FY 2019: 4.97%
- DBE Participation FY 2020: 7.40%
- DBE Participation FY 2021: 11.60%
- DBE Participation FY 2022: 1.98%

## **Evidence from Local Disparity Studies**

No other local jurisdictions have conducted studies relevant to the City's FAA contracting activities.

## **Disparities Affecting DBE Opportunities**

The Disparity Study explored the Census Bureau data and literature relevant to how discrimination in the City's market and throughout the wider Texas economy affects the ability of minorities and women to fairly and fully engage in the City's prime contract and subcontract opportunities. Data from the Census Bureau's Survey of Business Owners indicate very large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Data from the Census Bureau's American Community Survey ("ACS") indicate that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages, and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, grow, and succeed.

While relevant and probative to whether the City needs to continue to employ race-conscious measures to meet its DBE goal, the Study recognized that these results are difficult to quantify within the rigors of the strict scrutiny standards and §26.45(d).

## **Current DBE Capacity**

The City next considered the current capacity of DBE firms to perform work in its market area, as measured by the amount of work performed by DBEs on FAA assisted projects over the past five years. Following the USDOT's Office of Small and Disadvantaged Business Utilization's *Guidance on Tips for Goal-Setting in the Disadvantaged Business Enterprises Program*, the City combined the step 1 base figure with its median past DBE participation for an average of 11.95% (step 1 base figure of 16.50% + median past participation of 7.40% = 23.90%/2 = 11.95%).

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

The regulations require that the City meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation (see §26.51(a); see also §26.45(f)(3), and §26.51(c).

The race-neutral and race-conscious attainment for the past five fiscal years is below to determine the maximum race-neutral participation. The City's median percentage on FAA assisted contracts through race-neutral means for FY 2018-2022 was 0.00%.

## Race-Neutral and Race-Conscious Achievement

Year	Race-Neutral Achievement	Race-Conscious Achievement	Total DBE Achievement	DBE goal
2018	0.00%	7.75%	7.75%	11.0%
2019	0.00%	4.97%	4.97%	11.0%
2020	0.00%	7.40%	7.40%	13.78%
2021	0.00%	11.60%	11.60%	13.78%
2022	0.00%	1.98%	1.98%	13.78%

The City also considered the amount by which past goals were exceeded, as well as our past history of not achieving goals, in determining the race-neutral and race-conscious proportion consistent with USDOT goal-setting tips. Specifically, USDOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years' goals that were not met or increasing the race-neutral portion to account for exceeding goals.<sup>2</sup>

The City will meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. The City will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation and track and report of race-neutral and race-conscious participation separately. This will include but not be limited to:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses participation;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- 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;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

<sup>2</sup> *Tips for Goal -Setting in the Disadvantaged Business Enterprise (DBE) Program: IV. Calculating the Race/ Gender -Neutral and Race/ Gender-Conscious Split; A. Consider the Amount by Which You Exceeded Your Goals in the Past. & F. Consider Past History of Inability to Achieve Goals.* (<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>).

- Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Assist DBEs and other small businesses to utilize emerging technology and conduct business through electronic media.

## **Public Participation**

Pursuant to §26.45(g)(1), the City held one virtual public consultation meeting on July 26, 2023, to actively solicit input from stakeholders including community organizations and other officials or organizations that can be expected to have information relative to the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and the City's efforts to establish a level playing field for the participation of DBEs in FAA assisted, transportation-related contracting.<sup>3</sup> Eleven people attended. Please see Exhibit A for the list of invited organizations. These meetings were facilitated by CHA to inform and engage with the public on its proposed goal and the methodology used to determine the goal. The City invited members of the public, including minority- and woman-owned businesses; minority, woman, and general contractor groups; community organizations; public officials; and small and minority-focused business development organizations. Staff members from the City's Small Minority Business Resources department were present to answer questions.

No comments were received during the public consultation process, and no changes were made.

The goal is posted on the City of Austin's Small & Minority Business Resource website at <https://www.austintexas.gov/news/dbe-public-comment-notice>.

It is also available for inspection during normal business hours at the Small & Minority Business Resources Department, 811 Barton Springs Rd Suite 805, Austin, TX 78704.

## **Final Adjusted Goal**

The recommended DBE Goal for FY 2023-2025 is 11.95%. The City projects it will meet 11.95% of this goal through race-conscious means and 0.00% through race-neutral measures. The proposed DBE Goal is the sum of the race-conscious participation and the race-neutral participation.

DBE participation for FAA assisted projects will be evaluated annually to determine whether market conditions warrant adjustments to the overall DBE goal and/or individual race-neutral and race-conscious components.

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<sup>3</sup>Official institutional guidance from USDOT states that the consultation process with knowledgeable stakeholders facilitates information concerning the availability of DBEs and non-DBEs. It indicates that by definition, the process of consultation involves a scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information and advice before a decision is made. See <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-gas-disadvantaged>.

**ATTACHMENT 6**  
**Demonstration of DBE Participation & Good Faith Efforts**  
**DBE Compliance Plan Appendix A-C**

Appendix A

**IFB – DBE COMPLIANCE PLAN**

*All sections (I-VIII) must be completed and submitted  
prior to the due date in the solicitation documents*

**Section I — Project Identification and Goals**

<b>Project Name</b>	
<b>Solicitation Number</b>	

<b>Project Goals</b>	
DBE	

**Section II — Prime Company Information**

<b>Name of Company</b>	
<b>Address</b>	

Propos



## ATTACHMENT 7

### **DBE Monitoring and Enforcement Mechanisms**

The City of Austin 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 applicable Texas law.
3. The Code of the City of Austin, Texas and other applicable state and federal laws

Additional information on the DBE Monitoring and Enforcement processes can be found in Attachment 6, City of Austin DBE Program Packet. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

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

## ATTACHMENT 8

DBE Certification Application Form or web link

[http://www.austintexas.gov/sites/default/files/files/Small\\_Minority\\_Business/Certification/2016/DBE\\_application\\_11.03.2014.pdf](http://www.austintexas.gov/sites/default/files/files/Small_Minority_Business/Certification/2016/DBE_application_11.03.2014.pdf)



www.austintexas.gov/sites/default/files/files/Small\_Minority\_Business/Certification/2016/DBE\_applica

ment contains forms. The filling of form fields is not supported.

1 of 14 Automatic Zoom



Appendix F

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

***Roadmap for Applicants***

**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 (\$52.47 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

**ATTACHMENT 9**  
State's UCP Agreement



Propos

**ATTACHMENT 10**  
Small Business Element

**Objective/Strategies**

It is important to provide equal opportunities to all businesses interested in doing business with the City of Austin. The City shall review, develop and use measures to facilitate the participation of small businesses in City contracting opportunities with respect to USDOT funded projects.

The Small & Minority Business Resources Department (SMBR) and the Capital Contracting Office (CCO) have established the Small Business Construction Program (SBDP). This program is designed for construction projects with an estimated budget of less than \$50,000 as outlined in Texas Gov't Code 2254.003(a)(1)). These projects will be reserved for initial solicitation for certified SBEs. The SBCP is race and gender-neutral; projects facilitated through SBDP will not have goals and seek to:

To expand contract opportunities to small businesses, this program maintains a competitive environment while ensuring that contracts will be awarded to small businesses.

To enhance the City's minority programs, the SBCP program expands opportunities for small business enterprises (SBE) and complements the federal and local program. It addresses the Disparity Study recommendation for a race and gender-neutral initiative.

Procurements within the SBCP are competitively bid by small businesses certified as a Small Business Enterprise (SBE).

An SBE is defined as a business whose gross receipts are less than \$14 million based upon a rolling three-year average.

SBEs are solicited for construction projects below \$50,000 (projects are re-solicited if no qualified small business bids are received.)

**SBCP Eligibility**

In order to qualify for inclusion in the SBCP, a firm and its affiliates must meet the Small Business Size Standards as reflected in the U.S. Small Business Administration's Subsector 238-Specialty Trade Contractors of \$15 million in average gross receipts for the past three years and be certified as a Small Business Enterprise (SBE) by the City of Austin.

The size standard is consistent with 49 CFR 26.5 and is no larger than the Small Business Administration's size standards. Personal Net Worth standards are consistent with 49 CFR Part 26 thresholds.

Application process for Small Business Enterprise Certification requires on-line registration with Vendor Connection at the Purchasing Office's website and submission of only one of the SBE verification affidavits below:

SBCP Certified Public Accountant (CPA) Small Business Enterprise Affidavit and the Owner's current resume or;

SBCP Small Business Enterprise Affidavit and the Owner's current resume and three years business tax returns

### **Monitoring/Record Keeping**

The City will implement the following to assist in fostering small business participation. Reviewing the USDOT funded projects to determine whether it is appropriate to utilize the Design-Build or Construction Manager-at-Risk alternative delivery methods which are conducive to unbundling contacts and providing greater subcontracting opportunities on a small scale, thus providing more opportunities for small businesses.

The City will promote the use of joint ventures on federal projects by educating vendors on the benefits of forming partnerships with smaller businesses.

The City will develop and deliver trainings to small businesses interested in working on airport related projects on topics such as: airport requirements including project certifications and qualifications, security clearances, and resources available to assist with future procurement interests. This will assist small businesses with the necessary tools and the confidence to compete against larger firms on airport-related procurements.

The City will engage a third-party construction company, seek volunteers, or utilize Department of Aviation staff in training small businesses interested in providing general construction trade services. The purpose of this training will be to broaden small businesses' skill sets to compete for more projects.

### **Implementation Timeline**

The City of Austin's SBDP was approved by FAA in 2012.

### **Assurance**

The City will make the following assurances:

1. assurance that the program is authorized under state law.
2. assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program.
4. assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
5. assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
6. assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).

**Appendix A**  
Good Faith Effort Process/Checklist  
The Good Faith Effort process and checklist is part of the  
DBE Compliance Plan Appendix A

**Appendix A**

**SECTION VIII—DBE COMPLIANCE PLAN CHECKLIST**

The DBE *Compliance Plan* must be completed and submitted by the time specified in the solicitation documents. If the goals were not achieved, Good Faith Efforts documentation must be submitted with the DBE *Compliance Plan*. All questions in Section VIII MUST be completed and submitted with the *Compliance Plan* if goals are not met.

1. Were written notices sent to all DBEs from the availability list at least five (5) business days prior to the submission of this *Compliance Plan*?

Yes                   No

2. Is documentation of those written notices attached?

Yes                   No

Proprietary

## Appendix B Uniform Report of DBE Awards

General Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS			
<small>**Please refer to the instructions sheet for directions on filling out this form**</small>			
1 Submitted to (check only one): <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA-Recipient ID Number			
2 AIP Number (FAA Recipients), Grant Number (FTA Recipients)			
3 Federal fiscal year in which reporting period ends:			
4. Date This Report Submitted:			
5 Reporting Period:		FAA annual report due Dec. 1	
6 Name and address of Recipient:		FAA annual report due Dec. 1	
7 Annual DBE goal(s):		OVERALL Goal:	

**Awards/Commitments this Reporting Period**

	A		B		C		D		E		F		G		H		I	
	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs /Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs							
A AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)																		
B Prime contracts awarded this period																		
9 Subcontracts awarded/committed this period																		
10 TOTAL																		

B BREAKDOWN BY ETHNICITY & GENDER	Contracts Awarded to DBEs this Period					
	A			B		
	Total to DBE (dollar amount)	Women	Men	Total to DBE (number)	Women	Men
11 Black American						
12 Hispanic American						
13 Native American						
14 Asian-Pacific American						
15 Subcontinent Asian Americans						
16 Non-Minority						
17 TOTAL						

**Payments Made this Period**

C PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	A		B		C		D		E		F	
	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs						
18 Prime and sub contracts currently in progress												
D TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D		E		F	
	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs							
19 Race Conscious												
20 Race Neutral												
21 Totals												
22 Submitted By:			24 Signature:				25. Phone Number:					

49 CFR Part 26 Appendix B: Version 6(a)

PROU

# Appendix C

## Small Business Development Program Affidavit

<http://www.austintexas.gov/departments/certification-small-business-enterprise-sbe>

The screenshot shows a web browser window with the URL [www.austintexas.gov/departments/certification-small-business-enterprise-sbe](http://www.austintexas.gov/departments/certification-small-business-enterprise-sbe). The page features a navigation menu on the left with links for Home, About, Forms, Services, Divisions, Documents, and FAQ. The main content area is titled "Small and Minority Business Resources" and includes a header image of the African American Cultural & Heritage Facility. Below the header, the page is divided into three columns. The first column contains a "KEEP IT CURRENT" graphic with icons for email address, phone number, and fax number. The second column is titled "CERTIFICATION FOR SMALL BUSINESS ENTERPRISE (SBE) Small Business Construction Program (SBCP)" and provides an overview of the program, its objectives, and eligibility requirements. The third column is titled "TOP CONTENT" and lists links for Certification, Disadvantaged Business Enterprise, Certification for Small Business Enterprise (SBE), About Small & Minority Business Resources, and Contract Compliance. A "SBE Certified Vendors" section is also present, describing a directory of certified vendors.

Home  
About  
Forms  
Services  
Divisions  
Documents  
FAQ

**KEEP IT CURRENT**  
email address  
phone number  
fax number

**AFRICAN AMERICAN CULTURAL & HERITAGE FACILITY**  
**Small and Minority Business Resources**

**CERTIFICATION FOR SMALL BUSINESS ENTERPRISE (SBE)**  
**Small Business Construction Program (SBCP)**

The Small & Minority Business Resources Department (SMBR) and the Capital Contracting Office (CCO) formerly the Contract Management Department (CMD) have established the Small Business Construction Program. This program is designed for construction and construction-related projects with an estimated budget of less than \$50,000. These projects will be reserved for initial solicitation for certified SBEs.

**SBCP Objectives**

To expand contract opportunities to small businesses. This program maintains a competitive environment while ensuring that contracts will be awarded to small businesses.

To enhance the Minority/Women Business Enterprise (MBE/WBE) program. The SBCP program expands opportunities for small business enterprises (SBE) and complements the MBE/WBE program. It addresses the Disparity Study recommendation for a race and gender neutral initiative.

To administer the SBCP in a manner consistent with applicable federal and state law.

**SBCP Eligibility**

In order to qualify for inclusion in the SBCP, a firm and its affiliates must meet the Small Business Size Standards as reflected in the U.S. Small Business Administration's Subsector 238-Specialty Trade Contractors of \$15 million in average gross receipts for the past three years and be certified as a **Small Business Enterprise (SBE)** by the City of Austin.

**TOP CONTENT**

- ★ Certification
- ★ Disadvantaged Business Enterprise
- ★ Certification for Small Business Enterprise (SBE)
- ★ About Small & Minority Business Resources
- ★ Contract Compliance

**SBE Certified Vendors**

A directory of Small Business Enterprises (SBEs) certified by the City of Austin's Small & Minority Business Resources Department (SMBR)