



THE CITY OF WACO TEXAS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PLAN TRIENNIAL UPDATE

for

Fiscal Year 2022/2023/2024

**Federal Aviation Administration (FAA)
Airport Improvement Program (AIP) Projects**

at

Waco Regional Airport (ACT)

**Submitted by Joel C. Martinez
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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Waco, owner of the Waco Regional Airport (ACT), 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 of Waco has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Waco has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

Joel C. Martinez, Airport Director, has been delegated as the DBE Liaison Officer. In that capacity, the Airport Director 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 City of Waco in its financial assistance agreements with the Department of Transportation.

The City of Waco has disseminated this policy statement to all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that perform work for us on DOT assisted contracts by posting on bulletin boards in the building, by including ACT DBE requirements in advertisements for bids, and by including the DBE requirements in project specifications and contract documents.

(Signature) Chief Executive Officer

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The City of Waco will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The City of Waco 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 of Waco 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

The City of Waco will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to Federal Aviation Administration as follows:

The City of Waco 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. The City of Waco will similarly report the required information about participating DBE firms. All reporting will be done through the Federal

Aviation Administration (FAA) official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List

The City of Waco 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 The City of Waco DOT-assisted contracts, for use in helping to set 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 Waco will collect this information in the following ways:

1. The bidders list will be voluntarily obtained from all prequalified prime contractors. Prequalified prime contractors will be requested to submit a form and list all potential sub-contractors or other contractors, material suppliers, and trucking firms who have submitted bids or quotes to them in the last year. The list of sub-contractor or other contractor bidders will be compared to prequalified prime contractors. Information gained from this process will be used to complete the "Bidder's List Collection Form" shown in Attachment 3 of this document.
2. If the previous process becomes ineffective, the bidders list will be obtained by requiring each bidder on a U. S. DOT assisted project to submit the information as part of the bid proposal. Information gained from this process will be used to complete the "Bidder's List Collection Form" shown in Attachment 3 of this document.

Records Retention and Reporting:

The City of Waco will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City of Waco 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 City of Waco's financial assistance agreement.

Section 26.13 Federal Financial Assistance Agreement

The City of Waco has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

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

The City of Waco 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 of Waco 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 of Waco 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 Waco 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: The City of Waco will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Waco 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. The City of Waco is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City of Waco is in compliance with it and Part 26. The City of Waco will continue to carry out this program until all funds from DOT financial assistance have been expended. The City of Waco 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 DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the City of Waco:

Mr. Joel C. Martinez
Airport Director
Waco Regional Airport
7909 Karl May Drive
Waco, TX 76708
Phone: 254-750-8656
Fax: 254-750-8659
Email: joelm@wacotx.gov

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access to staff from other offices for coordination including legal offices and the consulting engineers 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 of Waco's progress toward attainment and identifies ways to improve progress.

7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE 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. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Waco 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 of Waco will seek the existence of DBE financial institutions as well as encourage prime contractors to seek opportunities for using DBE financial institutions by reviewing the most recent list of the Minority-Owned Depository Institutions found on the Federal Reserve website at the following link:

<http://www.federalreserve.gov/releases/mob/current/default.htm>

Section 26.29 Prompt Payment Mechanisms

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

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

- The City of Waco will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the

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

To implement this measure, the City of Waco includes the following clause from FAA Advisory Circular 150/5370-10H, Section 90, paragraph 90-06 Partial payments in each DOT-assisted prime contract:

Option 3: The Owner may 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 the Owner's payment to the prime Contractor. The retainage value protects the City of Waco's interests. Performance and payment bonds also provide similar protection of the City's interests. The Option 3 contract clause and suitable values are as follows:

a. From the total of the amount determined to be payable on a partial payment, five percent (5%) of contracts totaling \$400,000.00 or greater, and ten percent (10%) of contracts totaling under \$400,000.00 will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-03. Contractor must provide a certified invoice to the Resident Project Representative (RPR) that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

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

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The City of Waco is a non-certifying member of the Texas Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The State of Texas – Texas Department of Transportation (TXDOT) revises the Directory monthly which can be found at: <https://txdot.txdotcms.com/>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The City of Waco has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The City of Waco 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 City of Waco DBE program.

The City of Waco 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.

Monitoring Payments to DBEs and Non-DBEs

The City of Waco undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Other affirmative steps to monitor prompt payment and retainage requirements.
 - The City of Waco 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.
 - The City of Waco will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
 - During the construction project, on-site construction observers will note the operations conducted by DBE firms, their staffing levels and activity on a weekly basis to observe compliance.
 - The City of Waco will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Prime Contractor and DBE Subcontractors will be required to sign a compliance form documenting the actual dollar amount of DBE–participation utilized during the construction project prior to release of retainage.

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

The City of Waco proactively reviews contract payments to subcontractors including DBEs quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City of Waco by the prime contractor.

Prompt Payment Dispute Resolution

The City of Waco will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

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

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

The applicable contract clause is in accordance with FAA Advisory Circular 150/5370-10H, Section 90, paragraph 90-06 Partial Payments – Option 3:

Option 3: The Owner may 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 the Owner's payment to the prime Contractor. The retainage value protects the City of Waco's interests. Performance and payment bonds also provide similar protection of the City's interests.

Prompt Payment Complaints

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

- The subcontractor should first seek resolution of any payment discrepancies from the prime contractor using the terms of the contract agreement between the parties.
- If the subcontractor is unsuccessful, then they should see resolution from the City of Waco DBELO. The subcontractor should be prepared to cite the term of the contractual agreement that they believe has not been met. The DBELO will consult with the Project Engineer (PE) or Resident Project Representative (RPR) verify the completion of work if applicable.
- If the subcontractor is unsuccessful in gaining timely and meaningful action or resolution from the City of Waco within 90 days, the subcontractor may contact the appropriate Federal Aviation Administration Airport District Office (ADO).

Enforcement Actions for Noncompliance of Participants

The City of Waco will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assess liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor

- 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
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met

The applicable contract clause is in accordance with FAA Advisory Circular 150/5370-10H, Section 90, paragraph 90-06 Partial payments – subparagraph b.:

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

The City of Waco will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City of Waco reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

Work site monitoring is performed by Resident Project Representative (RPR) and/or the Project Engineer (PE). Contracting records are reviewed by the RPR, the PE, and the DBELO. The City of Waco will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

The City of Waco has created an 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 program element is included as Attachment 10. The program element will be actively implemented to foster small businesses.

As part of this program element, we will include the following strategies:

- (1) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (2) On prime contracts not having DBE contract goals, we will require 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.
- (3) 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.

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

Section 26.45 Overall Goals

The City of Waco will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), The City of Waco will submit its Overall Three-year DBE Goal to FAA by August 1st. The schedule established by and posted to the website of The Federal Aviation Administration (FAA) can be found at:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Waco 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 City of Waco 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.

- The City of Waco will use the TXDOT DBE Directory information and Census Bureau Data as a method to determine the base figure.
- The City of Waco understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination.

- Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. the City of Waco 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.
- A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

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 City of Waco’s market.

In establishing the overall goal, the City of Waco 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 efforts by the City of Waco 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 goal setting process, and it will occur before the City of Waco is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City of Waco engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the City of Waco. This notice will provide that the City of Waco and 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 public comment period will not extend the August 1st deadline.

The Overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during this public participation process and the City of Waco responses.

The City of Waco will begin using the overall goal on October 1 of the relevant period, unless other instructions from Federal Aviation Administration 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 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 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, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The City of Waco 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 City of Waco for calculating goals is inadequate, FAA may, after consulting with the City of Waco, adjust the overall goal or

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

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The City of Waco will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the Federal Aviation Administration for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City of Waco 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 can be found in Attachment 5 to this program.

The City of Waco 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.

Contract Goals

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such

contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the 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)

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

The Waco Regional Airport Director is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

The following information will be required of every bidder/offeror:

The City of Waco treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

- (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 Waco Regional Airport at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a North American Industry Classification Standard (NAICS) code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) 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.

- (vi) 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/offeror will be required to present the information stipulated in paragraph (2) of this section no later than 5 days after bid opening as a matter of responsibility.

Administrative reconsideration

Within three (3) days of being informed by The City of Waco that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. Cody Mathis
Waco Regional Airport
7909 Karl May Drive
Waco, TX 76708
Phone: 254-750-8655
Fax: 254-750-8659
Email: codym@wacotx.gov

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

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

Good Faith Efforts procedural requirements (post-solicitation)

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

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of The City of Waco. This includes, but is 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 another DBE firm.

Such written consent will be provided only if the City of Waco agrees, for reasons stated in the 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. The City of Waco determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the City of Waco 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 the City of Waco has 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 the City of Waco a 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 the City of Waco, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the City of Waco and the prime contractor of the reasons, if any, why

the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the City of Waco as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, 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 of Waco 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 was established for the procurement. The good faith efforts shall be documented by the contractor. If the City of Waco requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the contractor. The City of Waco shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the City of Waco 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 officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Waco is a non-certifying member of the Texas Unified Certification Program (UCP). Texas 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 Texas UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact: <https://txdot.txdotcms.com/>

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Waco is the member of a Unified Certification Program (UCP) administered by The State of Texas. The UCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Waco

The City of Waco understands that if it fails to comply with any requirement of this part, the City of Waco 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 FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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.

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

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

The City of Waco, 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. The City of Waco understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan-Forms 1&2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State of Texas Unified Certification Program (UCP)
- Attachment 10 Small Business Element Program

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ATTACHMENT 1

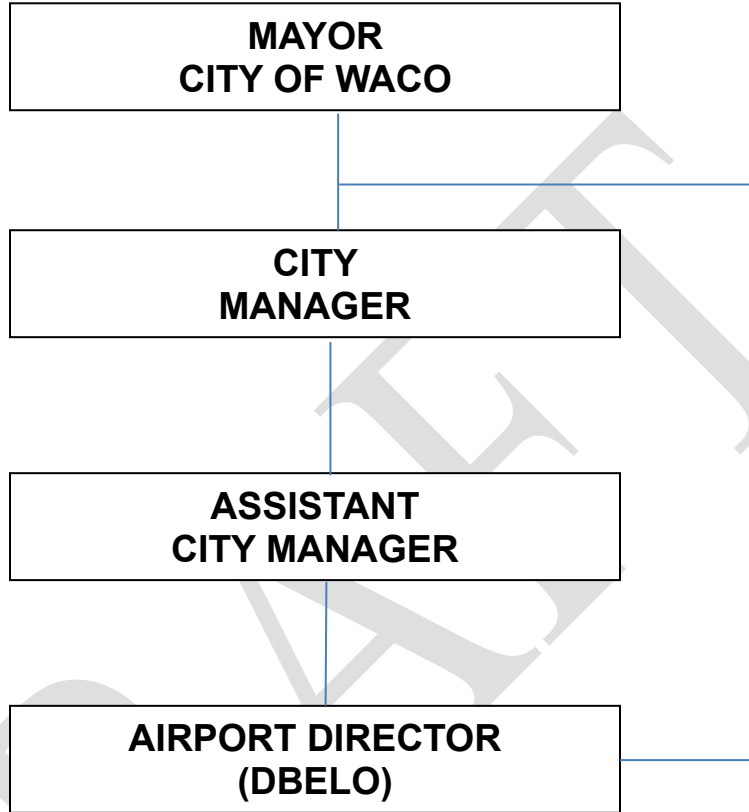
Regulations: 49 CFR Part 26 or website link

<https://www.govinfo.gov/content/pkg/CFR-2017-title49-vol1/xml/CFR-2017-title49-vol1-part26.xml>

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ATTACHMENT 2

Organizational Chart



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

(SAMPLE BIDDERS LIST COLLECTION FORM)

The following information will be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder.

Firm Name	Firm Address / Phone number	DBE or Non- DDBE Status (Verify via State's UCP 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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<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 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

ATTACHMENT 4
DBE Directory (Link to DBE Directory)

<https://txdot.txdotcms.com/>

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ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: Waco Regional Airport (ACT), City of Waco, Texas

Goal Period: 3-Year Goal Period: FY-2022 / 2023 / 2024 (October 1, 2021 – September 30, 2023)

DOT – assisted contract amount(s):

FY-2022	\$3,522,000 (Apron reconstruction project) - Construction
FY-2023	\$ 862,322 (Runways 1/19 and 14/32 rehab projects -Design)
FY-2024	\$1,225,000 (Improve airport drainage (WHA Mitigation - (phase 1 construction)

Overall Three-Year Goal: 6.63% to be accomplished entirely through 0.28% RC and 6.35RN

Total dollar amount to be expended on DBE(s): **\$371,898.05**

Number and types of contracts Airport anticipate awarding:

Contracts for Fiscal Year #1

1. Reconstruct Apron (Phase 3 - Construction
2. Extend Service Road (Construction)

Contracts for Fiscal Year #2

1. Rehabilitate Runways 1/19 and 14/32 - Design

Contracts for Fiscal Year #3

1. Improve Airport Drainage (WHA Mitigation); Phase 1 - Construction

Market Area: The State of Texas with consideration given to all Texas Department of Transportation (TxDOT) Districts, and close consideration given to the Waco District which includes the counties of Bell, Bosque, Coryell, Falls, Hamilton, Hill, Limestone, and McLennan.

This market area was chosen because prime contractors will travel from many TxDOT Districts to perform this type of work in the TxDOT Waco District. The TxDOT Districts are the areas where the substantial majority of contractors and subcontractors would seek to do business with the airport and the areas the airport spends the substantial majority of its contracting dollars. This marketing area includes the counties surrounding the

airport and additional areas in the State where contractors and subcontractors can be found to do the types of contracts being awarded at the airport.

Step 1 - Analysis: Actual relative availability of DBE(s)

The data used to calculate the DBE base figure was derived utilizing information collected from the US Census Bureau (American Fact Finder) concerning State of Texas County Business Patterns (using the National American Industry Classification System – NAICS):

https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml

and; The Texas Department of Transportation (TXDOT) DBE Certified Contractors list:

<https://txdot.txdotcms.com/>

The ratios listed are determined by dividing the DBE firms in the local market area by the total of all firms within the same market area.

$$\text{(Unweighted) DBE Goal per activity} = \frac{\text{Total number of Certified DBE Firms}}{\text{Total number of all firms}}$$

The base figure was determined by dividing the total DBE firms in the local market area by the total of all firms (compiled from Census Bureau Data according to the relevant NAICS project codes):

- The data source used to derive the numerator was the Texas Department of Transportation (TXDOT) DBE Certified Contractors list for the market area.
- The data source used to derive the denominator was the US Census Bureau (American Fact Finder) concerning the State of Texas County Business Patterns.

Weighted Availability of DBE firms:

Dividing the total number of DBE(s) by the total number of “All Firms” gives a base DBE availability figure for each contract.

The (Weighted) DBE Goal (in dollars) =

$$\frac{\text{Total number of DBE Firms}}{\text{Total number of all firms}} \times (\% \text{ of the project activity costs} \times \text{the total project costs})$$

For example:

$$\text{Reconstruct Apron (Phase 3) Site Preparation Firms DBE Goal} = \frac{159 \text{ DBE Firms}}{2,434 \text{ total firms}} = 6.53\% \times (25\% \times \$3,347,000) = \$54,639.78$$

Then all DBE activity totals are added and then divided by the total project cost to determine the DBE goal for the contract(s).

Example:

$$\text{FY-22 DBE Target Goal for the Apron Reconstruction (Ph 3) Construction Project is:} = \frac{(\$177,725.70 + \$54,639.78)}{\$3,347,000.00} = 6.94\%.$$

$$\text{Similarly, the FY 22 Target Goal for the Service Road Extension Project is calculated as follows:} = \frac{(\$10,531.25 + \$1,714.12)}{\$175,000.00} = 7.0\%$$

Therefore, the average **(6.97%)** is the (weighted) FY-22 Target Goal for all FY-22 only. FY-23 and FY-24 are calculated in a similar manner.

Fiscal Year 22 – \$3,522,000.00 - Reconstruct Apron, Phase III (Construction); Extend Service Road (Construction). Award of the following is anticipated:

Waco (ACT) FY-22 Activity	NAICS Codes	DBE Firms (A)	All Firms (B)	DBE % (A/B) = (C)	Project activity % (D)	Activity (Dollars) (E)	DBE Goal (C) x (E) = (F) (Dollars)
Highway, Street, Bridge	237310	54	763	7.08%	75%	\$2,510,250.00	\$ 177,725.70
Site Preparation	238910	159	2,434	6.53%	25%	\$836,750.00	\$ 54,639.78
Total(s)		213	3,197	6.81%	100%	\$ 3,347,000.00	\$ 232,365.48
Reconst. Apron (Ph 3) (Const.)							6.94%

Waco (ACT) FY-22 Activity	NAICS Codes	DBE Firms (A)	All Firms (B)	DBE % (A/B) = (C)	Project activity % (D)	Activity (Dollars) (E)	DBE Goal (C) x (E) = (F) (Dollars)
Highway, Street, Bridge	237310	54	763	7.08%	85%	\$ 148,750.00	\$ 10,531.25
Site Preparation	238910	159	2,434	6.53%	15%	\$ 26,250.00	\$ 1,714.12
Total(s)		213	3197	6.81%	100%	\$ 175,000.00	\$ 12,245.37
Extend Service Road - Construction							7.00%

Fiscal Year 23 – \$862,322.00 - Rehabilitate Runways 1/19 and 14/32 (Design). Award of the following is anticipated:

Waco (ACT) FY-23 Activity	NAICS Codes	DBE Firms (A)	All Firms (B)	DBE % (A/B) = (C)	Project activity % (D)	Activity (Dollars) (E)	DBE Goal (C) x (E) = (F) (Dollars)
Engineering services	541330	355	5,383	6.59%	85%	\$ 732,973.70	\$ 48,302.97
Surveying	541370	69	714	9.66%	15%	\$ 129,348.30	\$ 12,495.05
Total(s)		424	6,097	8.12%	100%	\$ 862,322.00	\$ 60,798.02
Rehab. RW's 1/19 & 14/32 (Design)							7.05%

Fiscal Year 24 – \$ 1,125,000.00 – Improve Airport Drainage (Wildlife Hazard Assessment Mitigation (Construction). Award of the following is anticipated:

Waco (ACT) FY-24 Activity	NAICS Codes	DBE Firms (A)	All Firms (B)	DBE % (A/B) = (C)	Project activity % (D)	Activity (Dollars) (E)	DBE Goal (C) x (E) = (F) (Dollars)
Site Preparation	238910	159	2,434	6.53%	80%	\$900,000.00	\$58,770.00
Engineering services	541330	355	5,383	6.59%	15%	\$168,750.00	\$ 11,120.62
Surveying	541370	69	714	9.66%	5%	\$56,250.00	\$5,433.75
Total(s)		583	8,531	7.59%	100%	\$1,125,000.00	\$ 75,324.37
Improve Apt Drng (WHA Mitig – Ph 1 (Const.))							6.70%

The calculated base of the DBE Goal: 6.91%

Step 2 – Adjustments to Step 1 base figures

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The City of Waco will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The city will use the RN measures to obtain DBE participation:

1. Advertising contracting opportunities to as many small businesses as possible, and by making free plan inspection available at the office of the project engineer.
2. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small business participation.

First, the City of Waco researched its market area for any disparity studies that may have been conducted in the last 5 years and found none. We referred to the:

- Texas 2019 Annual DBE Goal for Highway Design and Construction found at: <https://ftp.dot.state.tx.us/pub/txdot/civ/txdot-disparity-study-2019.pdf>
- TXDOT website found at: <https://www.txdot.gov/>

Second, community participation was solicited for comments. The following offices were / will be contacted:

- The Greater Waco Chamber (<https://wacochamber.com/>)
- Association of Minority Contractors - Texas (<https://namctexas.org/>)
- The Cen-Tex Hispanic Chamber of Commerce (<https://wacohispanicchamber.com/>)
- The Cen-Tex African American Chamber of Commerce (www.centexchamber.com)
- CENTEX Association of General Contractors – Waco Chapter (<https://centexagc.org/>)

Lastly, the historic DBE goal accomplishments at the airport were examined for Fiscal Years 2019 and 2020. Waco Regional Airport (ACT) received several AIP grants in FY’s 2019 and 2020 as well as CARES ACT funding in 2020. The grants helped the airport to fund a variety of eligible projects. Unfortunately, ACT was deficient in meeting its established DBE goal of 7.84% during the two fiscal years. Therefore, the City of Waco will make an adjustment using the FY-2020 accomplishments only to determine the FY-22/23/24 DBE triennial goal.

Past History of ACT DBE Participation

Fiscal Year	Total Grant amount	DBE Goal Established	DBE Accomplished	Over or Under (+ / -)	Type of work
FY-2019	\$4,342,946.00	7.84%	2.46%	-5.38%	1. Acquire Land for Approaches 2. Airport Drainage 3. Airport Engine Generator 4. Improve Terminal Building

FY-2020	\$1,442,844.00	7.84%	7.56%	-0.28%	1. Improve Terminal Building 2. Rehabilitate Terminal Building 3. Rehabilitate Taxiway
Overall Adjustments Chosen				-0.28%	

Recommended adjustment (Step 2)	0.28%*
Base figure (Step 1)	6.91%
Total overall goal (averaged)	6.63%

*Ordinarily, we would have added the deficiency amount of -2.83% to the base figure from Step 1. However, that would have resulted in a downward adjusted goal of 4.09%. After looking at the certified DBE firms for all NAICS codes considered for this analysis, we felt that 4.08% was too low. Additionally, the FY-2019 grants were for land acquisition and the purchase of an engine generator, and equipment procurement and land appraisals typically have minimal DBE involvement. The City of Waco has determined the FY-2020 shortfall is a suitable and achievable Step 2 adjustment. This will be made to the overall Step 1 average goal of **6.91%**.

The City of Waco believes this overall goal accurately reflects DBE participation that can be achieved for the type of work being awarded during this three-year period.

<i>FY-22/23/24 Overall Goal</i>	6.63%
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Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation

The City of Waco will meet the maximum feasible portion of its overall goal by using a combination of race-neutral (RN) and race-conscious (RC) means of facilitating race-conscious 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 (RN) 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;
- (6) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (7) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (8) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Race-Conscious (RC) means included, but not limited to the following:

1. Establish DBE goals for particular contractor, subcontractor, and consulting services opportunities.
2. Negotiate with potential prime contractor to include DBE participation through purchases of goods and services in the execution of AIP grants.
3. Utilize, with prior FAA approval, other methods that take a competitor's ability to provide DBE participation into account in awarding a concession.

Our analysis indicated that the City of Waco's most recent past DBE performance has been significantly under the previous DBE goal. **Therefore, it is recommended that the City of Waco meet its established overall goal of 6.63% for FY 2022-2024 through 0.28% Race Conscious (RC) means and 6.35% through Race-Neutral (RN) Means.**

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, the City of Waco provided for consultation and publication. This process included an opportunity for consultation with minority, women, 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 of Waco efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with interested stakeholders and the meeting focused on obtaining information relevant to the goal setting process. This meeting was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

Published Notice: An invitation to a Public Consultation and Open House meeting was published in the listed publication on November 17, 2022:

Waco Tribune-Herald 900 Franklin Avenue Waco, TX 76701
Phone: 254-757-5757 or 800-678-8742
Email: news@wacotrib.com

A notice of the proposed goal was published on the City of Waco official website before the methodology is submitted to the Federal Aviation Administration. The notice informed the public that the proposed goal and its rationale are available for inspection during normal business hours at the Waco Regional Airport offices for 30 days following the date of the notice and informing the public that the City of Waco will accept comments on the goals for 30 days from the date of the notice.

If the proposed goal changes following review by the Federal Aviation Administration, the revised goal will be posted on the City of Waco official website.

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

Sample Public Notice Language:

PUBLIC NOTICE

In accordance with the U.S. Department of Transportation's Title 49 Code of Federal Regulations, Part 26, the City of Waco hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **6.63%** for Federal Aviation Administration funded contracts / agreements. The proposed goal pertains to federal fiscal years 2022 through 2024. A meeting will be held on Thursday, November 17, 2022 at 10:00 a.m. at the Waco Regional Airport Conference Room 7909 Karl May Drive; Waco, Texas 76708; for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process.

The proposed goal and its attendant methodology are available for inspection between 8:00 a.m. and 5:00 p.m. Monday through Friday, except City Holidays, at the City of Waco City Hall 300 Austin Avenue Waco, Texas 76101, for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

ATTENTION: Mr. Joel C. Martinez,
Airport Director
7909 Karl May Drive
Waco, Texas 76708
Phone: (254) 750-8475
Fax: (254) 750-8659
joelm@wacotx.gov

or

Federal Aviation Administration
FAA Southwest Regional Office
Office of Civil Rights
10101 Hillwood Parkway
Fort Worth, TX 76177

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Waco Regional Airport

WOULD LIKE TO INVITE YOU TO THE

TRIENNIAL DBE BUSINESS OPEN HOUSE AND PUBLIC CONSULTATION MEETING

This airport open house is for all Disadvantage Business Enterprise (DBE) firms, industry associations, and other organizations interested in doing business with Waco Regional Airport

This meeting agenda will include information about our DBE Program, DBE Goals, and potential future airport construction projects

We encourage you to share this information with DBE businesses that might be interested in working with

Waco Regional Airport!

Thursday, November 17, 2022

10:00 AM – 12:00 PM

Waco Regional Airport Conference Room
7909 Karl May Drive Waco, Texas 76708
(254) 750-8475

To RSVP for the Airport Open House send an email message to ContactUs@TheSolcoGroup.com, or if you have any questions, please contact Mr. Roderick T. Nicholson, Project Manager with The Solco Group, LLC via email at rod@theSolcoGroup.com

Waco Regional Airport Public Consultation Meeting Sign-In Sheet

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RESULTS OF THE November 17, 2022 PUBLIC CONSULTATION MEETING

The meeting participants discussed the goal methodology and the need for more DBE firms in the local area. The group discussed some of the potential upcoming projects and the types of sub-contracts that may be needed. _____

_____.

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ATTACHMENT 6

Demonstration of Good Faith Efforts – Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror has met the DBE contract goal.
 - The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- The bidder/offeror (if unable to meet the DBE goal of ____%)
 - The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Legal name of the bidder/offeror's firm: _____

Bidder / Offeror Representative:

(Name)

(Title)

(Signature)

(Date)

State Registration No. _____ (if applicable)

FORM 2 LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & Title of AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS Code	Dollar amount / %*	Dealer or Manufacturer**

*Note: Percentage is to be used only in negotiated procurements, including design-build contracts

**For material suppliers only, indicated whether the DBE is a manufacturer, or a regular dealer as defined by §26.55.

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract / agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.55.

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

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

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

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

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The City of Waco 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 Texas Statutes, Title 15.

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

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

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ATTACHMENT 9
State of Texas UCP Agreement

http://ftp.dot.state.tx.us/pub/txdot-info/bop/tucp_moa.pdf

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ATTACHMENT 10

Small Business Element

The City of Waco will create and implement a race-neutral small business element as part of the Waco Regional Airport program, in compliance with §26.39. The following components are strategies that will be used.

1. Objective/Strategies

The City of Waco plans to use the following strategies to help eliminate obstacles for Small Business Enterprises (SBE) participation on DOT-assisted projects. These strategies have been selected because they can be successfully implemented by the current airport staff and have the greatest opportunity for race- and gender-neutral DBE participation at the Airport. This program will include, but not be limited to, the following strategies:

- (1) For large construction contracts (those over \$1,000,000), the Airport will require bidders on the prime construction contract to specify elements of the contract or specific subcontracts that are of a size that small businesses can reasonably perform.
- (2) The City of Waco will structure procurements to allow joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (3) The City of Waco will unbundle some large engineering and construction contracts, when possible, to a size that SBEs can reasonably perform.
- (4) The City of Waco will advertise in small business or state-wide publications the steps required for a DBE firm to become certified.

2. Definition

- (1) For this program, a small business is defined as one meeting the requirements of a CFR Part 26 for a "Small Business Concern". Only SBEs meeting this definition will be considered for inclusion in the small business program. SBEs shall be certified as small businesses with the US Small Business Administration (www.SBA.gov). The City of Waco will use these sources to verify SBE certification.
- (2) Personal Net Worth standards should be consistent with 49 CFR Part 26.

3. Verification

The City of Waco will diligently attempt to minimize fraud and abuse in the small business element of the DBE program by verifying that all disadvantaged business enterprises are certified under the State of Texas UCP program. The DBELO will document the certification and will refer any concerns of potential/suspected fraudulent certifications to the Texas Department of Transportation - Civil Rights Division, 125 E. 11th Street, Austin, TX 78701-2483.

4. Monitoring / Record Keeping

All race-neutral DBE participation obtained by the plan will be reported as part of the Airport's annual DBE Accomplishment Reporting. In addition, the airport will track the plan's small business participation on an annual basis in the table below.

Waco Regional Airport (ACT)			
Fiscal Year	Federal Dollars to SBE(s)	% of total Federal Dollars Awarded	Race Neutral DBE Participation
2021			
2022			
2023			
2024			
2025			

5. Assurance

- (1) All the strategies listed in this program are authorized under Texas state law.
- (2) Certified DBEs that meet the size criteria established under this program are presumptively eligible to participate in this program.
- (3) There are no geographic preferences or limitations imposed on any federally assisted procurements included in this program.
- (4) There are no limits on the number of contracts awarded to firms participating in the program; however, every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
- (5) Aggressive steps will be taken to encourage minority and women owned firms that are eligible for DBE certification to become certified.
- (6) This program is open to all small businesses regardless of their location.