

**VALLEY INTERNATIONAL AIRPORT
DBE PROGRAM – 49 CFR PART 26
POLICY STATEMENT**

Section 26.1, 26.23 Objectives/Policy Statement

The City of Harlingen Texas (City), owner of Valley 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 (hereafter referred to as “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 the City’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.

The Assistant Director of Aviation has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Director of Aviation 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 in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the Valley International Airport Board (Airport Board) and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on City DOT-assisted contracts. The distribution was accomplished by email distribution.

[signature of CEO here]

Marv Esterly, Director of Aviation

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 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 their meanings defined in Part 26, §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

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

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

The City will transmit to the 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 will similarly report the required

information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

Bidders List

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 the City's 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.

This information will be collected in the following way(s):

1. We will require each bidder on AIP-funded projects to complete the Bidder's List Collection Form, included in Attachment 3;

Records retention and reporting:

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

Section 26.13 Federal Financial Assistance Agreement

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

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

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

Bryan J. Wren, AAE
Assistant Director of Aviation
Valley International Airport
3002 Heritage Way, 3rd Floor
956.430.8600 (P)
956.430.8619 (F)
bryan@flythevalley.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Aviation 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 a staff of one 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. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
4. Determine contractor compliance with good faith efforts.

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.

Efforts made to comply with Section 26.27 include the following:

1. Web searches for listing of financial institutions in the state of Texas owned and controlled by socially disadvantaged individuals. Web sites found include the following:
 - a. <https://www.investopedia.com/women-owned-banks-by-state-5115603>. Three women-owned banks identified.
 - b. <https://www.occ.treas.gov/topics/consumers-and-communities/minority-outreach/index-minority-outreach.html>. One African-American owned; four Asian or Pacific-American owned; three women-owned (included in a., above); and three Hispanic owned identified.
2. We will provide a list of financial institutions identified through these efforts at pre-bid meetings for AIP-funded projects.

Section 26.29 Prompt Payment Mechanisms

The City 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 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.

The City 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 has selected the following method to comply with this requirement:

The City 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 includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

- a. From the total of the amount determined to be payable on a partial payment 10 percent of such total amount 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 50-14 of FAA Advisory Circular (AC) 150/5370-10, *Standard Specifications for Construction of Airports*. Contractor must provide a certified invoice to the 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 of AC 150/5370-10.

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 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 is not a certifying member of the Texas Unified Certification Program (UCP), administered by the Texas Department of Transportation (TxDOT) but relies on Texas UCP certification to determine contractor and subcontractor participation that may be counted toward the City's DBE program goals. The Texas UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The TxDOT directory of DBE certified firms lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. You must search both the "Statewide" and desired "District" to locate all DBEs for your District or area. For any types not listed contact the TxDOT DBE Project Specialist at 512-486-5511.

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The City has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The City 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 set forth these mechanisms in the City's DBE program.

The City 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 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):

The City will include in each Contract subject to 49 CFR Part 26 a requirement for Contractors to submit a status report of Subcontractor payments monthly for the duration of the contract. We will require the following information in the status report:

1. Total amount invoiced by the Contractor for the prior month;
2. The name of each particular Subcontractor or supplier utilized during the prior month;
3. Indication if the Subcontractor or supplier is acting as an MBE, WBE, DBE, or non- certified firm on this contract;
4. The vendor/supplier number of each Subcontractor or supplier; and
5. Total amount invoiced that is to be paid to each Subcontractor or supplier.

The City 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's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

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

Prompt Payment Dispute Resolution

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

The City will convene a meeting between the prime contractor and the subcontractor that are parties to the dispute, with the resident project representative or project manager, as appropriate, to resolve the dispute. The City will require that each party to the dispute send representatives authorized to bind the party and will ensure participation by a representative of the City with authority to bind the City and authority to take enforcement action.

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

Alternative dispute resolution (ADR)

The City will include in each contract subject to 49 CFR Part 26 the following clauses:

1. The Contractor shall include in each subcontract provisions establishing an alternative dispute resolution procedure to resolve disputes or claims by subcontractors regarding compliance with the prompt payment requirements of this article.
2. Upon award of this Contract, the Contractor shall submit to the City a detailed alternative dispute resolution plan.
3. The City will not issue a Notice to Proceed for this Contract until it has reviewed and approved the alternative dispute resolution plan.

Prompt Payment Complaints

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

[xx NOTE:

- The subcontractor should first contact the prime contractor directly to resolve the prompt payment concern and request a written determination.
- If the subcontractor is not comfortable contacting the prime contractor directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor may contact the DBELO to initiate a complaint.
 - Complaints must be in writing setting forth the specific facts which the subcontractor believes establish non-compliance with prompt payment requirements. A copy of the complaint must be provided to the Contractor.
 - The DBELO will provide the Contractor an opportunity to respond to the complaint not later than 15 days after filing of the complaint.
 - The DBELO will issue a determination not later than 30 days after receipt of the Contractor's response.
- If either the subcontractor or the contractor desires to dispute the DBELO's decision, they may file an appeal to the Director of Aviation.
 - Appeals must be submitted in writing not more than 15 days after the DBELO's determination, setting forth the specific basis for the appeal. A copy of the appeal must be provided to the other party to the dispute.
 - The Director of Aviation will provide an opportunity to the other party to the dispute not later than 15 days after filing of the appeal.
 - The Director of Aviation will issue a determination not later than 30 days after receipt of the response.
- If filing a prompt payment complaint with the City, as set forth above does not result in timely and meaningful action by the City to resolve the prompt payment dispute, the subcontractor may contact the FAA Southwest Region DBE/ACDBE Compliance Team Specialist (currently Kirk K. Brouwer, FAA Eastern Region Office of Civil Rights, Room 217, 159-30 Rockaway Blvd., Jamaica, NY 11434; (718) 533-3053; Kirk.K.Brouwer@faa.gov).
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

- *In accordance with the contract, assessing 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*
- *Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).*

The City will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City 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 DBELO and project managers. Contracting records are reviewed by DBELO and project managers. The City 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 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 small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City to be considered by DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City 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 will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA.

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.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 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 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. City will use a Bidders List or alternative mechanisms that comply with 49 CFR Part 26.45 as a method to determine the base figure. For this determination, the City uses the number of available DBE firms certified for relevant NAICS codes from the Texas UCP DBE Directory in the Airport's market area as the numerator and the total number of firms listed under the same NAICS code in Census Bureau Data as the denominator to calculate a percentage of availability. The City 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 City 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 will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the City 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 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 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 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 will publish a notice announcing the proposed overall goal before submission to the Federal Aviation Administration on August 1st. The notice will be posted on the Airport's official web-site. If the proposed goal changes following review by the Federal Aviation Administration, the revised goal will be posted on the Airport's official internet web site.

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

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

Project Goals

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

If a goal is established on a project basis, 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 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 for calculating goals is inadequate, the FAA may, after consulting with the City, adjust the overall goal or require that the goal be adjusted by the City. 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 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 fails to administer its DBE program in good faith.

The City 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 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 will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to the FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City 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; and.
- (2) Ensuring distribution of the DBE directory, through print or electronic means, to the widest feasible universe of potential prime contractors.

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

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the City, 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 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:
- (i) No later than 5 days after bid opening as a matter of **responsibility**.

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

Administrative reconsideration

Within 7 days 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: Marv Esterly, Director of Aviation, 3002 Heritage Way, Harlingen, TX 78550, (956) 430-8605; email--ATTN Marv Esterlycelina@flythevalley.com. 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. 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 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 1200 or applicable state law;
- (6) The City 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 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 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 City 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 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 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/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the City 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 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 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 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 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 49 CFR Part 26 at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit

on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City is not a certifying member of the Texas Unified Certification Program (UCP) but relies on Texas UCP certification to determine firms whose participation may be counted toward achievement of DBE goals. The 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:

*DBE and SBE Certification Section
Civil Rights Division
125 East 112th St.
Austin, TX 78701-2409
(512) 416-4700 (Ph.)
(512) 486-5539 (Fax)*

To email the Civil Rights Division use the URL <https://www.txdot.gov/inside-txdot/division/civil-rights/contact.html> and click on the “Email Civil Rights link

A link to the Texas UCP’s certification procedures, including 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 is not a certifying member of a Unified Certification Program (UCP) administered by the Texas Department of Transportation, but relies on the Texas UCP to determine firms eligible to be counted as DBEs. 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

The City understands that if it fails to comply with any requirement of this part, the City 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, 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 understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

[List and append]

- 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's UCP Agreement
- Attachment 10 Small Business Element Program
- Attachment 11 Small Business Element Certification Forms

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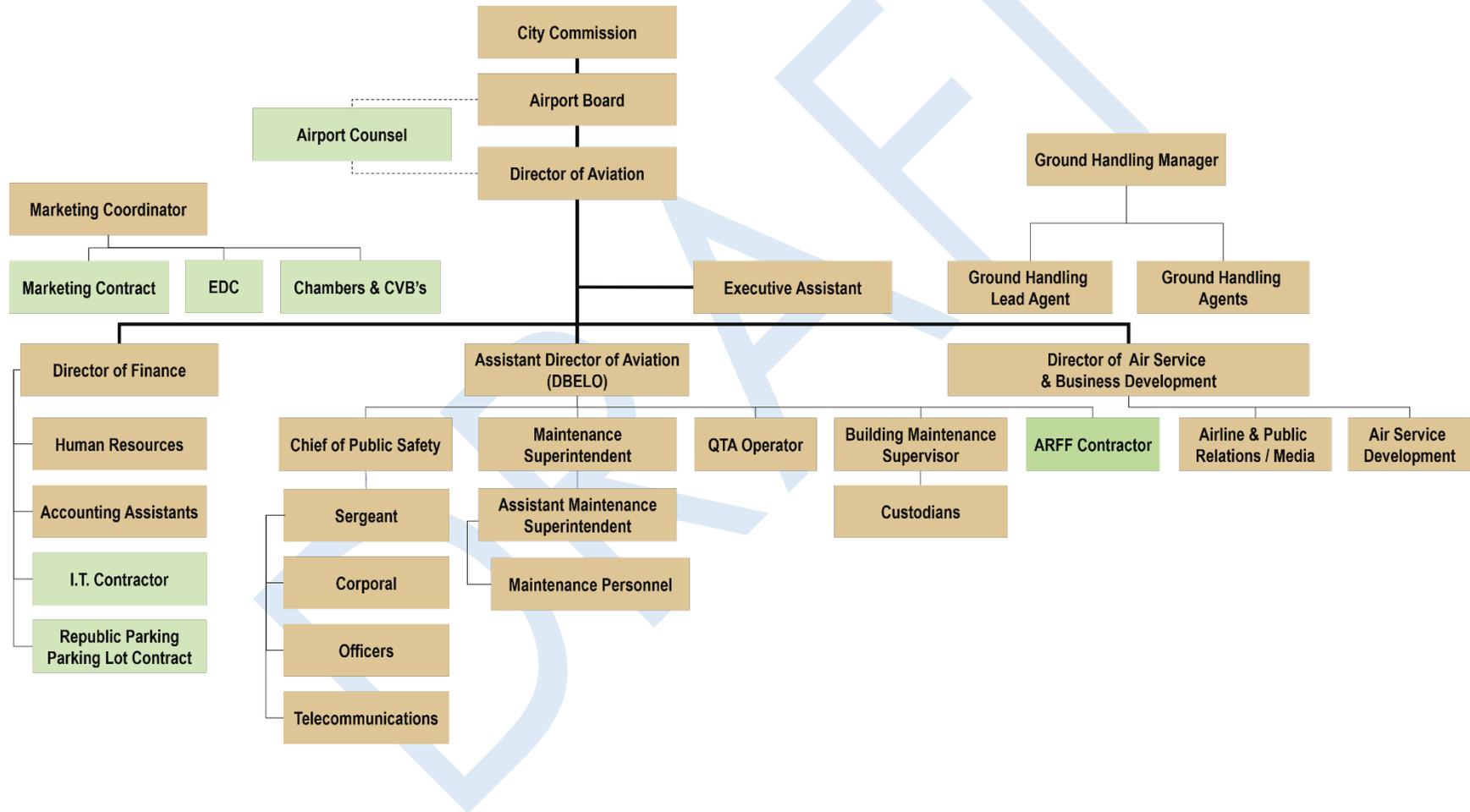
ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

A link to download 49 CFR Part 26 is available at <https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

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ATTACHMENT 2
Organizational Chart



ATTACHMENT 3
 Bidder's List Collection Form

The information below must be collected from every bidder who submits a quote/bid to the City and every potential subcontractor who submitted a quote/bid to each bidder, pursuant to 49 CFR §26.11(c).

Firm Name	Firm Address/ Phone #	DBE or Non-DBE 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

The web link to the Texas DBE directory is

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=839&TN=txdot>

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ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Harlingen, TX; owner of Valley International Airport

Goal Period: FY-2022-2023-2024 – October 1, 2021 through September 30, 2024)

DOT-assisted contract amount:	FY-2021	\$13,520,000
	FY-2022	\$ 2,800,000
	FY-2023	\$ 2,800,000
	Total	\$19,120,000

Overall Three-Year Goal: 2.36%, to be accomplished through 2.36% RC and 0.00% RN, representing an average of the three years based on the total value of DOT assisted contracts

Total dollar amount to be expended on DBEs: \$451,232

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

Note: the values shown below are for the total value of the DOT funded contract, consistent with the figures above.

Contracts Fiscal Year #1

1. *Runway 17R-35L Extension, Construction Phase 1 - \$13,520,000*

Contracts Fiscal Year #2

1. *Runway 17R-35L Extension, Construction Phase 2 - \$2,800,000*

Contracts Fiscal Year #3

1. *Runway 17R-35L Extension, Construction Phase 3 - \$2,800,000*

Market Area: The market area for Valley International Airport is Cameron and Hidalgo Counties.

Step 1. Actual relative availability of DBEs

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

Method: Use DBE Directories

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=7549&TN=txdot>

and Census Bureau Data from <https://data.census.gov/cedsci/>

Unweighted Availability of DBE Firms:

The City is using unweighted availability because scope quantities are not able to be estimated with a reasonable degree of accuracy at this time.

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FY 2022 -- Runway 17R-35L Extension, Construction Phase 1

NAICS	Type of Work	Total DBEs ¹	Total All Firms
237310	Construction management, highway, road street & bridge ²	2	19
238210	Electrical Contractors	1	104
238910	Site Preparation Contractors	3	30
238990	All Other Specialty Trade Contractors	5	46
327320	Ready Mix Concrete	0	20
33995	Sign Manufacturing	0	8
324121	Asphalt paving and mixtures	0	0
423610	Electrical Supplies	0	31
484	Truck Transportation	3	462
4884	Support Activities for Road Transportation	0	47
541330	Engineering Services	15	102
541350	Building Inspection Services	1	3
541370	Surveying and Mapping (except Geophysical) Services	3	14
541380	Testing Laboratories	0	11
541690	Other Scientific and Technical Consulting Services	0	34
561730	Landscaping Services	4	67
561990	All Other Support Services	1	16
5621	Waste Collection	0	17
Total		38	1,031

¹ DBE firms certified in more than one of the listed NAICS codes are only associated with a single code to avoid overestimating availability.

² As relevant to HRL's anticipated projects, NAICS code 237310 also includes airport runway construction, airport striping, asphalt paving, concrete paving, and airport runway surfacing

FY 2023-- Runway 17R-35L Extension, Construction Phase 2

NAICS	Type of Work	Total DBEs ¹	Total All Firms
237310	Construction management, highway, road street & bridge ²	2	19
238210	Electrical Contractors	1	104
238910	Site Preparation Contractors	3	30
238990	All Other Specialty Trade Contractors	5	46
327320	Ready Mix Concrete	0	20
33995	Sign Manufacturing	0	8
324121	Asphalt paving and mixtures	0	0
423610	Electrical Supplies	0	31
484	Truck Transportation	3	462
4884	Support Activities for Road Transportation	0	47
541330	Engineering Services	15	102
541350	Building Inspection Services	1	3
541370	Surveying and Mapping (except Geophysical) Services	3	14
541380	Testing Laboratories	0	11
541690	Other Scientific and Technical Consulting Services	0	34
561730	Landscaping Services	4	67
561990	All Other Support Services	1	16
5621	Waste Collection	0	17
Total		38	1,031

¹ DBE firms certified in more than one of the listed NAICS codes are only associated with a single code to avoid overestimating availability.

² As relevant to HRL's anticipated projects, NAICS code 237310 also includes airport runway construction, airport striping, asphalt paving, concrete paving, and airport runway surfacing

FY 2024-- Runway 17R-35L Extension, Construction Phase 3

NAICS	Type of Work	Total DBEs ¹	Total All Firms
237310	Construction management, highway, road street & bridge ²	2	19
238210	Electrical Contractors	1	104
238910	Site Preparation Contractors	3	30
238990	All Other Specialty Trade Contractors	5	46
327320	Ready Mix Concrete	0	20
33995	Sign Manufacturing	0	8
324121	Asphalt paving and mixtures	0	0
423610	Electrical Supplies	0	31
484	Truck Transportation	3	462
4884	Support Activities for Road Transportation	0	47
541330	Engineering Services	15	102
541350	Building Inspection Services	1	3
541370	Surveying and Mapping (except Geophysical) Services	3	14
541380	Testing Laboratories	0	11
541690	Other Scientific and Technical Consulting Services	0	34
561730	Landscaping Services	4	67
561990	All Other Support Services	1	16
5621	Waste Collection	0	17
Total		38	1,031

¹ DBE firms certified in more than one of the listed NAICS codes are only associated with a single code to avoid overestimating availability.

² As relevant to HRL's anticipated projects, NAICS code 237310 also includes airport runway construction, airport striping, asphalt paving, concrete paving, and airport runway surfacing

The data source or demonstrable evidence used to derive the numerator was: The Texas UCP Directory.

The data source or demonstrable evidence used to derive the denominator was: the United States Census Bureau.

Dividing the total number of DBEs by the total number of All Firms gives a base DBE availability figure for each contract. The availability figures for all contracts were then combined and averaged to provide the basis for the three-year overall goal.

The base goal projections are as follows:

- Fiscal Year #1 – 3.69%

- Fiscal Year #2 – 3.69%
- Fiscal Year #3 – 3.69%

Average of weighted availability: $(3.69\% + 3.69\% + 3.69\%)/3 = 3.69\%$

Base of DBE Goal: 3.69%

Step 2: Adjustments to Step 1 base figure

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

Past History Participation

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

FY	Total Grant Contract Payments	DBE Goals			Accomplishments		
		RC %	RN	Total	RC	RN	Total
FY 2016	\$4,166,027	8.60%	0.00%	8.60%	0.39%	0.00%	0.39%
FY20 17	\$5,233,652	8.60%	0.00%	8.60%	8.60%	0.29%	8.89%
FY 2018	\$4,744,560	8.60%	0.00%	8.60%	1.95%	0.00%	1.95%
FY 2019	\$5,764,597	8.60%	0.00%	8.60%	0.00%	0.00%	0.00%
FY 2020	\$12,980,948	11.07%	0.00	11.07	1.03%	0.00%	1.03%

Arranging this historical data from low to high, (0.00%, 0.39%, 1.03%, 1.99%, 8.89%) the median is 1.03%.

Step 1 Base averaged with historical median: $(3.69\% \times 2 + 1.03\%)/3 = 2.36\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of 2.36%. The City believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

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

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities; and
4. Ensuring distribution of DBE directory, through print or electronic means, to the widest feasible universe of potential prime contractors.

The City estimates that in meeting the established overall goal of 2.36%, it will obtain 0.00% from RN participation and 2.36% through RC measures.

The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, City provided for consultation and publication. This process included consultation with minority, women’s, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City’s efforts to establish a level playing field for the participation of DBEs. The consultation consisted of a mass email to the groups identified above, with a request for written comments, and was conducted before the goal methodology was submitted to the FAA for review.

The following comments were received during the course of the consultation:

OR

No comments were received.

A notice of the proposed goal was published on the Airport's official website before the methodology was submitted to the FAA. The notice also solicited public comments.

The following public comments were received:

OR

No public comments were received.

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

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

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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:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.
- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and will submit documentation demonstrating good faith efforts.
- The Bid specification does not specify a DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

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 firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

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

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

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

 Signature of Bidder/Offeror's Authorized Representative

Date: _____

The 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 DBE'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 shall be null and void.

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

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

1. The right to terminate the contract as to any or all of the work effective at a time specified by the City;
2. The right to money damages;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to deem the contractor non-responsible in future bids or contracts awarded by the City.

In addition, provisions in prime contracts allow the City access to the contractor's books and records, including without limitation, payroll records, tax returns and records, and books of account, on 5 business days' notice, to allow the officer to determine the contractor's compliance with its commitment to DBE participation and the status of any DBE performing any portion of the concession agreement.

Further, 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.

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

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 Process

The City is not a certifying agency, but relies on DBE certifications of the Texas UCP. A link to the Texas DBE UCP Certification Application Process, including required forms, is available at <https://txdot.txdotcms.com/>

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ATTACHMENT 9
State's UCP Agreement

The City does not have an agreement with the Texas UCP, but does rely on the Texas UCP certifications to determine eligibility of a firms' participation in FAA-funded contracts to be counted toward DBE program and contract goals.

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ATTACHMENT 10 Small Business Element

1. Objective/Strategies

The City's race-neutral Small Business Element includes the following strategies:

- (1) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (2) To meet the portion of the City's overall goal we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

Participation in the Small Business Element is open to any DBE firm or non-DBE firm that meets the following criteria:

1. The firm meets the definition of a small business concern as defined in section 3 of the Small Business Act and the Small Business Administration's regulations implementing it (13 CFR Part 121) and that also does not exceed the average annual gross revenue cap specified in 49 CFR §26.65(b). While this cap no longer applies to DBE certification for DBE participation in FAA funded projects, the FAA encourages its use in defining firms eligible to participate in a recipient's Small Business Element. Therefore the City is including it as a criterion for participation in our Small Business Element.
2. Each individual who owns and exercises control of the firm has a personal net worth, as defined in 49 CFR §26.5 that does not exceed \$1.32 million.

All businesses meeting these criteria will be considered to be small businesses, without regard to race or gender.

3. Verification

A firm seeking initial participation in the Small Business Element may verify its eligibility by either:

1. Submitting a copy of its Texas UCP small business enterprise (SBE) certification; or
2. Submitting a certification of gross revenues and individual net worth showing that the standards above are met. Sample SBE certification forms are included as Attachment 11.

Upon completing review of the information submitted, the City will notify the firm of whether it has been accepted to participate in the Small Business Element.

4. Monitoring/Record Keeping

- The City maintains a separate record of firms participating in its Small Business element, including the documentation submitted in support of an initial application or renewal request.
- Consistent with the Texas UCP policy, a firm is eligible to participate in the Small Business Element for three years after the notification of initial acceptance or renewal. Prior to the three-year anniversary, the firm must submit a request for renewal accompanied by either its current Texas UCP SBE certification or current certifications of gross revenue and personal net worth.

5. Assurance

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

Attachment 11
 Small Business Element Certification for
 Valley International Airport
 Certification of Gross Revenues

Business Legal Name	
DBA or Tradename (if applicable)	
Authorized Representative	
Business Phone	
Email Address	
Total Gross Revenues for three most recent Fiscal Years (FY)	FY Ended _____ Gross Revenues: \$ _____ FY Ended _____ Gross Revenues: \$ _____ FY Ended _____ Gross Revenues: \$ _____

I certify that the total Gross Revenues of the entity identified above are true and correct.

Signature of Authorized Representative

Date

Print Name

Title

Attachment 11
 Small Business Element Certification for
 Valley International Airport
 Certification of Personal Net Worth

Business Legal Name	
DBA or Tradename (if applicable)	

By affixing their signature, each individual listed below certifies that the information provided for him/her, exclusively, including personal net worth, is true and correct.

Name	Ownership Share	Position in Firm	Personal Net Worth	Signature