



Minority/Women Business Enterprise (M/WBE) Policy and Administrative Procedures

Business Diversity & Development Department



**MINORITY/WOMEN BUSINESS ENTERPRISE (MWBE)
POLICY AND ADMINISTRATIVE PROCEDURES**

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ASSOCIATED MINORITY/WOMEN BUSINESS ENTERPRISE POLICY**

MINORITY/WOMEN BUSINESS ENTERPRISE POLICY

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DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD

OFFICIAL BOARD ACTION/RESOLUTION

Date 01/09/2020	Committee Finance/Audit	Subject Adoption of the Disparity Study Findings and Associated Minority/Women Business Enterprise Policy	Resolution # 2020-01-010
Action That the Board hereby adopts the findings of the 2019 Disparity Study and the Minority/Women Business Enterprise (M/WBE) policy, and authorizes the Chief Executive Officer or designee to develop administrative procedures to implement the policy.			
Description <ul style="list-style-type: none"> • This action requests the adoption of the 2019 Minority and Women Business Enterprise Disparity Study Findings and the adoption of the Board's revised M/WBE Policy. • In addition, this action requests that the Chief Executive Officer be authorized to develop administrative procedures to implement the policy. • It is the policy of the DFW Airport Board to use race conscious measures to enhance the participation of minority and women-owned business in Airport contracts and subcontracts to the extent permitted by law. • The revised M/WBE Policy outlines the key objectives that will be used to eliminate the present and ongoing effects of past and present discrimination against minority and women-owned business utilization. 			
Justification <ul style="list-style-type: none"> • DFW is required to conduct periodic Availability & Disparity Studies to ensure there is a legal basis for continuing race- and gender-conscious programs 			
D/S/M/WBE Information <ul style="list-style-type: none"> • N/A 			
Schedule/Term <ul style="list-style-type: none"> • Effective June 1, 2020 through September 30, 2027 			
Contract #	Agreement #	Purchase Order #	Action Amount \$0 Revised Amount \$0
For Information contact Tamela Lee 3-5515	Fund	Project #	External Funding Source Amount \$0

Additional Information

On February 20, 2018, Colette Holt & Associates, (CHA) was retained to conduct a Disparity Study for the Dallas/Fort Worth International Airport to determine whether there was a compelling interest for the Airport to establish a narrowly-tailored minority- and women-owned business enterprise (M/WBE) program. The study also covered the Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs

CHA'S 2019 Disparity Study (Study) established findings from the contracting period between January 1, 2012 through December 30, 2017, that confirm that although the Board's Small Business Enterprise and Minority/Women Business Enterprise programs have reduced barriers to its contracting opportunities on the basis of race or gender, significant disparities in the Airport's utilization of MWBEs continue to persist.

The Disparity Study findings will apply to the Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE), however, the recommended M/WBE policy will not apply to the federal DBE and ACDBE programs. The DBE and ACDBE policies will be developed in accordance with FAA regulations and guidelines and presented to the Board for approval at a later time.

Additional Attachments: **Y****BE IT RESOLVED BY THE DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD**

That the Board hereby adopts the findings of the 2019 Disparity Study and the Minority/Women Business Enterprise (M/WBE) policy, and authorizes the Chief Executive Officer or designee to develop administrative procedures to implement the policy.

Approved as to Form by


Rodriguez, Elaine
Legal Counsel
Dec 19, 2019 11:23 am

Approved as to Funding by


Underwood, Max
Vice President Finance
Finance
Dec 19, 2019 7:25 am

Approved as to M/WBE by


Burks Lee, Tamela
Vice President Business Diversity
and Development
Business Diversity and
Development
Dec 18, 2019 8:40 am

SIGNATURE REQUIRED FOR APPROVAL**Approved by**


Department Head
Small & Emerging Business
Dec 18, 2019 8:40 am


Chief Executive Officer

Jan 9, 2020 1:54 pm

Date

Minority and Women Business Enterprise (MWBE) Program Policy

Business Diversity & Development Department



Effective: June 1, 2020

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I. PROGRAM PREAMBLE

WHEREAS, on February 20, 2018, Colette Holt & Associates, (CHA) was retained to conduct a Disparity Study for the Dallas/Fort Worth International Airport to determine whether there was a compelling interest for the Airport to establish a narrowly-tailored minority- and women-owned business enterprise (MWBE) program; and

WHEREAS, CHA'S 2019 Disparity Study (Study) established findings from the contracting period between January 1, 2012 through December 30, 2017, that confirm that although the Board's Small Business Enterprise and Minority/Women Business Enterprise programs have reduced barriers to its contracting opportunities on the basis of race or gender, significant disparities in the Airport's utilization of MWBEs continue to persist; and

WHEREAS, the CHA Study found, based upon quantitative and qualitative evidence, that minority- and women-owned firms do not yet enjoy a fully level playing field for Airport prime contracts and associated subcontracts; and

WHEREAS, the Board is relying upon the strong basis in evidence provided by the Study findings in concluding that the Airport has a compelling interest in remedying the ongoing effects of marketplace discrimination adversely affecting the utilization of MWBEs in Airport contracts and in the Airport's relevant marketplace; and

WHEREAS, the CHA Study was reviewed and formally recommended for acceptance by an independent legal expert; and

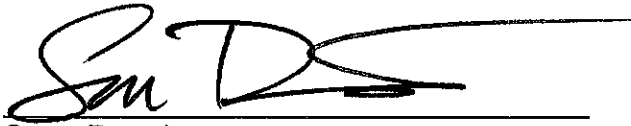
WHEREAS, on January 9, 2020 the Board voted to formally accept the findings of the CHA studies for purposes of policy formulation; and

WHEREAS, the significant underutilization of available MWBEs is also a drain on the local economy and undermines the economic vitality and development of the Dallas/Fort Worth region; and

WHEREAS, this Board is fully committed to not only remedying the ongoing effects of marketplace discrimination, but to also using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population regardless of race or gender; and

WHEREAS, based upon an extensive factual predicate, the Board has determined that a narrowly tailored combination of race- and gender-neutral and race- and gender-conscious remedies and programs are necessary to serve these compelling interests and needs of the DFW International Airport; **NOW THEREFORE:**

The following Minority Business Enterprise Program Policy is adopted effective June 1, 2020.

A handwritten signature in black ink, appearing to read "Sean Donohue", written over a horizontal line.

Sean Donohue
Chief Executive Officer
Dallas/Fort Worth International Airport

1-10-2020

Date

II. POLICY STATEMENT

Dallas/Fort Worth International Airport (DFW) has a long history of supporting small businesses owned by minority, women and disadvantaged individuals, including small businesses. This Minority and Women Business Enterprise (MWBE) Policy seeks to reduce race- and gender-based barriers to and foster participation by minority- and women-owned businesses in contracting and procurement opportunities at DFW by increasing the capacities of such firms to perform as prime vendors and subcontractors and as suppliers. This Policy will allow DFW to more effectively target MWBE participation and create opportunities relating to the Airport's contracting and procurement.

This Policy seeks to promote full and fair opportunities for MWBEs certified by an entity recognized by the Airport, and whose place of business is located in the Airport's relevant market area.

III. SCOPE OF THE MWBE PROGRAM

The intent of the -MWBE Program is to provide full and fair opportunities for equal participation by minority-, and women-owned businesses in locally-funded Airport contracting and procurement opportunities. This program shall not be applicable to any contracts or procurement opportunities that are federally funded or subject to the Disadvantaged Business Enterprise (DBE) or the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Programs or to contracts or solicitations that have been issued prior to the effective date of this Policy.

The MWBE Program requires contractors to make good faith efforts to use M/WBEs in certain contracting and procurement opportunities determined by DFW. Compliance with requirements for bidders to exercise good faith efforts shall be measured utilizing guidance provided in 49 C.F.R. Part 26, Appendix A.

Every locally funded contract will be evaluated by the Airport's Business Diversity and Development Department (BDDD) to determine the appropriate method for enhancing MWBE participation to be counted towards the achievement of the annual aspirational MWBE goal and other program objectives. For contracts determined to be inappropriate for the application of MWBE contract goals, various race- and gender-neutral methods may be employed. The criteria used to set a MWBE contract goal shall include business availability, the nature of the contract, the Airport's past experiences with MWBE participation in similar contracts, price competitiveness, subcontracting opportunities and progress towards meeting the annual goal.

For those locally-funded contracts that BDDD determines race-neutral remedies alone will likely be insufficient to fully overcome the effects of marketplace discrimination, the BDDD may, pursuant to the criteria stated herein, apply race / gender-conscious MWBE

program elements in an effort to assist MWBE firms in overcoming the effects of marketplace discrimination that have adversely affected their ability to compete for DFW subcontracts and prime contracts.

Procedures for implementation, including good faith efforts requirements, information submitted with bid/proposals, reporting procedures, etc., shall be consistent with procedures utilized in the Airport's Administrative Procedures Manual.

IV. MWBE PROGRAM ELEMENTS

The BDDD shall have the responsibility of evaluating categories of Informal Solicitations and each prospective Formal Solicitation document in advance of posting an advertisement to the public to determine which of the following MWBE program elements should be applied to a given contract.

A. MWBE Annual Aspirational Goal

For each fiscal year, the BDDD may establish an annual aspirational percentage goal for overall MWBE participation on DFW contracts.

This annual aspirational goal is to be established and adjusted by the BDDD on an annual basis based upon the Study and any additional accurate and reliable measure of relative MWBE availability.

The annual aspirational goal is not to be applied to individual solicitations but will serve as a benchmark against which to measure the overall effectiveness of the MWBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

B. Race- and Gender-Neutral Program Elements

1. Race- and Gender-Neutral Bidder Outreach

The following race- and gender-neutral Program Element shall be applied by the Airport to all appropriate bid solicitations regardless of the industry segment affected:

Pursuant to Board Resolution #2007-11-306, titled as "Delegation of Expenditure Authority," whereby the Board approved increasing the CEO's delegated contracting /expenditure authority up to \$50,000 for all contracts, and raised the threshold at which biddable contracts must be competitively bid to those valued above \$50,000, for all procurement contracts valued at between \$3,000 and \$50,000, the Airport shall contact and solicit bids or quotes from at least two Historically Under-utilized Businesses (HUB) as required by State law, and shall also contact and solicit bids from at least two HUB and/or MWBEs.

2. Technical and Business Development Resources

DFW may offer a wide range of technical assistance and business development resources to MWBEs and small businesses, including capital assistance, bonding assistance and support resources. Such assistance may include guidance with general administrative, personnel management, invoicing, preparation of business plans, change orders and project budgets. In addition to services offered or funded directly by DFW, numerous assistance programs are offered to small businesses throughout the North Texas Region.

3. Subcontractor Mobilization Payments

To account for the preparatory work and operations necessary for the movement of subcontractor personnel, equipment, supplies, and incidentals to the project site and for all other work or operations that must be performed or costs incurred when beginning work approved for subcontracting in accordance with Article 108.01 of Standard Specifications for construction contracts, the prime contractor shall be required to make a mobilization payment to each subcontractor as determined by the Airport.

C. Race - Conscious Program Elements

The BDDD may, on a contract-by-contract basis, at its discretion, set a predetermined percentage of a specific contract that would be expected to be performed by qualified MWBEs. Factors to be considered by the BDDD in making this determination shall include the relative availability of MWBEs, the nature of the contract, the Airport's past experiences with MWBE participation in similar contracts, price competitiveness, subcontracting opportunities and progress towards meeting the annual goal.

V. ADMINISTRATION OF THE PROGRAM

A. Counting and Tracking M/WBE Participation

Only small businesses that are certified as MWBEs shall be counted towards satisfaction of the Airport's MWBE goals. MWBE prime bidders may count the entire amount of that portion of the contract that is performed by the MWBE's own forces (inclusive of the cost of supplies and materials obtained by the MWBE for completion of the work for the contract, including supplies purchased or equipment leased by the MWBE) towards satisfaction of the MBWE contract goal. The Airport will use the guidance provided in 49 C.F.R. Part 26.55 for counting purposes.

DFW shall monitor and track participation by M/WBEs in locally funded projects.

B. Role of Business Diversity & Development Department in Program Administration

BDDD is responsible for the establishment, implementation, coordination, and monitoring of the MWBE Policy and Procedures. BDDD will coordinate and cooperate with the Airport operational staff as necessary for effective implementation of the MWBE Policy and Procedures.

BDDD will:

- Be responsible for establishing the administrative procedures in support of the MWBE Policy, including but not limited to:
 - Goal setting
 - Certification Standards and Procedures for MBEs, and WBEs
 - Graduation Standards and Procedures for MBEs, and WBEs
 - Determining a Commercially Useful Function
 - Determining Good Faith Efforts
 - Counting MWBE Participation
 - Monitoring and Reporting
 - Potential Violations
- Establish, distribute, interpret, and administer the Airport's MWBE Policy and Procedures Manual's policies, standards and procedures as well as govern the implementation, interpretation, and application of this Policy and Procedures Manual.
- Develop and maintain procedures to ensure that MWBEs are able to compete on all locally funded Airport and commercial development contracts.
- Develop listings of MWBEs for prime and subcontracting opportunities. These listings reflect suppliers or services for which the Airport and/or its contractors have a business use.
- Review and verify the certification status of MWBEs. The Vice President of BDDD makes the final determination on appeals regarding MWBE certification eligibility.
- Review bids and solicitations to ensure that MWBEs have an equal opportunity to participate in locally-funded Airport and commercial development contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements and the conditions in which retainage is held, etc.
- Verify the utilization of MWBEs by Airport contractors and consultants.
- Prepare and present periodic reports to the Airport Board of Directors on compliance with the MWBE Policy and Procedures Manual.

- Assess and recommend periodically any process changes that may be necessary to improve the overall effectiveness of the MWBE Policy and Procedures.
- Assess the procurement methods that can be applied on individual contracts to implement the MWBE Policy and Procedures.
- Monitor and report the progress of MBE and WBE, and non-MWBE participation in all procurements by Airport departments.
- Determine whether a MWBE is performing a Commercially Useful Function (CUF) on an Airport procurement.
- Determine whether a bidder/proposer made Good Faith Efforts (GFEs) to achieve the MWBE contract goal.
- Promote and educate Airport personnel and contractors about the Expedited Payment Program and other programs and identify Airport solicitations for participation per the program requirement.
- Monitor and ensure MWBE compliance for Airport procurements in the contract closeout process.
- Promote and conduct outreach functions to the MWBE community and other stakeholders.
- Assist all Airport departments and contractors with the implementation and/or application of the MWBE Policy and Procedures Manual.
- Participate in pre-solicitation discussions including any design review meetings to take into consideration factors including, but not limited, to MWBE availability, bonding limits, opportunities for unbundling larger contracts into smaller units for bidding purposes, and type of work capabilities available from MWBEs in the development of drawing and specifications.
- Attend pre-bid/proposal and pre-construction/design conferences to explain the MWBE Policy and Procedures and respond to pertinent questions.
- Review requests for bids/proposals and other solicitation documentation, including the evaluation criteria to ensure inclusion of MWBE Policy and Procedures and remove artificial barriers to potential MWBE participation.
- Promote the MWBE Policy and Procedures and its accomplishments through innovative initiatives such as recognition programs and awards as well as annual reports and newsletters.

C. Other Airport Departments' Roles and Responsibilities

Each Airport department that has or shares responsibility for the awarding or monitoring of Airport contracts is responsible for promoting, supporting and assisting in carrying out the MWBE Program Policy and administrative procedures. Such departments are to be held accountable for exercising specific functions in support of the MWBE Policy and Procedures, as well as any other function(s) deemed necessary by management to implement the goals and objectives of the Board's MWBE Program Policy.

Legal Department

- Provide legal assistance, as necessary, to ensure that the MWBE Policies and Administrative Procedures and their implementation meet legal standards.

Audit Services Department

- As appropriate, audit and provide other assistance with respect to compliance with the MWBE Program Policy and Procedures.

The following Airport departments have specific additional implementation responsibilities outlined in the administrative procedures:

- Risk Management Department
- Design, Code and Construction Department
- Revenue Management Department
- Procurement and Materials Management Department

D. Periodic Review and Sunset of Policy

Beginning no later than January 1, 2026, and every seven years thereafter, the Airport shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, the BDDD or designee shall present the disparity study findings and recommendations to the Board for review and approval. Following review of those study findings and recommendations, the BDDD shall consider any proposed modifications to, or sunset of, this Policy, and shall propose modifications to this Policy and submit any policy amendments to the Board for adoption as appropriate to effectuate the continuation, modification or termination of the MWBE Program Elements of this Policy. Absent an extension of this MWBE Program Policy by the Board, the provisions of this Policy shall be void and may not be enforced after September 1, 2027.

VI. AUTHORIZATION AND PROMULGATION OF PROCEDURES

The MWBE Program Policy is promulgated by the Chief Executive Officer pursuant to his powers and duties as defined by the Contract and Agreement between the City of Dallas

and the City of Fort Worth dated and effective as of April 15, 1968. The Executive Vice President of Administration and Diversity or the Vice President of Business Diversity and Development is authorized to issue exceptions to this Policy, and to promulgate and enforce procedures and practices necessary to effectuate its objectives.

VII. DEFINITIONS

Relevant Market Area – for purposes of this Policy, the Airport's relevant market area, as established by the Study, consists of the counties of Dallas, Tarrant, Denton, and Collin.

Minority Business Enterprise – a Minority Business Enterprise (“MBE”) shall be defined as a “for-profit” business concern which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and whose management and daily business operations are controlled by one or more of the minority individuals who own it. An MBE is a firm that is certified by an approved Airport certification entity in accordance with the standards and procedures identified in the Certification section of the MWBE Policies and Procedures Manual. BDDD incorporates by reference the certification standards of 49 C.F.R. Part 26 and the NCTRCA Certification Guidelines (http://nctrca.org/docs/MBE-WBE_Manual.pdf) as model certification guidelines and reserves the right to independently certify MBEs.

Minority Persons – individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origins, regardless of race;
- “Native Americans,” which includes persons who are American Indians or members of the any of the native tribes of indigenous people of North America recognized by the United States Department of the Interior’s Bureau of Indian Affairs; and
- “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Women Business Enterprise – Women Business Enterprise (“WBE”) shall be defined as for a “for-profit” business concern which is at least 51 percent owned and controlled by one or more non-minority female person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more non-minority women; and whose management and daily business operations are controlled by one or more of the female individuals who own it. A WBE is a firm that is certified by an approved Airport certification entity in accordance with the standards and procedures identified in the Certification section of the MWBE Policies and Procedures Manual. BDDD incorporates by reference the certification standards of 49 C.F.R. Part 26 and the NCTRCA Certification Guidelines (http://nctrca.org/docs/MBE-WBE_Manual.pdf) as model certification guidelines and reserves the right to independently certify WBEs.

VIII. SEVERABILITY

If any section, paragraph, sentence, clause, phrase or word of this MWBE Program Policy, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Policy which can be given effect without the invalid provision or application, and to this end, all the provisions of this Policy are hereby declared to be severable.

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)
PROGRAM**

ADMINISTRATIVE PROCEDURES

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) ADMINISTRATIVE PROCEDURES

SECTION I. SCOPE AND INTERPRETATION

A. The policies, procedures and Contract clause(s) established for the Minority/Women Business Enterprise (M/WBE) Program shall be applicable to Airport Board:

- General Goods & Services
- Construction-related Professional Services (including architectural & engineering services)
- Other Professional Services
- Construction Services
- Legal Services
- Treasury
- Third-Party Commercial Development
- Third-Party Concession Tenant Finish Outs

These policies, procedures and Contract clauses shall apply to all such Contracts and agreements and subcontracts and agreements, unless the provisions herein are in conflict with state or federal law or rules and regulations promulgated there under. The Business Diversity & Development Department (BDDD) and/or Airport Board may make changes to the existing policy, procedures, and contract provisions. Any future changes supersede past policies, procedures, contract provisions. All vendors are responsible to be aware of future changes.

B. To the extent that the M/WBE Program Policy and Administrative Procedures do not address an issue or concern, the Airport Board will follow the provisions of 49 C.F.R. Part 26.

C. For Contracts with an estimated value of between \$3,000.00 and \$50,000.00, the provisions of the M/WBE Program Policy and Administrative Procedures apply, except that no Contract Specific Goal will be set. At least two M/WBEs and two firms certified as Historically Underutilized Businesses (HUB) by the State of Texas must be solicited. An M/WBE that is also certified as a HUB may count towards the HUB requirement.

D. For Contracts with an estimated value greater than \$50,000.00, the provisions of the M/WBE Program Policy and Administrative Procedures apply, and BDDD will evaluate whether to set a Contract Specific Goal.

E. For Contracts that are awarded under \$50,000 and later increase to greater than \$50,000.00, BDDD will evaluate whether to set a Contract Specific Goal.

- F. For each solicitation designated as sole, single or specified source, or brand designations, BDDD may consider setting a Contract Specific Goal or outreach efforts to M/WBEs.
- G. Action and expenditure categories not subject to the M/WBE Program Policy and Administrative Procedures include but are not limited to the following:
 - 1. Actuarial Standards
 - 2. Amendments
 - 3. Asset Management Agreements
 - 4. Airport Board Policies and Procedures
 - 5. Authorization Designation
 - 6. Bank fees
 - 7. Budget contingency
 - 8. Contract Ratification/Reconciliation
 - 9. Conveyance/Selling of Airport Board Property or Facilities
 - 10. Deductive Change Order
 - 11. Delegation of Authority
 - 12. Disposition of depreciated equipment
 - 13. Equipment Leases
 - 14. Emergency for the Public Health & Safety
 - 15. Executive Compensation/Benefits
 - 16. Financial Investments/Transactions
 - 17. Goods/Finished Products
 - 18. Government Code Exemption
 - 19. Grants except those subject to local, state or federal regulations
 - 20. Industry conferences and training seminars

21. Insurance Premiums
22. Interlocal/Interagency agreements
23. Legal Settlements
24. Licensing Agreements *(Not applicable to Concessions)*
25. Memberships/Sponsorships
26. Memorandum of Understanding (MOU) *(Not applicable to Concessions)*
27. Mitigation Transactions
28. Payment ratification/reconciliation
29. Payments to non-profit organizations
30. Payments to other government agencies
31. Reimbursements on a case-by-case basis
32. Rejection of Bids
33. Resolutions/Ordinances
34. Schedule of Charges
35. Scope of work reduction
36. Solicitation Methods
37. Subscriptions
38. Terminated Contracts
39. Utility Payments
40. Any Contracts deemed by BDDD not to be covered by this Policy.

SECTION II. DEFINITIONS

A “Glossary of Definitions” for the terms used in the Airport Board’s M/WBE Program Policy and Administrative Procedures is located in the Appendix of this document.

SECTION III. BUSINESS DIVERSITY & DEVELOPMENT DEPARTMENT'S PROGRAM ROLES AND RESPONSIBILITIES

- A. The Airport Board's BDDD is responsible for the implementation, coordination, monitoring and compliance of the M/WBE Program Policy and Administrative Procedures. BDDD will formulate, propose and implement rules and regulations for the development, implementation, administration and monitoring of the Airport Board's various programs established by other Airport Board Policy or by federal law. BDDD will coordinate and cooperate with the Airport Board operational staff as necessary for effective implementation of the M/WBE Program Policy and Administrative Procedures.
- B. The BDDD Vice President reports directly to the Executive Vice President of Administration and Diversity and has direct, unrestricted access to the Airport Board's Chief Executive Officer in matters concerning the M/WBE Program Policy and Administrative Procedures.
- C. BDDD will:
 - 1. Review, monitor, and ensure compliance with the Airport Board's M/WBE Program Policy and Administrative Procedures.
 - 2. Formulate, propose, implement, administer and monitor the Airport Board's M/WBE Program Policy and Administrative Procedures for the development, implementation, administration, and monitoring of the various programs as well as govern the implementation, interpretation and application of the M/WBE Program Policy and Administrative Procedures.
 - 3. Develop and maintain procedures to ensure that M/WBEs are able to compete on all locally-funded Airport Board Contracts.
 - 4. Review Contract language as needed with the Legal Department for appropriate Program language.
 - 5. Review and verify the certification status of M/WBEs.
 - 6. Establish an Annual M/WBE Program Goal
 - 7. Review bids and solicitations to ensure that M/WBEs have an equal opportunity to participate in locally-funded Airport Board Contracts, including, but not limited to reviewing the scope of work, bonding requirements, insurance requirements, the conditions in which retainage is held, etc.

8. Review requests for bids/proposals and other solicitation documentation, including the evaluation criteria, to ensure inclusion of the M/WBE Program Policy and Administrative Procedures and remove artificial barriers to potential M/WBE participation.
9. Participate in pre-solicitation discussions, including any design review meetings, to consider such factors as M/WBE availability, bonding limits, and capabilities in the development of specifications.
10. Develop and implement a Contract Specific Goal setting methodology.
11. Set a Contract Specific Goal on all appropriate Contracts, including Contract modifications as defined herein.
12. Attend pre-bid/proposal and pre-construction/design conferences to explain the M/WBE Program Policy and Administrative Procedures and its requirements as well as respond to pertinent questions addressed via addendum.
13. Evaluate Contractors' achievement of Contract Specific Goals or Good Faith Efforts to meet Contract Specific Goals.
14. Review attendance data from pre-bid/pre-proposal or outreach meetings to evaluate the availability and/or interest of M/WBEs for other BDDD initiatives.
15. Determine whether an M/WBE is performing a Commercially Useful Function (CUF) on an Airport Board procurement or ongoing contract.
16. Monitor and report the progress of M/WBE and non-M/WBE participation in all procurements by Airport Board departments.
17. Work with User Departments to monitor Contracts to ensure prompt payments to M/WBEs and compliance with applicable Contract Specific Goals and commitments.
18. Receive, review, and act upon complaints and suggestions as necessary or appropriate concerning various BDDD programs
19. Monitor and ensure M/WBE compliance for Airport Board procurements in the Contract closeout process.
20. Prepare and present periodic reports to the Airport Board on compliance with the M/WBE Program Policy and Administrative Procedures and progress towards meeting the Annual M/WBE Goal.

21. Assess and recommend periodically any process changes that may be necessary to improve the overall effectiveness of the M/WBE Program Policy and Administrative Procedures.
22. Assist all Airport Board departments and Contractors with the implementation and/or application of the M/WBE Program Policy and Administrative Procedures.
23. Promote and educate Airport Board personnel and Contractors about the Expedited Payment Program and identify Airport Board solicitations for participation per the program requirement.
24. Develop technical assistance programs to support M/WBEs with contracting, business and professional development.
25. Promote and conduct outreach functions to the M/WBE community and other stakeholders.
26. Provide information and assistance to M/WBEs relating to Airport Board contracting practices and procedures, bid specifications, requirements and prerequisites.
27. Encourage and promote joint ventures, partnering and teaming arrangements between M/WBEs and non-M/WBEs and between two or more M/WBEs to enhance innovative approaches to increase M/WBE participation. Airport Board employees shall not engage in direct referrals, matchmaking, or any practice that gives the appearance of preferential treatment of one Contractor over another.
28. Promote the M/WBE Program and its reporting accomplishments toward the annual program goal through innovative initiatives such as recognition programs and awards, annual reports and newsletters.
29. Receive, review and act upon complaints and suggestions received concerning the various programs established through Airport Board policy or by federal law.

SECTION IV. OTHER AIRPORT BOARD DEPARTMENT'S ROLES AND RESPONSIBILITIES

- A. Each Airport Board department that has or shares responsibility for the awarding or monitoring of Airport Board Contracts is responsible for promoting, supporting, and assisting in carrying out the M/WBE Program Policy and Administrative Procedures. Such departments are to be held accountable for exercising specific functions in support of the M/WBE Program Policy and Administrative Procedures,

as well as any other function(s) deemed necessary by management to implement the goals and objectives of the Airport Board's M/WBE Program Policy and Administrative Procedures.

- B. In an effort to reduce barriers to M/WBE participation on Airport Board procurements, all departments requesting bids, proposals or any other solicitation on behalf of the Airport Board shall have the following roles and responsibilities
1. Notify and provide BDDD upon departmental knowledge of an anticipated solicitation the necessary information to determine whether a Contract Specific Goal should be set including, but not limited to, the completed scope of work, experience and insurance requirements, budget, line item cost estimate with North American Industry Classification System (NAICS) codes for each line item, delivery schedule, bid specifications and any other relevant information no later than (10) business days prior to the procurement announcement.
 2. Evaluate anticipated solicitations to unbundle items or services to permit offers on quantities or scopes of work less than the total requirement or the performance of distinct portions of the project where feasible
 3. Review the Contract term to encourage a maximum of three (3) years with no more than two (2) one-year extensions. BDDD must be notified in advance about Contracts that are expected to be an exception to this limit.
 4. At least five (5) business days before a solicitation will be advertised; forward a copy of the advertisement to BDDD to ensure appropriate M/WBE language has been included.
 5. Ensure that all applicable provisions of the M/WBE Program Policy and Administrative Procedures, the most current version of the M/WBE Special Contract Provisions and required federal contract provisions are included in bid specifications/proposals and Contracts.
 6. Assist BDDD in identifying potential M/WBEs for participation in particular Contracts. Airport Board employees shall not engage in direct referrals, matchmaking, or any practice that gives the appearance of preferential treatment of one Contractor or another. This does not apply to Airport Board employees facilitating meet-and-greet introductory meetings for prospective vendors.
 7. Assist in the development, monitoring and implementation of M/WBE Contract Specific Goals and commitments.

8. Manage Contracts in a consistent manner to assure compliance with the utilization of M/WBEs and the M/WBE Program Policy and Administrative Procedures.
9. Assist in the compilation of Contract data for M/WBE availability and utilization.
10. Gather and maintain contracting and subcontracting data for non-traditional contracts that are managed by user departments and are not direct expenditures of the Airport and/or not captured through the Airport's financial system.
11. Provide BDDD access to contract management systems or shared networks to access the necessary information for each Contract including, but not limited to, the Contract value, pre-bid/pre-proposal sign in sheets, the bid or proposal results, any Contract modifications, the M/WBE goal commitment and the contracting parties signatures confirming an executed agreement with the Airport Board when requested. This information can be provided to BDDD through a copy of the face (cover) sheet and key pages of the signed executed Contract, Notice of Award, Notice to Proceed, Change Orders as well as any other relevant information.
12. Notify BDDD no later than three (3) business days prior to any key post award Contract meeting(s) or issues that could affect the Contractor's ability to achieve the M/WBE commitment, such as Contract kickoff meetings, on-boarding meetings, progress meetings or meetings to address Contract performance issues affecting M/WBE commitments.
13. Require that each Contractor submit as part of its pay request process, the required B2Gnow Compliance Audit Summary to ensure an accurate accounting of M/WBE contractual participation.
14. Assist and support BDDD by ensuring that the Contractor provides all necessary documents and information, which provides a final accounting for all subcontractor participation including M/WBE participation, to close out the Contract.
15. Assist and participate in workshops, trade fairs, outreach events, etc., to identify and increase the participation of M/WBEs on Airport Board solicitations.
16. Advertise the Airport Board's Contract opportunities via the Airport Board's web site to maximize M/WBE participation.
17. Include BDDD representatives as part of the principal selection and evaluation teams as a voting member to ensure review and consideration

of M/WBE participation on such Contracts and compliance with the M/WBE Program Policy and Administrative Procedures.

18. Provide forecasts of upcoming procurement opportunities.
 19. Perform other activities to support the various Business Diversity Programs established through the Board's policies and procedures, or by federal law.
- C. The following Airport Board departments have specific M/WBE Program Policy and Administrative Procedures implementation responsibilities as follows:
1. Audit Services
 - a. As appropriate, audit and provide other assistance with respect to compliance with the M/WBE Program Policy and Administrative Procedures.
 2. Commercial Development
 - a. Inform BDDD of upcoming projects for which proposals will be solicited.
 - b. Include BDDD representatives as part of the principal selection and evaluation teams as a voting member to ensure review and consideration of M/WBE participation and compliance with the M/WBE Program Policy and Administrative Procedures.
 - c. Provide BDDD with proper documentation required to prepare an Official Board Action and reports in a timely manner.
 - d. Include BDDD in design and construction kick off meetings, onboarding meetings, and progress meetings and close out meetings with the Developer and its Contractor. Facilitate compliance site visits as necessary to monitor M/WBE participation.
 - e. Assist BDDD with requesting M/WBE utilization progress reports from the Developer's Contractor.
 - f. Require each Contractor to report its final M/WBE utilization as part of the request for Tenant Certificate of Occupancy process.
 3. Concessions – Tenant Finish Outs
 - a. Inform BDDD of upcoming reconcept projects for which M/WBE participation may be applicable.

- b. Include BDDD representatives as part of the principal selection and evaluation teams as a voting member to ensure review and consideration of M/WBE participation and compliance with the M/WBE Program Policy and Administrative Procedures.
 - c. Provide BDDD with proper documentation required to prepare an Official Board Action and reports in a timely manner.
 - d. Include BDDD in design and construction kick off meetings, onboarding meetings, progress meetings and close out meetings with the Concessionaire and its Contractor. Facilitate compliance site visits as necessary to monitor M/WBE participation.
 - e. Assist BDDD with requesting M/WBE utilization progress reports from the Concessionaire's Contractor.
 - f. Require each Contractor to report its final M/WBE utilization as part of the request for Tenant Certificate of Occupancy process.
4. Communications & Marketing
- a. As appropriate, will provide communications, outreach, community engagement and collaboration to support the BDDD in achieving its primary business goal.
5. Design, Code and Construction (DCC)
- a. In coordination with BDDD, assist in notifying M/WBE related organizations or associations (chambers, trade organizations, non-profit plan rooms) of Airport Board Contract opportunities.
 - b. Make plans and specifications relating to Airport Board Contracts available to prospective bidders and organizations, including M/WBEs, without purchase or a deposit, within five (5) business days from the first public advertisement date.
 - c. Provide for the use of procurement methods, when feasible, that will increase potential M/WBE participation as well as discourage the use of specifications and plans that unduly impact opportunities for M/WBE or other small firms or requirements to specify the use of certain restrictive goods and materials.
 - d. Divide proposed acquisitions into reasonably small scopes or lots (not less than economic production runs or economically feasible projects) to permit offers on scopes of quantities less than the total requirement or discrete portions of the project.

- e. Structure procurements such that, if practicable, M/WBEs and small firms may compete as prime Contractors.
- f. Ensure that solicitation schedules are advertised 5 business days in advance of the pre-bid or pre-proposal conference to encourage M/WBE participation to the extent consistent with the actual requirements of the Airport Board.
- g. Where practicable, direct contracting shall be used for scopes of work or items that are normally procured through the prime Contract. Those services will be provided on a direct Contract to the Airport Board or to Commercial Developers.
- h. Encourage prime Contractors to form contractual relations with M/WBEs at all levels, including subcontractor and joint venture relationships. Airport Board employees shall not engage in direct referrals, matchmaking, or any practice that gives the appearance of preferential treatment of one Contractor or another. This does not apply to Airport Board employees facilitating meet-and-greet introductory meetings for prospective vendors.
- i. If BDDD determines that solicitation requests/specifications prohibit or deter M/WBE participation, provide an explanation for the prohibitive requirements including, but not limited to, the reason(s):
 - i. The proposed solicitation cannot be divided into reasonably small scopes or lots (not less than economic production runs) to permit offers on scopes or quantities less than the total requirement.
 - ii. Solicitation schedules cannot be established that will discourage M/WBE participation to the extent consistent with the Airport Board's requirements.
 - iii. The proposed acquisition cannot be structured to encourage M/WBEs to compete as the prime Contractor; or
 - iv. The consolidated construction project cannot be required as separate and distinct Contracts.
- j. BDDD will review the proposed solicitation and any supplemental documentation to make a recommendation to the sponsoring/procuring department regarding the proposed solicitation package.

- k. Include BDDD representatives as part of the principal selection and evaluation teams as a voting member to ensure review and consideration of M/WBE participation on such Contracts and compliance with the M/WBE Program Policy and Administrative Procedures.
- l. Ensure subcontracts with M/WBE subcontractors are executed in compliance with the M/WBE Program Policy and Administrative Procedures.
- m. Require compliance with M/WBE contractual clauses, including but not limited to, substitution of subcontractors, as well as reporting and counting guidelines on Airport Board projects.
- n. Assist and support BDDD by providing relevant contractual information such as, but not limited to, successful low bidder information, construction schedules, solicitation notices, copies of executed subcontracts, etc. and facilitating compliance site visits to better monitor and ensure compliance with applicable M/WBE Program Policy and Administrative Procedures.
- o. Notify BDDD when delivery orders/scopes of work are issued which may have an adverse impact on the Contractor's ability to meet its M/WBE commitment.
- p. Notify BDDD when M/WBE subcontractors or subconsultants are substituted without proper prior BDDD approval.
- q. Provide BDDD with proper documentation, including the most current B2Gnow Compliance Audit Summary (if applicable) and the Final Schedule of Subcontractors required to prepare Official Board Action five (5) business days prior to step one approval.
- r. Provide BDDD with proper documentation for Contract closeout, including the Closeout Notification Memo, the Final B2Gnow Compliance Audit Summary and the Contract Status Report.
- s. Assist as requested in the implementation of the M/WBE Program Policy and Administrative Procedures.
- t. The following duties are specific to DCC projects, consisting of all types of consultants, Contractors or construction managers-at-risk, which provide technical staff and office support to the Airport Board for large-scale locally funded capital projects.

- i. When pre-qualifying prospective bidders/proposers, provide the pre-qualification criteria to BDDD prior to issuing the solicitation
- ii. Promote meaningful joint ventures between small businesses, M/WBEs and non-M/WBEs and between two or more M/WBEs. Airport Board employees shall not engage in direct referrals, matchmaking, or any practice that gives the appearance of preferential treatment of one Contractor or another. This does not apply to Airport Board employees facilitating meet-and-greet introductory meetings for prospective vendors.
- iii. Include M/WBE participation as part of the evaluation criteria for all solicitations.

6. Legal

- a. Provide legal assistance, as necessary, to ensure that the M/WBE Program Policy and Administrative Procedures and implementation of these policies and procedures meet legal standards.
- b. Review Contract language for appropriate implementation of the M/WBE Program Policy and Administrative Procedures.
- c. Encourage M/WBE participation on all legal contracts.

7. Procurement and Materials Management (PMM)

- a. The PMM department, in cooperation with BDDD, will inform BDDD of upcoming solicitations. Further, PMM will provide support and technical assistance in coordination with BDDD's implementation of the M/WBE Program Policy and Administrative Procedures.
- b. PMM will make available bid specifications to prospective bidders upon advertising the solicitation to maximize M/WBE participation. Where possible, PMM will attempt to notify M/WBEs of upcoming opportunities by using their internal sourcing platform, iSupplier and other forms of communication including but not limited to print, digital and radio in addition to standard norms of advertising for specific bids.
- c. Provide for the use of procurement approaches that will remove barriers and increase potential M/WBE participation, e.g., using certain types of materials and methods, and the unbundling of larger Contracts into smaller ones when feasible.

- d. Review applicable insurance and bonding requirements to determine if the requirements are prudent and feasible, and whether such established risk/exposure limits hinder the ability of M/WBEs and small firms to bid more competitively on Airport Board Contracts.
 - e. Advertise the Airport Board's opportunities via the Airport Board's web site to maximize M/WBE participation.
 - f. Include BDDD representatives as part of the principal selection and evaluation teams as a voting member to ensure review and consideration of M/WBE participation and compliance with the M/WBE Program Policy and Administrative Procedures.
 - g. Ensure subcontracts with M/WBE subcontractors or subconsultants are executed in compliance with the M/WBE Program Policy and Administrative Procedures.
 - h. Require compliance with M/WBE contractual provisions, including but not limited, to prior written BDDD approval of substitution of subcontractors/subconsultants, and reporting and counting guidelines.
 - i. Require each Contractor to report its M/WBE utilization as part of the pay request process.
 - j. Assist and support BDDD by providing relevant contractual information such as, but not limited to, successful low bidder information, project schedules, solicitation notices, copies of executed subcontracts, etc. and facilitate compliance site visits to better monitor and ensure compliance with the applicable M/WBE Program Policy and Administrative Procedures.
 - k. Provide BDDD with proper documentation required to prepare an Official Board Action and reports in a timely manner.
8. Risk Management
- a. Review applicable insurance requirements to determine, if prudent and feasible, whether established risk/exposure limits may be changed to allow M/WBEs and other small firms to bid more competitively on Airport Board Contracts.
 - b. Provide technical assistance and programs that support M/WBEs' efforts to obtain insurance and bonding.

SECTION V. OVERALL ANNUAL M/WBE GOAL

- A. The DFW Airport Board's M/WBE overall, Annual Goal for all expenditure Contracts is based on the Airport Board's current Availability/Disparity Study (2019).
- B. BDDD may, as appropriate, from time to time recommend the adjustment of the Annual Goal upon review, to the Executive Vice President of Administration & Diversity to ensure it is based upon a strong basis in evidence and is narrowly tailored to that evidence. The Annual Goal shall be based on the total dollars spent annually for all expenditure Contracts and the availability of M/WBEs to perform such prime Contracts and subcontracts. Work undertaken by M/WBEs as Contractors, Consultants, Joint Venture Partners, Subcontractors, Subconsultants, Suppliers, Manufacturers, Manufacturer's Representatives, Brokers when performing a Commercially Useful function, including appropriate portions of work undertaken by such at the Prime level and on subsidiary tiers, shall count towards the Annual Goal.
- C. BDDD shall conduct inquiries, studies and/or hearings, and utilize information and assistance from such persons, consultants, entities or organizations, including but not limited to the Department Heads, as it deems necessary in its sole discretion, to make such annual recommendation.
- D. The Executive Vice President of Administration and Diversity shall review the Annual Goal recommended by BDDD, may undertake such additional inquiries as he or she deems appropriate, and may approve, disapprove or modify the recommended Annual Goal. Until the Executive Vice President approves, disapproves or modifies the recommended Annual Goal, the current Annual Goal shall continue in effect.

SECTION VI. CONTRACT SPECIFIC GOALS

- A. BDDD shall review each bid or proposal solicitation to determine whether to set a Contract Specific Goal for M/WBE utilization based upon the following factors:
 - 1. The total dollar value of all work on such contract,
 - 2. The availability of at least three M/WBEs to perform the anticipated scope of work from the Airport Board's relevant market area. For this purpose, the Airport Board's relevant market area is Dallas, Tarrant, Collin and Denton counties.
 - 3. Past M/WBE utilization on similar Contracts.

4. The Airport Board's progress towards achieving the Annual Goals; and
 5. Any other factors deemed relevant by BDDD.
 6. BDDD may not set a Contract Specific Goal for a given contract if it is in the best interest of the Airport Board.
 7. The Contract Specific Goal percentage may vary from contract to contract consistent with meeting the appropriate overall Annual Goal, when established.
- B. BDDD, at its sole discretion, may cause a representative sample of Contracts to be bid or otherwise selected without Contract Specific Goals, in order to determine M/WBE utilization on such Contracts in the absence of such Goals.
- C. The M/WBE Contract Specific Goal is not to function as a quota or set-aside.
- D. To permit BDDD to set Contract Specific Goals, the Contracting Departments shall provide BDDD a completed Request for Goal Determination Form with the following information at least ten business days before the advertisement for each solicitation, including but not limited to:
1. The type of project, goods/finished products, professional and non-professional services being designed or procured and a detailed description of the scope of work to be performed;
 2. The estimated dollar amount of the Contract and/or percentages;
 3. Funding Source;
 4. Applicable NAICS codes and the estimated weight and or dollar amount for each scope of work of the project using an acceptable format approved by BDDD;
 5. The options of a general Contractor or prime consultant to break the work out for subcontracting purposes and the estimates in dollar amounts of each sub-trade or scope element appropriate for the particular Contract.
 6. Past M/WBE participation on similar Airport Board Contracts;
 7. The staff's practical knowledge of the industry, including but not limited to practical awareness of M/WBE availability and capacity pertaining to the particular project.
 8. A projected list of materials that will be needed on the project;

9. Identification of items which may be constructed on the worksite or in remote locations;
 10. Transportation needs of the project;
 11. Identification of items which will be constructed as integral units or fabricated;
 12. Installation skills or certifications required;
 13. The available pool of vendors and Contractors as needed.
 14. Other factors, data, report or other information, as appropriate.
- E. Goal determinations are not in perpetuity and may be revisited if the solicitation is not released as scheduled.
- F. Solicitations that do not follow the Request for Goal Determination procedure may result in the contract award not moving forward as an Official Board Action.
- G. For each solicitation designated as sole, single or specified source, brand designations or solicitations not subject to Airport Board approval, the Contracting Department shall provide BDDD the following information five (5) days in advance:
1. The type of project or facility being designed and a description of the work to be performed;
 2. The estimated dollar amount of the Contract;
 3. The justification and documentation for such a procurement and/or award including what efforts were performed by the requesting department to source for M/WBE providers; or
- H. If change orders or any other Contract modifications are issued increasing to greater than \$50,000.00 a Contract value that originally started under \$50,000 and was not subject to Airport Board Approval, the Contracting Department has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase in the scope of work of such Contract, regardless of whether the initial scope of work did not lend itself to a Contract Specific Goal. BDDD will review the additional scope of work and determine if a goal should be set.
- I. BDDD staff shall not disclose costs estimate data to any potential Contractor.
- J. BDDD shall determine the final Contract Specific Goal and will advise the Contracting Department of the goal in writing. The Contracting Department is responsible for incorporating the final Contract Specific Goal in the bid/proposal

solicitation package prior to advertising and subsequently thereafter in the Contract documents.

SECTION VII. M/WBE CERTIFICATION

- A. In order to count the participation of M/WBEs towards the Contract Specific Goal or Annual Goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. In addition to having a valid certification from one of the entities listed above, the M/WBE must have a physical place of business in the Airport Board's relevant market area at the time the bid or proposal is submitted for credit towards meeting the M/WBE goal. The Airport Board's relevant market area is Dallas, Tarrant, Collin and Denton counties.
- B. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Using a post office box, private mailbox services, another person's or firm's office space (including Airport Board office space), virtual offices, shared or coworking office spaces, executive suites or staffing services does not satisfy the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of this document.
- C. An M/WBE owner or employee living in the relevant market area does not satisfy the requirement that the M/WBE have a place of business in the relevant market area. However, an M/WBE majority owner who operates his/her own business solely from his/her own residence in the four-county relevant market area satisfies the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of this document.
- D. Affiliate/Affiliation: Regardless of certification by a recognized agency, the M/WBE must be an independent business and not an affiliate of any other business. Affiliate means any business entity that is affiliated with an M/WBE or with owners of such M/WBE or any other business enterprise. Business enterprises are affiliates of each other when:
 - 1. Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or

shareholders.

2. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
 3. *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
 4. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.
- E. BDDD in its sole discretion shall determine whether an M/WBE is an independent business.
- F. The Contractor must submit to BDDD a properly completed M/WBE Certification Certificate or letter, with all required attachments, for all M/WBEs proposed to be utilized as subcontractors or suppliers to meet the Contract Specific Goal at the time of bid/proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. BDDD's decision on the request shall be final.
- G. A firm must be certified as an M/WBE at the time of bid or proposal submission to be counted towards meeting the Contract Specific Goal for purposes of determining Contract award.
- H. Dollars paid to a firm prior to it obtaining an approved certification do not retroactively apply toward meeting the Contract Specific Goal or Annual Goal.
- I. M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.
- J. BDDD maintains a directory of certified firms that have expressed an interest in doing business with the Airport Board or are currently doing business with the Airport Board. The directory is not a certification database. Certifications listed are provided by third-party service providers. Bidders and proposers may use the directory to assist them in locating M/WBE firms for the work required on the Contract; however, the certifications should be verified through the approved certification agency. The directory is located at:

- <https://dfw.diversitysoftware.com>

SECTION VIII. COUNTING M/WBE PARTICIPATION

- A. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the M/WBE Program Policy and Administrative Procedures and contractual requirements. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's or the development agreement's Contract Specific Goal, BDDD may base its determination solely on the information provided in the bid or proposal document.
- B. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the M/WBE will perform with its own workforce will be counted towards the Contract Specific Goal. In addition, the M/WBE's ownership interest percentage must be commensurate with its capital contribution, control, management, profits and risks.
- C. When counting the M/WBE participation on bids with charged reimbursable expenses, deductive or add alternates, the responsiveness determination shall be based on the base bid. Contractors, however, are strongly encouraged to include M/WBE participation on add alternates and charged reimbursable expenses when feasibly possible. Any participation achieved on add alternates and charged reimbursable expenses will be credited towards the M/WBE goal.
- D. When calculating participation levels, percentages and dollar amounts for each M/WBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific Goal.
- E. A Contractor cannot require an M/WBE subcontractor to enter into an exclusive arrangement for purposes of submitting its bid or proposal or require the M/WBE subcontractor to enter into a non-compete arrangement post award.
- F. Post award, the Contractor may count towards its M/WBE contractual commitment an M/WBE in the relevant market area that is certified by an approved entity during the performance of the Contract, if the M/WBE is added to the Contract or substituted for an M/WBE pursuant to the M/WBE SUBSTITUTIONS OR TERMINATIONS section herein.
- G. The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by an M/WBE after it has ceased to be certified as an M/WBE or ceased to satisfy the requirement that the M/WBE have a physical place of business in the relevant market area.

- H. M/WBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self- perform.
- I. M/WBE prime Contractors cannot count their self-performance in lieu of meeting an M/WBE subcontracting commitment made at the time of contract award.
- J. When an M/WBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the M/WBE toward the Contract Specific Goal.
- K. All M/WBE contractors, subcontractors, joint ventures, suppliers, manufacturers, manufacturers' representatives, or brokers listed in the bid or proposal must actually perform a commercially useful function in the work of a contract within the area(s) for which they are certified, and must not act as a conduit. In no case, shall an M/WBE act as a conduit, nor shall the participation of an M/WBE count toward the goal to the extent it fails to perform a commercially useful function.
- L. When a Contractor utilizes an M/WBE staffing service to perform work and the workers are independent contractors, subcontractors, or employees of the staffing firm who do not receive paid benefits (including, at a minimum, healthcare coverage and paid time off), the Contractor shall count only the amount of fees or commissions charged by the staffing service for providing the labor force, consistent with normal industry practices.
- M. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate as defined in the M/WBE Program Policy and Administrative Procedures.
- N. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the M/WBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime Contractor or its affiliate).
- O. When an M/WBE subcontracts part of the work of its Contract to another firm at any tier, the value of the subcontracted work may be counted towards the M/WBE goal only if the M/WBE's subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-M/WBE does not count toward the M/WBE goal.
- P. The Contractor will count towards the M/WBE goal expenditures to an M/WBE subcontractor, only if the M/WBE subcontractor is performing a commercially useful function on the Contract.
 - 1. An M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work

involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.

2. An M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether an M/WBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which M/WBEs do not participate.
3. If an M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the M/WBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
4. When an M/WBE is presumed not to be performing a commercially useful function as provided in this section, the M/WBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. BDDD in its sole discretion shall determine whether an M/WBE is performing a commercially useful function.

Q. BDDD shall use the following factors in determining whether an M/WBE trucking company is performing a commercially useful function:

1. The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the M/WBE goal.
2. The M/WBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
3. The M/WBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

4. The M/WBE may lease trucks from another M/WBE, including a owner-operator who is certified as an M/WBE. The M/WBE who leases trucks from another M/WBE shall receive credit for the total value of the transportation services the lessee M/WBE provides on the Contract.
5. The M/WBE may also lease trucks from a non-M/WBE firm, including from an owner-operator. The M/WBE that leases trucks equipped with drivers from a non-M/WBE is entitled to credit for the total value of transportation services provided by non-M/WBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by M/WBE-owned trucks or leased trucks with M/WBE employee drivers. Additional participation by non-M/WBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from BDDD.
 - a. *For Example: M/WBE Firm X uses two of its own trucks on a contract. It leases two trucks from M/WBE Firm Y and six trucks equipped with drivers from non-M/WBE Firm Z. M/WBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. M/WBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.*
6. The M/WBE may lease trucks without drivers from a non-M/WBE truck leasing company. If the M/WBE leases trucks from a non-M/WBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
 - a. *For Example: M/WBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-M/WBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. M/WBE credit would be awarded for the total value of the transportation services provided by all four trucks.*
7. For purposes of this paragraph, a lease must indicate that the M/WBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the M/WBE, so long as the lease gives the M/WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the M/WBE.

R. Suppliers: A supplier may be a regular dealer, manufacturer, manufacturer's representative or broker. The Contractor shall count expenditures to M/WBEs for materials or supplies towards the M/WBE goal as follows:

1. On Airport Board contracts of less than five million dollars (\$5,000,000.00), at the time of bid openings or proposal selection, one hundred percent (100%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal. If the materials or supplies are purchased from an M/WBE regular dealer, BDDD will count 100% of the cost of the materials or supplies toward M/WBE goals.
2. On Airport Board contracts of five million dollars (\$5,000,000.00) or more, at the time of bid opening or proposal selection, sixty percent (60%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal.
 - a. If the materials or supplies are obtained from an M/WBE manufacturer, BDDD will count 100 percent of the cost of the materials or supplies toward M/WBE goal.
 - b. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - c. If the materials or supplies are purchased from an M/WBE regular dealer, BDDD will count 60% of the cost of the materials or supplies toward M/WBE goal.
 - d. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought and kept in stock in the usual course of business.
 - i. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - ii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution

equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- e. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
 - f. With respect to materials or supplies purchased from an M/WBE which is neither a manufacturer nor a regular dealer, BDDD will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward M/WBE goals, provided it has been determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. BDDD will not count any portion of the cost of the materials and supplies themselves toward M/WBE goals, however.
 - g. BDDD will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis
- S. If an M/WBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation towards the M/WBE goal until the firm is certified. Counting of participation is not retroactive; only dollars paid to the M/WBE after certification count toward the M/WBE goal. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be M/WBE certified.
- T. BDDD reserves the right to reject the participation of a certified firm for credit towards meeting the Contract Specific Goal, in its sole discretion.
- U. The Contractor shall not count the participation of an M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
- V. The following expenditures to M/WBEs may also count toward the M/WBE goal:
- 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.

2. The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.

W. Joint Ventures: The Airport Board shall encourage where economically feasible joint ventures to maximize prime contracting opportunities for M/WBEs on all eligible Contracts, including commercial development agreements.

1. If a Contractor engages in a joint venture to satisfy its M/WBE commitment, BDDD shall review all contractual agreements or other pertinent documents regarding:
 - a. The initial capital investment of each venture partner;
 - b. The proportional allocation of profits, losses and risks to each venture partner;
 - c. The sharing of the right to control the ownership and management of the joint venture;
 - d. Actual participation of the venture partners in the performance of the Contract;
 - e. The method of and responsibility for accounting;
 - f. The methods by which disputes are resolved; and
 - g. Other pertinent joint venture factors.
2. A draft of the proposed joint venture agreement must be submitted with the bid or proposal to BDDD for its approval in writing. BDDD shall determine the degree of M/WBE participation resulting from the joint venture that may be credited towards the Contract Specific Goal.
3. BDDD will count M/WBE participation where the M/WBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the M/WBE in a joint venture. BDDD will allow the joint venture to count the portion of the total dollar value of the Contract

equal to the distinct, clearly defined portion of the work of the Contract that the M/WBE joint venture partner performs with its own forces toward the M/WBE commitment and for which it is at risk.

4. If, after the award of a contract to a team, any member of the team believes that the terms and conditions of the agreement as approved by BDDD have not been complied with, then such member may seek review and mediation of such agreement before the Vice President of BDDD. The request for review must be made in writing.
5. In the event that the mediation with the Vice President, does not resolve all disputes, the Vice President of BDDD shall have the option of referring mediation proceedings to a qualified outside mediator, the costs to be borne by the interested parties.

SECTION IX. GOOD FAITH EFFORTS TO MEET CONTRACT SPECIFIC GOALS

A. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)

1. Each Contractor must comply with the terms and conditions of the M/WBE Program Policy and Administrative Procedures in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
 - a. Responsive; compliance with requirements. If a bid/proposal meets the Contract Specific Goal or shows an adequate good faith effort in accordance with the M/WBE Program Policy and Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.
 - b. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a Contract Specific Goal does not provide the necessary information, documentation or forms outlined in the M/WBE Program Policy and Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport and is not appealable.
2. If BDDD establishes a Contract Specific Goal, the goal will be stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the solicitation and the M/WBE Program Policy and Administrative Procedures, a Contractor must either meet the contract specific goal or demonstrate that the Contractor has made sufficient good

faith efforts to meet the Contract Specific Goal. If the Contractor will not meet the M/WBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.

3. For construction Contracts awarded using the procurement methods of Indefinite Delivery, Job Order Contract, Construction Management-at-Risk or Design Build, a Compliance Plan is required to address the Contract Specific Goal and the utilization of M/WBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
4. In evaluating a Contractor's good faith effort submission, BDDD will only consider those documented efforts that occurred prior to the good faith efforts submission.

5. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following criteria with the bid or proposal. The following factors are taken into account when assessing whether a Contractor made good faith efforts to meet the Contract Specific Goal. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the Contract Specific Goal. These factors should not be considered as a template, checklist or some quantitative formula. A Contractor is required to meet all factors outlined below and provide support documentation in order for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the Contract Specific Goal. This means that a Contractor must show that it took all necessary and reasonable steps to achieve a Contract Specific Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the Contract Specific Goal, even if they were not fully successful. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. BDDD will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the Contractor has made based on the regulations and the guidance in 49 C.F.R. Part 26. **NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADQUATE DEMONSTRATION OF GOOD FAITH EFFORT.** Contractors are not limited to these particular areas and may include other efforts deemed appropriate. Complete the **Commitment to M/WBE Participation** form and attach support documentation only if the Contract Specific Goal is not achieved. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A).
- a. Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. *The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the*

solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.

- b. Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.
- c. Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- d. Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.
- e. Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for

example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. *A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.*

- f. Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - g. Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs.
 - i. At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over an M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
6. BDDD will review not only the different kinds of efforts the Contractor has made but also the quantity and quality of those efforts. Efforts that are merely *pro forma* or merely formalistic are not good faith efforts to meet the goal, even if they are sincerely motivated. The scope and intensity of the

efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort. Whether other Contractors attained a sufficient level of M/WBE participation to meet the Contract Specific Goal will also be taken into consideration when determining whether the Contractor in question has made a good faith effort. A promise to use M/WBEs after Contract award is not considered to be responsive to the Contract solicitation or to constitute good faith efforts. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of M/WBE participation sufficient to meet the Goal.

7. Whether or not the Contract Specific Goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the Contract Specific Goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Airport Board will only award Contracts to Contractors determined to be responsive. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the BDDD's decision that sufficient good faith efforts were not made. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts and, if not, shall recommend that the Contractor be deemed non-responsive.
8. If a Contractor, that has submitted good faith efforts documentation, desires a review of BDDD's decision, it must file a written request for an appeal within two (2) business days after receipt of the written decision to the following Reconsideration Official:

Executive Vice President
Administration and Diversity
DFW Airport, 2400 Aviation Drive
P.O. Box 619428
DFW Airport, Texas 75261-9428

9. As part of the reconsideration, the Contractor will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Contractor will also have the opportunity to provide written documentation or argument concerning the issue of good faith. Arguments, evidence, and documents supporting the basis for the appeal must be received no later than five (5) business days after the notice of appeal is filed. The Reconsideration Official's decision shall be made based solely on the entire administrative record presented with the original good faith efforts documentation. No new additional information or documentation can be

provided or allowed for review. The Reconsideration Official will issue a final written decision in response to the appeal.

10. Failure of the bidder or proposer to show good faith efforts as to any one (1) of the criteria listed above shall render its overall good faith effort insufficient and its bid or proposal deemed non-responsive.

B. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)

1. The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance is not able to meet its original M/WBE commitment, due to changes to the scope of work made by the Airport Board, the Contractor and User Department must immediately notify BDDD of the scope of work changes that impact M/WBEs for approval. The Contractor has a continuing obligation to meet its original M/WBE commitment.
2. Such good faith efforts during Contract performance must include, but are not limited to:
 - a. Solicitation of M/WBEs that are certified in the applicable area of work or specialty.
 - b. Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract.
 - c. Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
 - d. Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and
 - e. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other

organizations that provide assistance in the identification of M/WBEs.

3. Modified good faith efforts must be demonstrated to be meaningful and not merely for formalistic compliance with this requirement. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.
4. A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the M/WBE Program Policy and Administrative Procedures. BDDD's determination shall be final.

SECTION X. PRE-AWARD COMPLIANCE PROCEDURES

A. M/WBE Utilization Forms and Related Documentation

1. Each Contractor must submit for all solicitations, bids or proposals, completed and signed M/WBE utilization forms as outlined below to be considered responsive. If the Contract Specific Goal is 0% and no M/WBE participation is proposed, including no M/WBE self-performance, the required forms should be noted as "Not Applicable". Note that Requests for Proposals and/or Qualifications include Business Diversity Evaluation Criteria which must be responded to in the proposal even if the Contract Specific Goal is 0%. User departments shall provide BDDD with proper documentation required to prepare an Official Board Action (OBA) by the deadline for completed draft OBAs.

B. Request for Bids (RFB) – Goods and Services

- **Commitment to M/WBE Participation** must be submitted at the time of bid submission.
- **Final Schedule of Subcontractors** must be submitted at the time of bid submission.
- **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Final Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Final Schedule of Subcontractors.

- **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.

C. Request for Bids (RFB) – Construction

- **Commitment to M/WBE Participation** must be submitted at the time of bid submission.
- **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.
- **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
- **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
- **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.

D. Request for Qualifications (RFQ) – Architectural/Engineering Services, Design & Design Management Services:

- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
- **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts. “To be determined” in lieu of a percentage is not acceptable.
- **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary

Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.

- **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
- **Good Faith Efforts Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.

E. Request for Proposal (RFP) – Goods and Services including Best Value:

- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
- **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts. “To be determined” in lieu of a percentage is not acceptable.
- **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors..
- **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
- **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
- **Good Faith Efforts Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.

F. Request for Proposals (RFP) for Construction-related Services procured through Indefinite Delivery: task/delivery order, Job Order Contracts, Construction Manager-at-Risk Services, Program Management/Construction Management services:

- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.

- **Certification Certificate for Prime** must be submitted at the time of proposal submission if a certified Prime is claiming credit for self-performance.
- **Compliance Plan:** a draft Compliance Plan using the Airport's template must be submitted at the time of proposal submission. The final Compliance Plan shall be required after the conclusion of the solicitation process as a component of contract negotiations and award.
- **Good Faith Effort Documentation.** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
- **Final Schedule of Subcontractors** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
- **Certification Certificates for Subcontractors** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor listed on the Final Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms

G. Design Build

- **Commitment to M/WBE Participation (Construction)** must be submitted at the time of proposal submission.
- **Commitment to M/WBE Participation (Design)** must be submitted at the time of proposal submission.
- **Preliminary Schedule of Subcontractors (Design)** must be submitted at the time of proposal submission.
- **Certification Certificates (Design)** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
- **Final Schedule of Subcontractors (Design)** must be submitted with the best and final offer.

- **Intent to Perform as a Subcontractor (Design)** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
- **Compliance Plan (Construction)** a draft Compliance Plan must be submitted at the time of proposal submission. The final Compliance Plan shall be submitted after the conclusion of the solicitation process as a component of contract negotiations and award.
- **Final Schedule of Subcontractors (Construction)** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
- **Certification Certificates (Construction)** must be submitted with the Final Schedule of Subcontractors for each certified subcontractor.
- **Intent to Perform as a Subcontractor (Construction)** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor.
- **Good Faith Effort Documentation** If the Contractor fails to meet the M/WBE goal, this documentation must be submitted at the time of proposal submission.

H. Third Party Commercial Development or Concessions Tenant Finish Out:

- **Commitment to M/WBE Participation (Design)** must be submitted prior to processing an Official Board Action.
- **Commitment to M/WBE Participation (Construction)** must be submitted prior to processing an Official Board Action.
- **Preliminary Schedule of Subcontractors (Design)** must be submitted at the Airport's Initial Project Kick-Off Meeting.
- **Final Schedule of Subcontractors (Design)** must be submitted at the Airport's Pre-Construction Meeting.
- **Preliminary Schedule of Subcontractors (Construction)** must be submitted at the Airport's Pre-Construction Meeting.
- **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's 50% construction-completion review meeting.

- **Accounting Reconciliation Statement** for the Contract must be submitted with the application for Certificate of Occupancy. A reconciliation statement shall include the total payments to the Prime Contractor and total payments made to each subcontractor listed on the Final Schedule of Subcontractors.
- I. Any commitments to meet the Contract Specific Goal must be detailed on the **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form included with the bid/proposal. Submission of the form shall constitute a representation by the Contractor to the Airport Board that it commits to maintain the M/WBE participation level to which it committed to overall at the time of Contract award throughout the performance of the Contract. For contracts where the scope of work is defined and M/WBE subcontractors have been selected to perform a portion of the work, the Contractor also commits to maintain and/or exceed the percentage commitment to each individual M/WBE subcontractor.
- J. The **Schedule of Subcontractors** forms must list all subcontractors and suppliers the Contractor intends to use in performing the work of the project including non-M/WBEs and detail the preliminary/final percentage and the dollar commitment of the Contractor to M/WBE participation. Only certified M/WBEs identified and the levels of participation listed for each at the time of bid/proposal submission will be considered in determining whether the Contractor has met the Contract Specific Goal. All M/WBEs must be properly certified under the guidelines of the CERTIFICATION section. Modifications, substitutions or termination of the M/WBEs identified must follow the guidelines of the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
- K. Submission of the **Intent to Perform as a Subcontractor** forms for each M/WBE firm shall constitute a representation by the Contractor to the Airport Board that it believes such M/WBE to be certified as an M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's relevant market area and the M/WBE is not affiliated with the Contractor as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with such M/WBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** forms.
- L. The Contractor shall enter into formal agreements with the M/WBE firms for work as indicated on the **Final Schedule of Subcontractors** and **Intent to Perform** forms within 10 (ten) business days after receipt of the Contract executed by the Airport Board or Notice to Proceed executed by the Airport Board. The Contractor, if requested, shall provide to BDDD copies of those agreements within 5 (five) business days of execution. BDDD reserves the right to review selected agreements at random.
- M. If the M/WBE subcontractor information or status changes after the forms have been submitted but prior to award of the Contract (pre-award), the Contractor must

immediately notify BDDD of the changes and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in M/WBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount.

- N. Post award, any substitution or termination of M/WBEs that occur after Contract award, must be processed using the Airport Board's Diversity Management System and follow the M/WBE Program Policy and Administrative Procedures stated in the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
- O. Contractors must appoint and designate to BDDD a high-level official to administer and coordinate its contractual M/WBE commitments.
- P. Alternative Compliance Plan
 - 1. Contracts secured through a competitive selection process rather than a competitive bid process, the Vice President of BDDD may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize M/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin.
 - 2. The development, scope, and utilization of such compliance plans will be governed by the following considerations and requirements.
 - 3. Basis for Determination
 - a. Unless otherwise authorized in writing by the Vice President of BDDD, a department may only require proposers to address a project goal by means of a compliance plan under the following conditions:
 - i. The project solicitation must include the procurement of construction services.
 - ii. At the time of the solicitation the project design must not be complete or at a level of completeness allowing for final competitive pricing proposal; and
 - iii. The project solicitation must not require a lump sum price proposal or the construction of the project upon which a contract award will be made.
 - 4. Development of Compliance Plan

- a. Upon a determination that a compliance plan will be required for a project, the compliance plan shall be developed in accordance with the following requirements:
 - i. The Vice President of BDDD will require separate goals for project professional services and project construction services.
 - ii. The construction goal established for each project shall be expressed as a percentage of either:
 - A. the total amount of any lump sum construction contract awarded to complete a project
 - B. total estimated “cost of the work,” as that term is defined in any guaranteed maximum price contract awarded to complete a project, or
 - C. on a task /work order
 - b. The contracting department shall provide a good faith estimate of the construction cost upon which a goal shall be set, and the compliance plan proposer shall provide a refined estimate at the time of the submission of a proposed compliance plan, if the amount is not reflected in an executed contract.
 - c. BDDD shall establish a timetable for submittal and review of any proposed compliance plan. During the solicitation process as solicitation submittal requirement; and after the conclusion of the solicitation process as a component of contract negotiations and award.
 - d. Failure to comply with any submittal timetable established by BDDD may result in no further consideration of the proposed compliance plan.
5. Elements of a Compliance Plan. At a minimum, a proposed compliance plan shall address the following elements:
- a. To the maximum extent applicable, the proposed compliance plan shall comply with the requirements of the M/WBE Program Policy and Administrative Procedures.

- b. The proposed compliance plan shall set forth a detailed program for community outreach and support calculated to enhance participation opportunities.
- c. The proposed compliance plan shall set forth a detailed program describing how the proposer will divide up the anticipated work into economically feasible units calculated to enhance participation opportunities.
- d. The proposed compliance plan shall set forth a detailed methodology by which the Contractor shall meet the project goal.
- e. The proposed compliance plan may be based upon a phased or packaged buy out of the project construction work and, if that is the case, will describe the process by which the proposer will address the project goal on a phased, package, or cumulative basis.
- f. If appropriate, the proposed compliance plan shall address the subcontracting of normally self-performed work to meet the project goal.
- g. The proposed compliance plan shall set forth how the proposer will comply with the requirements of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions as part of the construction work, including use of commitment forms, Intent to Perform, Schedule of Subcontractors forms or proposal pricing worksheet to adequately document committed participation attained.
- h. The proposed compliance plan shall contain a specific acknowledgement of the proposer's continuing duty, pursuant to the M/WBE Program Policy and Administrative Procedures, and Contract Provisions to maintain, throughout the duration of any project contract, compliance with the level of participation committed to under any approved compliance plan, and such commitment will be the basis for award of any contract. The plan will also detail the methodology the proposer will employ for maintaining participation commitments.
- i. The proposed compliance plan shall set forth a detailed methodology for tabulation of participation performance and plan administration, as well as monitoring and reporting progress and participation performance to BDDD. The plan shall provide for review and reconciliation milestones during the project and for review and audit opportunities for BDDD.

- j. The proposed compliance plan will recommend methods for supporting BDDD administration and oversight of the plan, if approved.
- k. The proposed compliance plan will affirm that BDDD shall have prompt, full and complete access to all contractor and subcontractor personnel, books and records required to monitor and assure performance of the approved compliance plan. Additionally, the plan will acknowledge BDDD's right to impose withholding of payment in the event of noncompliance.
- l. The proposed compliance plan shall set forth a detailed methodology for issuance of notice(s) of non-compliance with the plan and a reasonable opportunity to cure.
- m. The proposed compliance plan shall set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.

6. Approval of Compliance Plan

- a. Upon receipt of a proposed compliance plan, BDDD shall review and either approve or initially reject, with comments, the proposed plan. In the event of a rejection of the proposed plan, the BDDD shall set a date for submission and if warranted, schedule a meeting to discuss any deficiencies that must be addressed in the re-submittal.
- b. In the event the Vice President of BDDD formally rejects a proposed compliance plan, the Vice President of BDDD shall notify the agency head in writing of its determination and such determination shall result in no further consideration of the contractor's proposal or in termination of the contract for cause, in the event a contract has been awarded. In no event shall a contract to construct a project be executed or continue without a compliance plan approved by the Vice President of BDDD.
- c. Upon approval, the compliance plan shall be incorporated and made a part of the contract with the plan proposer.

7. Compliance and Enforcement

- a. The Contractor shall be subject to the COMPLIANCE AND ENFORCEMENT section of the M/WBE Program Policy and Administrative Procedures and Contract Provisions. If upon approval, the Contractor acknowledges and accepts that any failure

to comply with any material term or condition of an approved compliance plan or applicable provision of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions including failure to satisfactorily address the project goal, maintain participation commitments or otherwise comply with any applicable requirements.

SECTION XI. POST AWARD COMPLIANCE PROCEDURES

A. Monitoring Contractual Commitments and Payments to M/WBEs

1. It is Airport Board policy that all Contractor invoices in compliance with Contract payment terms and conditions be paid within 30 days of receipt.
2. All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Airport Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Airport Board may withhold from any subcontractor its undisputed appropriate share of such payment.
3. No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Airport Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Airport Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Airport Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
 - a. The percentage amount of retainage withheld/released;
 - b. The schedule for withholding/releasing retainage;
 - c. The phased release of retainage according to any phased completion (substantial/final) of portions of the project;
 - d. The optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g.

optional cessation when 50% of project is substantially complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);

- e. The release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
4. Each Contractor must address (and implement) in its subcontracts the retainage provisions so that each subcontractor is treated by the Contractor in the same manner as Airport Board treats the Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Airport Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Airport Board and/or withholding less retainage than Airport Board withholds to cover the value of punch-list work required to be completed before final completion certification.
5. DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
6. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
7. BDDD may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
8. The Airport Board may also exercise any other rights or remedies available to it under this Contract or applicable law if the Contractor fails to comply with the payment terms of this Contract or applicable law.
9. In an effort to remove the race- and gender-neutral barrier of the length of time for subcontractor payments on Airport Board procurements, the Airport Board has an Expedited Payment Policy for eligible Contractors that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after

receipt of the subcontractor's invoice. The Airport Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.

10. To ensure that the Contractor meets its M/WBE contractual commitment, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions from the original Contract period. The M/WBE commitment is determined by the total M/WBE utilization in relation to the total dollar value of contract as paid to the Prime Contractor. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit verifying information as outlined below, concurrent with the Contractor's submission of each payment request. The information provided will be utilized to provide constant monitoring of the payments made to the M/WBE as well as non-M/WBE subcontractors in relation to the percentage of work performed. Failure to submit this information with the payment request will result in the invoice being returned to the Contractor. The Prime Contractor can be determined to be non-compliant if utilization commitments to individual M/WBE subcontractors are not achieved, even if the total M/WBE contractual commitment is being met by disproportionate M/WBE subcontractor utilization not originally listed by the Prime Contractor's Final Schedule of Subcontractors and Intent to Perform forms without a sufficient modified Good Faith Effort justification.
 - a. As of 2012, Contractors with new Contracts are required to report all payments online utilizing the Airport Board's Diversity Management System (B2Gnow) and submit a Compliance Audit Summary with each payment request. The Compliance Audit Summary confirmation is a printout of what was entered into the system.
 - b. Contracts prior to 2012, are required to submit the original Pay Period Activity Report form with the payment request, unless they choose to report online, which then defaults to Paragraph 10.a.
11. Training for the Airport Board's Diversity Management System: The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the Airport Board's Diversity Management System (B2Gnow). This includes all subcontractors who the Contractor will be utilizing on the Contract and will be verifying reported sub payments online.

12. Contract Close Out: To ensure that the Prime Contractor meets all its M/WBE contractual commitments, BDDD will review the Prime Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment.
 - a. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit a **Final B2Gnow Compliance Audit Summary** concurrent with the Contractor's submission of final payment request.
 - b. Once all sub payments have been verified by the subcontractors in the Airport Board's Diversity Management System, the contract will be reviewed for compliance with the program requirements and the prime Contractor's M/WBE contractual commitment.
 - c. The Contractor's performance will be reviewed, and a satisfactory/unsatisfactory determination will be provided in writing to the Contractor by BDDD.
 - d. A Contractor's unsatisfactory determination may result in future bids or proposals being deemed non-responsive. In determining whether a future bid or proposal will be deemed non-responsive, BDDD will take into consideration the following: circumstances for non-compliance, the length of the period of noncompliance and the history of previous unsatisfactory determinations.
13. Dispute Resolution: BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.
14. On-Site Inspections: Compliance monitoring may also include on-site inspections. The Contractor is responsible for providing BDDD, if requested, a project work schedule together with a list of all subcontractors for the scheduled work.
15. All reports of noncompliance will be referred by BDDD to the Contract administrator; and if appropriate, to the Legal Department.

SECTION XII. M/WBE SUBSTITUTIONS OR TERMINATIONS

- A. If change orders, amendments or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract that impact the participation of M/WBEs on the contract.
- B. If change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its M/WBE contractual commitment with existing M/WBEs first. If the Contractor is unable to meet its M/WBE contractual commitment with existing M/WBEs, the Contractor shall satisfy its commitment, as it relates to changed scope of work, modifications, and or amendments, by soliciting new M/WBEs and must submit a **Request for Approval of Change to Final Schedule of Subcontractors** through the Airport Board's Diversity Management System and must be approved in writing by BDDD.
- C. The Contractor cannot terminate, substitute or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for an M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.
 - 1. The Contractor shall utilize the specific M/WBEs listed in the Final Schedule of Subcontractors to perform the work and supply the materials for which each is listed unless the Contractor obtains BDDD's written consent as provided in this section; and
 - 2. The Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed M/WBE.
 - 3. The Contractor shall document good cause to terminate or substitute an M/WBE. For purposes of this paragraph, good cause includes the following circumstances:
 - a. The listed M/WBE subcontractor fails or refuses to execute a written contract.
 - b. The listed M/WBE 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 M/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.

- c. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - d. The listed M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
 - e. The listed M/WBE subcontractor is ineligible to work on public works projects because of suspension and applicable state law.
 - f. It has been determined that the listed M/WBE subcontractor is not a responsible Contractor.
 - g. The listed M/WBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
 - h. The listed M/WBE is ineligible to receive M/WBE credit for the type of work required.
 - i. An M/WBE owner dies or becomes disabled with the result that the listed M/WBE contractor is unable to complete its work on the contract.
 - j. Other documented good cause that BDDD determines compels the termination of the M/WBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate an M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the M/WBE contractor was engaged or so that the Contractor can substitute another M/WBE or non-M/WBE subcontractor after Contract award.
- 4. Before transmitting to BDDD its request to terminate and/or substitute an M/WBE subcontractor, the Contractor must give notice in writing to the M/WBE subcontractor, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the reason for the request.
 - 5. The Contractor must give the M/WBE subcontractor five days to respond to the Contractor's notice. The M/WBE subcontractor must advise BDDD and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why BDDD should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), BDDD may provide a response period shorter than five days.

- D. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for M/WBE firms put forward by bidders/proposers in bids/proposals.
1. When an M/WBE subcontractor is terminated as provided in this section or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another M/WBE subcontractor to substitute for the original M/WBE. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the M/WBE commitment established for the Contract. The good faith efforts shall be documented by the Contractor. 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, and BDDD shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.
- E. The Contractor must submit an **Intent to Perform as a Subcontractor** form for each proposed new M/WBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
- F. All changes to the **Schedule of Subcontractors** form must be submitted for review and approval through the Airport Board's Diversity Management System utilizing the **Request for Approval of Change to Final Schedule of Subcontractors** form when adding, changing, or deleting any subcontractor.
- G. Failure by the Contractor to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or such other remedies set forth in the Compliance and Enforcement section.

SECTION XIII. COMPLIANCE AND ENFORCEMENT

- A. These provisions address the additional contractual remedies available to the Airport Board as a result of the Contractor's failure to comply with the obligations set forth in the M/WBE Program Policy and Administrative Procedures. The contractual remedies set forth are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to the Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude the Airport Board's recovery of its actual damages for such unrelated breaches.

- B. The Contractor must attend and participate in onboarding, progress, non-compliance meetings and site visits upon request. The Contractor must forward all necessary documents and information during the course of performance and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for M/WBE participation on the Contract.
- C. BDDD is empowered to receive and investigate complaints and allegations by M/WBEs, third parties or Airport Board staff, or to initiate its own investigations regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Airport Board or its representatives concerning the investigation and Contractor's compliance with the Program requirements.
- D. The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Airport Board or its representatives to exercise any remedy available in this Contract, the Program requirements or applicable law. In addition, the failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements may be considered and have a bearing on future contract award considerations.
- E. Any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements may be reported to the Airport Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
- F. If Contractor is in breach of any of the Program requirements, the Airport Board or its representatives may exercise any of the following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
 - i. Withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
 - ii. Temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
 - iii. Termination of the Agreement/Contract;
 - iv. Suspension/debarment of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
- G. With respect to a firm not meeting a goal on a previous contract or the underutilization of M/WBEs (or SBEs, if applicable) on a previous contract, BDDD

shall regard as non-responsive any bid, proposal or competitive selection process proposal received that includes the Contractor, consultant as a Contractor, consultant, subcontractor, subconsultant, joint venture, supplier, manufacturer's representative, or broker.

H. With respect to M/WBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

I. Regular Reports

1. In order to monitor the progress of the M/WBE Program Policy and Administrative Procedures, BDDD shall maintain a record-keeping system designed to:

- a. Assess quarterly and annually overall M/WBE utilization on Airport construction Contracts, professional services and non-professional services Contracts and subcontracts.
- b. Identify and monitor monthly the Contractor's M/WBE utilization for the Contract and on a task-by-task basis utilizing a "Contracts Not Meeting Goals" report.

2. BDDD will prepare other M/WBE-related internal and external reports as required or requested. If the Contract Administrator or any other Airport Board personnel becomes aware of any issues of non-compliance with the M/WBE Program Policy and Administrative Procedures, BDDD shall be notified immediately.

SECTION XIV. M/WBE CONTRACT PROVISIONS AND CLAUSES

A. All Airport Board departments having Contract administration responsibilities shall ensure that the Minority/Women Business Enterprise (M/WBE) Special Contract Provisions and clauses including Title VI, as amended from time to time, are included in all Contracts and related subcontracts subject to BDDD's approval.

SECTION XV. OUTREACH

A. An integral component of the M/WBE Program is to identify and solicit M/WBE participation on the Airport Board's contracting opportunities. Outreach efforts are designed to document initiatives and establish procedures that best inform, present, and achieve results for maximum consideration and participation by M/WBEs. Internal and external communication and outreach efforts as well as interaction by BDDD and other Airport Board departments and the M/WBE business community are key.

B. Internal Communication

1. As detailed in the OTHER DEPARTMENTS ROLES AND RESPONSIBILITIES Section of this M/WBE Program Policy and Administrative Procedures, all Airport Board departments that have or share the responsibility for the awarding of Contracts must support and assist in promoting and implementing the M/WBE Program Policy and Administrative Procedures. BDDD has established, in conjunction with appropriate departments, procedures to enhance the qualifications, competitiveness, and opportunities for M/WBEs. Processes have been jointly established to capture, disseminate, analyze, and communicate Airport Board business opportunities, and address barriers to effective M/WBE participation.

C. External Communication

1. Communication and support of M/WBE initiatives by entities that represent or promote M/WBEs' interests are a crucial element to a viable and effective M/WBE Program. BDDD has also formalized efforts to ensure communication and participation by external M/WBE-related entities to maximize the Airport Board's M/WBE identification and solicitation efforts. Activities with these entities are geared towards establishing a fluid communication process that informs, facilitates networking, and assists in the overall development and management of the M/WBE Program. BDDD shall participate in M/WBE-sponsored activities and look to these entities as the principal organizations to generate support and participation by the minority and women business community.

D. M/WBE Listings

1. As part of the Airport Board's efforts to identify and ensure solicitation of M/WBEs, BDDD shall maintain listings of certified M/WBEs by industry codes. These listings will be used to notify M/WBEs of business opportunities and provide the primary vehicle for Airport Board bidders/proposers and Contractors to satisfy M/WBE requirements and facilitate joint ventures, partnerships, etc.

SECTION XVI. CONTRACTOR COMPLIANCE ASSISTANCE

- A. The Airport Board shall provide technical assistance to bidders, Contractors and consultants as necessary in complying with the M/WBE Program Policy and Administrative Procedures and M/WBE Special Contract Provisions.

SECTION XVII. SEVERABILITY

- A. The provisions of the M/WBE Program Policy and Administrative Procedures are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of the M/WBE Program Policy and Administrative Procedures, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this M/WBE Program Policy and Administrative Procedures, or the validity of its application to other persons or circumstances.

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM

GLOSSARY OF DEFINITIONS

GLOSSARY OF DEFINITIONS

AFFECTED CLASS – A group of persons, identifiable by name or characteristics, who are the victims of a pattern or practice of discrimination.

AFFIRMATIVE ACTION – Actions, policies, and procedures to which a contractor commits itself that are designed to achieve equal employment opportunity. The affirmative action obligation entails (1) thorough, systematic efforts to prevent discrimination from occurring or to detect it and eliminate it as promptly as possible, and (2) recruitment and outreach measures.

AFFILIATE - Any business enterprise that is affiliated with an M/WBE or with the owner(s) of such M/WBE or any other business enterprise. Business enterprises are affiliates of each other when:

1. Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
2. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
3. Affiliation based on identity of interest. Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
4. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.
5. BDDD in its sole discretion shall determine whether an applicant is an independent business.

AIRPORT BOARD – A semi-autonomous body charged with governing DFW International Airport.

ANNUAL GOAL - The targeted level for the aspirational goal established by the Airport for the annual aggregate participation of MBEs and WBEs in Airport contracts.

AVAILABILITY - The availability of firms as a percentage of all firms in DFW's geographic and industry market areas; and any disparities between DFW's utilization of M/WBE on its locally funded contracts and M/WBE availability.

BEST VALUE - A Best Value evaluation allows evaluators to consider other criteria in addition to purchase price and minimum specifications in the award of a competitive sealed bid.

BIDDER – A business enterprise, sole proprietor, firm, partnership, corporation, association or joint venture that submits a bid on a contract that is offered for competitive bidding by the Airport.

BROKER - A business enterprise that performs a commercially useful function as an intermediary, for a fee, in the acquisition of materials, supplies or equipment, regardless of whether or not it takes title to such materials, supplies or equipment, for the Airport or a private owner or its contractors, consultants or suppliers, but is not a manufacturer, manufacturer's representative or regular dealer. Only bona fide commissions earned by a broker for its activities in performing a commercially useful function on an Airport contract shall be counted toward the project goal. A packager shall be considered and treated as a broker.

BUSINESS ENTERPRISE – An individual, sole proprietorship, corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed or registered, as applicable, owned and controlled by person(s) who are citizens of the United States or lawful permanent residents of the United States, and otherwise authorized to do business in the State of Texas.

BUSINESS PROCESS – Any undertaking to enhance the participation of Minority and Women-owned Businesses by the Airport in contracts/procurements including reimbursement and revenue generating contracts.

CERTIFICATION – The certification of a firm as a minority or woman-owned firm by the Airport's BDD department or a certification agency approved by the Airport's BDD department. Certification neither represents nor implies that a business enterprise is qualified to perform on a contract, nor that it performs a commercially useful function.

CHALLENGE – A formal filing by a third party to rebut the presumption that a particular individual is not a minority or women-owned business.

COMMERCIAL DEVELOPMENT CONTRACT – An award by a person, corporation,

association or other legal entity (excluding the Airport) expending or committing the expenditure (by direct payment, reimbursement, or otherwise) of the proceeds of Airport revenue bonds or the proceeds of bonds issued by a nonprofit airport facility financing corporation for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, in connection with improvements at the Airport.

COMMERCIALLY USEFUL FUNCTION – Means responsibility for the execution of a distinct element of the work of a contract, which is carried out by a business enterprise actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venture partner. To determine whether an MBE or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated; i.e., the firm's role is not superfluous in an attempt to obtain credit towards goals. If, in BDDD's judgment, the firm (even though an eligible M/WBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded. Commercially useful function is measured for purposes of determining participation on a contract.

COMPLIANCE – Refers to the fact that a Contractor has correctly implemented the requirements of the applicable M/WBE Business process requirements.

COMPLIANCE PLANS - For contracts let by means of a competitive selection process, rather than a competitive bid process, a department head may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize MBE/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin

CONCESSION – The right to operate a business that sells goods and/or services to the public at a designated location or locations in one of the Airport's passenger terminals or on Airport premises.

CONCESSIONAIRE – The operator of an Airport concession.

CONDUIT – An MBE or WBE that knowingly agrees to pass the scope of work for which it is listed for participation and is scheduled to perform or supply on a contract, to a non-MBE or non-WBE. In this type of relationship, the MBE or WBE has not performed a commercially useful function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the commercially useful function requirement, and therefore the MBE's or WBE's participation does not count toward the MBE/ WBE goal on the contract.

CONSTRUCTION SITE – The general physical location of any building, highway or real property undergoing construction, rehabilitation, alteration, conversion, extension, demolition repair, or any other change or improvement, and any temporary location or facility at which a contractor or other participating party meets a demand or performs a

function relating to the contract or subcontract.

CONSTRUCTION WORK – The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

CONSULTANT - A business enterprise that enters into a contract with the Airport, in privity of contract with the Airport, for professional design and construction services or enters into such a contract with a private owner, in privity of contract with such private owner, for such services on a building or aviation or aeronautical facility, or improvements thereto, situated on real property owned by the Airport.

CONTRACT – An award by the Airport whereby the Airport expends or commits the expenditure of funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing. A legally binding relationship obliging a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. Notwithstanding the foregoing, contract shall also include construction or professional design and construction services contracts for buildings or aviation or aeronautical facilities or improvements thereto, constructed by private owners on real property owned by the Airport, without regard to the utilization of Airport funding.

CONTRACT MODIFICATION – Any change (deductive or additive) to the scope of work or dollar amount in any Airport contract including but not exclusive of: supplemental agreements, contract options renewal years and change orders.

CONTRACT SPECIFIC GOAL - The specific M/WBE goal established for a particular contract based upon the availability of MBEs and WBEs in the scope(s) of work of the contract. The project goal shall not be considered or construed as constituting a fixed quota.

CONTRACTING OPPORTUNITY – A procurement action to commercially obtain a product or service (as opposed to intergovernmental actions).

CONTRACTOR – One who participates, through a contract/subcontract (at any tier) or any other contractual agreement with the Airport. A contractor includes but is not exclusive to a contractor, consultant, commercial development developers, commercial development contractors and vendors.

CONTROL - is the primary power to direct the management of a business enterprise - specifically, the minority or woman owner(s) must possess the power and ability to direct or cause the direction of the management and policies of the firm, and to make the day-to-day, as well as major, decisions on matters of management, policy and operations.

DAY - Unless otherwise indicated, means business day.

DESIGN-BUILD CONTRACT - A contract for the procurement of both the design and the construction, reconstruction or remodeling of a public work in a single contract with a single design-build contractor or combination of such contractors that are capable of providing the necessary design and construction, reconstruction or remodeling services.

FIRM -A business organization, such as a corporation, limited liability company or partnership. Firms are typically associated with business organizations that practice law, but the term can be used for a wide variety of business operation units.

GOOD FAITH EFFORTS – Steps taken to achieve a MWBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Specific Goal.

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) - A Historically Underutilized Business (HUB) is a corporation, sole proprietorship, partnership or joint venture formed for the purpose of making a profit in which at least 51 percent or more of the business is owned, operated and controlled by a woman and/or ethnic minority in accordance with the Texas Government Code.

INDEFINITE DELIVERY CONTRACT - A contract that has been awarded to one or more vendors to facilitate the delivery of supplies and/or services. Usually a contract for supplies or services that does not procure or specify a firm quantity of supplies or the amount of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies or services during the period of the contract.

INELIGIBLE – legally or officially unable to qualify for any of the diversity programs, certification, or to be considered for credit or for an award as an M/WBE.

INDIAN TRIBE – Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation, which is recognized as eligible for the special Business process and services provided by the United States to Indians because of their status or is recognized as such by the State in which the tribe, band, nation, group or “tribally-owned concern” is located. A “tribally-owned concern” is any concern at least 51 percent owned by an Indian tribe as defined in this paragraph.

INTENT TO PERFORM - A written communication from a project bidder or proposer to the Airport with respect to a contract evidencing an understanding between an MWBE and the bidder or proposer that such MWBE has or will enter into a contractual relationship with the bidder or proposer on such contract or that such a bidder or proposer will self-perform as an MWBE on such contract.

JOINT VENTURE - Joint Venture means an association of two (2) or more business enterprises to constitute a single business enterprise to perform a City construction or professional design and construction services contract for which purpose they combine their property, capital, efforts, skills and knowledge and in which endeavor each party is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and whose share in the capital contribution, control, management responsibilities, risks and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the joint venturers and their relationship and responsibility to the contract.

MAINTENANCE – the upkeep of Board property or equipment

MANUFACTURER – A business enterprise that operates or maintains a factory or establishment that produces, or substantially alters on the premises the materials, supplies or equipment provided to contractors, consultants, subcontractors, subconsultants, suppliers, brokers or manufacturer's representatives on a contract, required under the contract and of the general character described by the contract specifications. The percentage of the value of the commercially useful function performed by a manufacturer on a City contract shall be counted toward the applicable project goal in the same manner as for a supplier to quantify the work performed.

MANUFACTURER'S REPRESENTATIVE - A business enterprise that sells products for one or more manufacturers. A manufacturer's representative does not take legal title to or physical possession of the products which it sells, such products generally being sent directly from the manufacturer to the contractor or subcontractor purchasing the products. Only bona fide commissions earned by a manufacturer's representative in performing a commercially useful function on a contract shall be counted toward the project goal.

MINORITY BUSINESS ENTERPRISE (MBE) – A for profit business concern which is at least 51 percent owned and controlled by one or more minority person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and whose management and daily business operations are controlled by one or more of the minority individuals who own it. An MBE is a firm that is certified by an approved Airport certification entity as noted in the Certification section in this manual.

MINORITY PERSONS - Individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

"Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of

Micronesia, or Hong Kong.

"Black Americans," which includes persons having origins in any of the Black racial groups of Africa.

"Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race.

"Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

"Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

MULTI TIER SUBCONTRACTOR- Subcontractors whose work to provide services or supplies is directly related to the performance of an Airport contract with the prime contractor or at any lower tier subcontractor (whether at a first, second, or third tier) to a first-tier subcontractor.

NON-PROFESSIONAL SERVICES – Those areas of services ancillary to maintenance as encompassed within the Airport's contracting processes authorized by the policies of the Airport, including but not limited to other services which could be performed without a professional license, special education or training.

NON-RESPONSIVE - means a bid or proposal that has been determined **not** to conform to essential requirements of the M/WBE requirements as set forth in the Policy, Procedures, and Contract Provisions.

PLACE OF BUSINESS – means any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the M/WBE in carrying on any business activity individually or through one or more of his or her regular employees in attendance. It is necessary to have a place of business filed to the secretary of state for establishing a business.

The following are not considered a place of business:

- P.O. Box
- Virtual offices
- Staffing services
- Shared office space with a prime
- Shared workspace
- Co working space

- An employee's residence
- A temporary field office established and utilized for the duration of a specific project

At BDDD's discretion a copy of the lease may be required and location subject to a site visit.

PRIMARY INDUSTRY CLASSIFICATION – The six digits North American Industrial Classification System (NAICS) code designation, which best describes the primary business of a firm. The NAICS code listing is accessible through the NAICS website (www.naics.com).

PRIME CONTRACTOR – Any person, firm, partnership, corporation, association or joint venture as herein provided which has executed a contract with the Airport or Commercial Development contract or agreement.

PRIVATE OWNER - A private or other non-Airport owner undertaking to contract for construction work or for design or construction management services on buildings or aviation or aeronautical facilities or improvements thereto, on real property owned by the Airport.

PROFESSIONAL DESIGN AND CONSTRUCTION-RELATED SERVICES - Those areas of services ancillary to construction as encompassed within the Airport's contracting processes authorized by the policies of the Airport, including but not limited to engineering, architectural, testing and construction management services.

PROFESSIONAL SERVICES – Those areas of services ancillary to a professional license as encompassed within the Airport's contracting processes authorized by the policies of the Airport, including but not limited to services provided by attorneys, accountants, medical professionals, technical services, research planning and consultants.

PROPOSAL - An offer to perform construction or professional design and construction services pursuant to a negotiated or otherwise competitively selected Airport contract with either the Airport or a private owner, and whether in response to a request for qualifications, request for proposals or otherwise. The department head shall designate the final project-specific proposal, and the date of receipt for each solicitation of proposers subject to this Administrative Procedures Manual.

PROPOSER - A business enterprise that submits a proposal on an Airport construction contract or professional design and construction services contract that is negotiated and not competitively bid or which utilizes a competitive selection process.

QUALIFIED - With respect to good faith efforts in this policy, means that a business enterprise has the financial ability, expertise, skill, experience and access to the necessary staff, facilities and equipment to complete contract(s) or subcontract(s) which

it may undertake on projects. The Airport makes no representations as to the qualification of any applicant business enterprise, MBE or WBE.

QUOTA – A contracting practice restricting the eligibility for the competitive award of a contract by the designation of an assigned share or proportion of the contract or procurements to a certain group or class.

RELEVANT MARKET AREA – means the geographic and procurement area in which the Airport contracts on an ongoing basis, as established by the findings of the DFW's Airport's findings as a result of the 2018 Disparity Study. Per the Study the Relevant Market Area is defined as the counties of Dallas, Denton, Collin, and Tarrant. The M/WBE must have an established "place of business" inside the airport's Relevant Market Area at time of bid/proposal.

REGULAR DEALER - A business enterprise that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the contract specifications and required for the performance of the contract are bought and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the business enterprise must be an established, regular business engaged in, as a substantial and material portion of its business, and in its own name, the purchase and sale or lease of the products in question. A regular dealer is presumed to keep such materials, supplies, articles or equipment in stock, but must in any event bear the risk of loss of such items. A regular dealer in such bulk items as steel, cement, gravel, stone, asphalt and petroleum products need not own, operate or maintain a place of business if it both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Brokers, conduits, packagers, manufacturers and manufacturer's representatives shall not be regarded as regular dealers within the meaning of this term.

RESPONSIVE - means a bid or proposal which conforms in all material respects to the M/WBE requirements set forth requirements as set forth in the Policy, Procedures, and Contract Provisions.

in the bid and/or request for proposals.

SET ASIDE – A contracting practice restricting eligibility for the competitive award of a contract to a certain group or class.

SOLE SOURCE - A sole source procurement is applicable when the product or service required can **only** be obtained from one supplier and there is adequate justification that no other product or service exists that will meet the Airport needs. Allowable circumstances are limited by law to:

- Patents, copyrights, secret processes, or natural monopolies
- Films, manuscripts, or books
- Gas, water, and other utility services

- Captive replacement parts or components for equipment

SPECIFIED SOURCE - A specified source procurement situation exists when a department requests a purchase order or contract be awarded to a specified source for professional or consulting services due to their unique ability to perform the Work. The Specified Source request will be considered; however, Board policy requires that Procurement also solicit proposals from at least two certified Minority and Women Business Enterprises (M/WBEs) if available.

- Uniquely qualified

STAFFING SERVICE – defined as an employment placement agency, temporary help service, temporary staff/employee augmentation, other temporary business support services

SUBCONTRACTOR or SUBCONSULTANT - Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime contractor on an Airport contract at any tier.

SUPPLIER - A business enterprise which either directly contracts with a contractor or consultant or directly contracts with subcontractors or subconsultants under such contractor or consultant on an Airport contract, and which business enterprise will provide materials, supplies or equipment under agreements with the contractor or consultant, or with other subcontractors or subconsultants under such contractor or consultant. A supplier may be a regular dealer, manufacturer, manufacturer's representative or broker. On Airport contracts of less than five million dollars (\$5,000,000.00), at the time of bid opening or proposal selection, one hundred percent (100%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the contract specific goal. On Airport contracts of five million dollars (\$5,000,000.00) or more, at the time of bid opening or proposal selection, sixty percent (60%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the contract specific goal.

TEXAS UNIFIED CERTIFICATION PROGRAM (TUCP) is a "one stop" certification process for the State of Texas DBE Programs, established October 1, 2002. Certain approved agencies within the State of Texas which have agreed to perform the certification processing for DBE firm (and some MWBE) applications within the state of Texas by specific TUCP regions.

WOMAN - a person of the female gender, encompassed within the findings of the Airport's Disparity Study, who is rebuttably presumed to be socially disadvantaged.

WOMEN BUSINESS ENTERPRISE (WBE) – A for profit business concern which is at least 51 percent owned and controlled by one or more female person(s), or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by

one or more women; and whose management and daily business operations are controlled by one or more of the female individuals who own it. A WBE is a firm that is certified by an approved Airport certification entity as noted in the Certification section herein.

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)
PROGRAM**

ATTACHMENTS

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)
PROGRAM**

**ATTACHMENT 1
REQUEST FOR GOAL DETERMINATION FORM**

REQUEST FOR D/M/WBE GOAL DETERMINATION

Completed Form is due to BDDD ten (10) business days prior to advertising.

DATE					
CONTRACT NUMBER					
CONTRACT NAME					
PROJECT MANAGER		DEPT.		PHONE #	
CONTRACT ADMINISTRATOR		DEPT.		PHONE #	
ADVERTISING DATES				<input type="checkbox"/> Solicitation Schedule Attached	

SOLICITATION HISTORY *(To be completed by Requestor)*

<input type="checkbox"/> NEW CONTRACT	
<input type="checkbox"/> PRIOR CONTRACT(S)	List previous similar contract(s) issued and associated contract number(s). Include goal, commitment and achievement percentages for each, if applicable.

SCOPE OF WORK SUMMARY *(To be completed by Requestor)* ☐ Scope of Work Attached

Provide a detailed description of the work associated with the project.

POTENTIAL SUBCONTRACTING OPPORTUNITIES				
PROJECT ESTIMATE			<input type="checkbox"/> Line Item Cost Estimate Attached	
CONTRACT TERMS				
FUNDING SOURCE		<input type="checkbox"/> Federal Funds	## %	Percentage of Federal Funds versus Total Contract Value
SPECIAL REQUIREMENTS				
Provide plans, specifications, and other information/materials that will assist BDDD in determining the contract-specific goal.				

D/M/WBE AVAILABILITY *(To be completed by BDDD)*☐ B2Gnow Preliminary Goal Worksheet Attached

AVAILABILITY POTENTIAL PRIME CONTRACTORS	
AVAILABILITY OF POTENTIAL SUBCONTRACTORS	
AVAILABILITY OF POTENTIAL SUPPLIERS	

REQUEST FOR D/M/WBE GOAL DETERMINATION

Completed Form is due to BDDD ten (10) business days prior to advertising.

GOAL DETERMINATION <i>(To be completed by BDDD)</i>		
PROGRAM TYPE	<input type="checkbox"/> DBE <input type="checkbox"/> M/WBE	
INDUSTRY AREA	<input type="checkbox"/> Construction <input type="checkbox"/> Architectural & Engineering <input type="checkbox"/> Professional Services <input type="checkbox"/> Non-Professional Services <input type="checkbox"/> Goods	
PARTICIPATION GOAL DETERMINED		Goal is percentage of contract value, not a subcontracting goal.
METHODOLOGY COMMENTS		

APPROVAL <i>(To be completed by BDDD)</i>				
RECOMMENDATION BY		BDDD STAFF	DATE	
BDDD Vice President or Designee <input type="checkbox"/> APPROVED <input type="checkbox"/> NOT APPROVED, Revise and resubmit.		DATE <div style="height: 40px;"></div>		

Signature – BDDD Vice President or Designee

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)
PROGRAM**

ATTACHMENT 2

M/WBE CONTRACT PROVISIONS INCLUDING FORMS

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) SPECIAL CONTRACT PROVISIONS

Notification is hereby given that an M/WBE Contract Specific Goal has been established for this Contract. The Contractor/vendor has committed to percent (%) M/WBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.

A. GENERAL REQUIREMENTS

1. It is the policy of the Dallas/Fort Worth International Airport Board of Directors ("Airport Board") to support the growth and development of Minority/Women Business Enterprises ("M/WBE") that can successfully compete for Airport prime contracting and subcontracting opportunities.
2. A "Contractor" is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Airport Board by submission of a bid or proposal on any such contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendors.
3. It is the policy of the Airport Board to ensure non-discrimination in the award and administration of Airport Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Airport Board's Minority/Women Business Enterprise Program Policy and Administrative Procedures in proposing and performing hereunder.
4. The Contractor 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 the Airport Board's M/WBE Program Policy and Administrative Procedures. 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 Airport Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Airport Board under this Contract.
5. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with the Airport Board's M/WBE Program Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for M/WBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting opportunities.
6. The Contractor specifically agrees to comply with all applicable provisions of the Airport Board's M/WBE Program Policy and Administrative Procedures and any amendments thereto. M/WBE and Non-M/WBE subcontractors also agree to comply with all applicable provisions of the Airport Board's M/WBE Program Policy and Administrative Procedures ("Policies"). BDDD and or the Airport Board

may make changes to the existing policy, procedures and contract provisions. Any future changes supersede past policies, procedures, contract provisions. The Contractor and subcontractors are responsible to be aware of future changes.

7. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
 - a. Subcontract/supplier awards, including awards to M/WBEs;
 - b. Specific efforts to identify and award such Contracts to M/WBEs, such as when requested copies of executed Contracts with M/WBEs to establish actual M/WBE project participation.

B. ADMINISTRATIVE REQUIREMENTS

1. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in submitting a bid/proposal and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid/proposal. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
2. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its M/WBE contractual commitments.
3. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to M/WBEs and Non-M/WBEs in such form and manner and at such times as the Airport Board shall prescribe.
4. The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will be used for, among other purposes, determining M/WBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract M/WBE audits. Audit determination(s) regarding Contractor's compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

C. GOALS AND GOOD FAITH EFFORTS

1. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)
 - a. Each Contractor must comply with the terms and conditions of the M/WBE Program Policy and Administrative Procedures in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
 - i. Responsive; compliance with requirements. If a bid/proposal meets the Contract Specific Goal or shows an adequate good

faith effort in accordance with the M/WBE Program Policy and Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.

- ii. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a Contract Specific Goal does not provide the necessary information, documentation or forms outlined in the M/WBE Program Policy and Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport Board and is not appealable.
- b. If BDDD establishes a Contract Specific Goal, the goal will be stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the solicitation and the M/WBE Program Policy and Administrative Procedures, a Contractor must either meet the Contract Specific Goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the Contract Specific Goal. If the Contractor will not meet the M/WBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
- c. For construction Contracts awarded using the procurement methods of Indefinite Delivery, Job Order Contract, Construction Management-at-Risk or Design Build, a Compliance Plan is required to address the Contract Specific Goal and the utilization of M/WBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
- d. In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
- e. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following criteria with the bid or proposal. The following factors are taken into account when assessing whether a Contractor made good faith efforts to meet the Contract Specific Goal. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the Contract Specific Goal. These factors should not be considered as a template, checklist or some quantitative formula. A Contractor is required to meet all factors outlined below and provide support documentation in order for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the Contract Specific Goal. This means that a Contractor must show that it took all necessary and reasonable steps to achieve a Contract Specific Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the Contract Specific Goal, even if they were not fully successful. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. BDDD will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the

Contractor has made based on the regulations and the guidance in 49 C.F.R. part 26. **NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FAITH EFFORT.** Contractors are not limited to these particular areas and may include other efforts deemed appropriate. Complete the **Commitment to M/WBE Participation** form and attach support documentation only if the Contract Specific Goal is not achieved. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A).

- i. Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. *The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.*
- ii. Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.
- iii. Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- iv. Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the

available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.

- v. Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. *A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.*
- vi. Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- vii. Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- viii. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs.

- ix. At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)((vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over an M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- f. BDDD will review not only at the different kinds of efforts that the Contractor has made but also the quantity and quality of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort. Whether other Contractors attained a sufficient level of M/WBE participation to meet the Contract Specific Goal will also be taken into consideration when determining whether the Contractor in question has made a good faith effort. A promise to use M/WBEs after Contract award is not considered to be responsive to the Contract solicitation or to constitute good faith efforts. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal.

- g. Whether or not the Contract Specific Goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the Contract Specific Goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Airport Board will only award Contracts to Contractors determined to be responsive. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the the BDDD's decision that sufficient good faith efforts were not made. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts and, if not, shall recommend that the Contractor be deemed non-responsive.

- h. If a Contractor, that has submitted good faith efforts documentation, desires a review of BDDD's decision, it must file a written request for an appeal within two (2) business days after receipt of the written decision to the following Reconsideration Official:

Executive Vice President
 Administration & Diversity
 DFW Airport, 2400 Aviation Drive
 P.O. Box 619428
 DFW Airport, TX 75261-9428

- i. As part of the reconsideration, the Contractor will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Contractor will also have the opportunity to provide written documentation or argument concerning the issue of good faith. Arguments, evidence, and documents supporting the basis for the appeal must be received no later than five (5) business days after the notice of appeal is filed. The Reconsideration Official's decision shall be made based solely on the entire administrative record presented with the original good faith efforts documentation. No new additional information or documentation can be provided or allowed for review. The Reconsideration Official will issue a final written decision in response to the appeal.
 - j. Failure of the bidder or proposer to show good faith efforts as to any one (1) of the criteria listed above shall render its overall good faith effort insufficient and its bid or proposal deemed non-responsive.
- 2. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)
 - a. The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance is not able to meet its original M/WBE commitment, due to changes to the scope of work made by the Airport Board, the Contractor and User Department must immediately notify BDDD of the scope of work changes that impact M/WBEs for approval. The Contractor has a continuing obligation to meet its original M/WBE commitment.
 - b. Such good faith efforts during Contract performance must include, but are not limited to:
 - i. Solicitation of M/WBEs that are certified in the applicable area of work or specialty;
 - ii. Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
 - iii. Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
 - iv. Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and

- v. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of M/WBEs
- c. Modified good faith efforts must be demonstrated to be meaningful and not merely for formalistic compliance with this requirement. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.
- d. A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the M/WBE Program Policy and Administrative Procedures. BDDD's determination shall be final.

D. COUNTING M/WBE PARTICIPATION

1. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the M/WBE Program Policy and Administrative Procedures and contractual requirements. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's or the development agreement's Contract Specific Goal, BDDD may base its determination solely on the information provided in the bid or proposal document.
2. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the M/WBE will perform with its own workforce will be counted towards the Contract Specific Goal. In addition, the M/WBEs ownership interest percentage must be commensurate with its capital contribution, control, management, profits and risks.
3. When counting the M/WBE participation on bids with charged reimbursable expenses, deductive or add alternatives, the responsiveness determination shall be based on the base bid. Contractors, however, are strongly encouraged to include M/WBE participation on add alternates and charged reimbursable expenses when feasibly possible. Any participation achieved on add alternates and charged reimbursable expenses will be credited towards the M/WBE goal.
4. When calculating participation levels, percentages and dollar amounts for each M/WBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific Goal.
5. A Contractor cannot require an M/WBE subcontractor to enter into an exclusive arrangement for purposes of submitting its bid or proposal or require the M/WBE subcontractor to enter into a non-compete arrangement post award
6. Post award, the Contractor may count towards its M/WBE contractual commitment an M/WBE in the relevant market area that is certified by an approved entity during the performance of the Contract, if the M/WBE is added to the Contract or substituted for an M/WBE pursuant to M/WBE SUBSTITUTIONS OR TERMINATIONS section herein.

7. The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by an M/WBE after it has ceased to be certified as an M/WBE or ceased to satisfy the requirement that the M/WBE have a physical place of business in the relevant market area.
8. M/WBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self- perform.
9. M/WBE prime Contractors cannot count their self-performance in lieu of meeting an M/WBE subcontracting commitment made at the time of contract award.
10. When an M/WBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the M/WBE toward the Contract Specific Goal.
11. All M/WBE contractors, subcontractors, joint ventures, suppliers, manufacturers, manufacturer's representatives, or brokers listed in the bid or proposal must actually perform a commercially useful function in the work of a contract within the area(s) for which they are certified, and must not act as a conduit. In no case, however, shall an M/WBE act as a conduit, nor shall the participation of an M/WBE count toward the goal to the extent it fails to perform a commercially useful function.
12. When a Contractor utilizes an M/WBE staffing service to perform work and the workers are independent contractors, subcontractors, or employees of the staffing firm who do not receive paid benefits (including, at a minimum, healthcare coverage and paid time off), the Contractor shall count only the amount of fees or commissions charged by the staffing service for providing labor force, consistent with normal industry practices.
13. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate, as defined in the M/WBE Program Policy and Administrative Procedures.
14. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the M/WBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime Contractor or its affiliate).
15. When an M/WBE subcontracts part of the work of its Contract to another firm at any tier, the value of the subcontracted work may be counted towards the M/WBE goal only if the M/WBE's subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-M/WBE does not count toward M/WBE goal.
16. The Contractor will count towards the M/WBE goal expenditures to an M/WBE subcontractor, only if the M/WBE subcontractor is performing a commercially useful function on the Contract.
 - a. AN M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity,

ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.

- b. An M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether an M/WBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which M/WBEs do not participate.
 - c. If an M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the M/WBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
 - d. When an M/WBE is presumed not to be performing a commercially useful function as provided in this section, the M/WBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. BDDD in its sole discretion shall determine whether an M/WBE is performing a commercially useful function.
17. BDDD shall use the following factors in determining whether an M/WBE trucking company is performing a commercially useful function:
- a. The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the M/WBE goal.
 - b. The M/WBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - c. The M/WBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The M/WBE may lease trucks from another M/WBE, including a owner-operator who is certified as an M/WBE. The M/WBE who leases trucks from another M/WBE shall receive credit for the total value of the transportation services the lessee M/WBE provides on the Contract.
 - e. The M/WBE may lease trucks from a non-M/WBE firm, including from an owner-operator. The M/WBE that leases trucks equipped with drivers from a non-M/WBE is entitled to credit for the total value of transportation services provided by non-M/WBE leased trucks equipped with drivers not

to exceed the value of transportation services on the contract provided by M/WBE-owned trucks or leased trucks with M/WBE employee drivers. Additional participation by non-M/WBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from BDDD.

- i. *For example: M/WBE Firm X uses two of its own trucks on a contract. It leases two trucks from M/WBE Firm Y and six trucks equipped with drivers from non-M/WBE Firm Z. M/WBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, any may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. M/WBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.*
 - f. The M/WBE may lease trucks without drivers from a non-M/WBE truck leasing company. If the M/WBE leases trucks from a non-M/WBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
 - i. *For Example: M/WBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-M/WBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. M/WBE credit would be awarded for the total value of the transportation services provided by all four trucks.*
 - g. For purposes of this paragraph, a lease must indicate that the M/WBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the M/WBE, so long as the lease gives the M/WBE absolute priority for use of the leased truck. Lease trucks must display the name and identification number of the M/WBE.
- 18. Suppliers: A supplier may be a regular dealer, manufacturer, manufacturer's representative or broker. The Contractor shall count expenditures to M/WBEs for materials or supplies towards the M/WBE goal as follows:
 - a. On Airport Board contracts of less than five million dollars (\$5,000,000.00), at the time of bid openings or proposal selection, one hundred percent (100%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal. If the materials or supplies are purchased from an M/WBE regular dealer, BDDD will count 100% of the cost of the materials or supplies toward the M/WBE goal.
 - b. On Airport Board contracts of five million dollars (\$5,000,000.00) or more, at the time of bid opening or proposal selection, sixty percent (60%) of the value of the commercially useful function performed by an M/WBE supplier on such contract shall be counted toward the M/WBE goal.

- i. If the materials or supplies are obtained from an M/WBE manufacturer, BDDD will count 100 percent of the cost of the materials or supplies toward the M/WBE goal.
- ii. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- iii. If the materials or supplies are purchased from an M/WBE regular dealer, BDDD will count 60% of the cost of the materials or supplies toward M/WBE goals.
- iv. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought and kept in stock in the usual course of business.
 - A. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - B. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- v. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expenditure transactions are not regular dealers.
- vi. With respect to materials or supplies purchased from an M/WBE which is neither a manufacturer nor a regular dealer, BDDD will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward M/WBE goals, provided it has been determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. BDDD will not count any portion of the cost of the materials and supplies themselves toward M/WBE goals, however.
- vii. BDDD will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

19. If an M/WBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the M/WBE goal until the firm is certified. Counting of participation is not retroactive; only dollars paid to the M/WBE after certification count toward the M/WBE goal. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be M/WBE certified.
20. BDDD reserves the right to reject the participation of a certified firm for credit towards meeting the Contract Specific Goal, in its sole discretion.
21. The Contractor shall not count the participation of an M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
22. The following expenditures to M/WBEs may also count toward the M/WBE goal:
 - a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
23. Joint Ventures: The Airport Board shall encourage where economically feasible joint ventures to maximize prime contracting opportunities for M/WBEs on all eligible Contracts, including commercial development agreements.
 - a. If a Contractor engages in a joint venture to satisfy its M/WBE commitment, BDDD shall review all contractual agreements or other pertinent documents regarding:
 - i. The initial capital investment of each venture partner;
 - ii. The proportional allocation of profits, losses and risks to each venture partner;
 - iii. The sharing of the right to control the ownership and management of the joint venture;
 - iv. Actual participation of the venture partners in the performance of the Contract;

- v. The method of and responsibility for accounting;
 - vi. The methods by which disputes are resolved; and
 - vii. Other pertinent joint venture factors.
- b. A draft of the proposed joint venture agreement must be submitted with the bid or proposal to BDDD for its approval in writing. BDDD shall determine the degree of M/WBE participation resulting from the joint venture that may be credited towards the Contract Specific Goal.
 - c. BDDD will count M/WBE participation where the M/WBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the M/WBE in a joint venture. BDDD will allow the joint venture to count the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the M/WBE joint venture partner performs with its own forces toward the M/WBE commitment and for which it is at risk.
 - d. If, after the award of a contract to a team, any member of the team believes that the terms and conditions of the agreement as approved by BDDD have not been complied with, then such member may seek review and mediation of such agreement before the Vice President of BDDD. The request for review must be made in writing.
 - e. In the event that the mediation with the Vice President, does not resolve all disputes, the Vice President of BDDD shall have the option of referring mediation proceedings to a qualified outside mediator, the costs to be borne by the interested parties.

E. CERTIFICATION

1. In order to count the participation of M/WBEs towards the Contract Specific Goal or Annual Goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. In addition to having a valid certification from one of the entities listed above, the M/WBE must have a place of business in the Airport Board's relevant market area at the time the bid or proposal is submitted for credit towards meeting the M/WBE goal. The Airport Board's relevant market area is Dallas, Tarrant, Collin and Denton counties.
2. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Using a post office box, private mailbox services, another person's or firm's office space (including Airport Board office space), virtual offices, shared or coworking office spaces, executive suites or staffing services does not satisfy the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of the M/WBE Program Policy and Administrative Procedures.
3. An M/WBE owner or employee living in the relevant market area does not satisfy the requirement that the M/WBE having a place of business in the relevant

market area. However, an M/WBE majority owner who operates his/her own business solely from his/her own residence in the four-county relevant market area satisfies the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of the M/WBE Program Policy and Administrative Procedures.

4. **Affiliate/Affiliation:** Regardless of certification by a recognized agency, the M/WBE must be an independent business and not an affiliate of any other business including non-M/WBEs. Affiliate means any business entity that is affiliated with an M/WBE or with owners of such M/WBE or any other business enterprise. Business enterprises are affiliates of each other when:
 - a. Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
 - b. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
 - c. *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
 - d. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.
5. BDDD in its sole discretion shall determine whether an applicant is an independent business.
6. The Contractor must submit to BDDD a properly completed M/WBE Certification Certificate or letter, with all required attachments, for all M/WBEs proposed to be utilized as subcontractors or suppliers to meet the Contract Specific Goal at the time of bid/proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. BDDD's decision on the request shall be final.
7. A firm must be certified as an M/WBE at the time of bid or proposal submission to be counted towards meeting the Contract Specific Goal for purposes of determining Contract award.

8. Dollars paid to a firm prior to it obtaining an approved certification do not retroactively apply toward meeting the Contract Specific Goal or Annual Goal.
9. M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.
10. BDDD maintains a directory of certified firms that have expressed an interest in doing business with the Airport Board or are currently doing business with the Airport Board. The directory is not a certification database. Certifications listed are provided by third-party service providers. Bidders and proposers may use the directory to assist them in locating M/WBE firms for the work required on the Contract; however, the certifications should be verified through the approved certification agency. The directory is located at:
 - <https://dfw.diversitysoftware.com>

F. PRE-AWARD COMPLIANCE PROCEDURES

1. M/WBE Utilization Forms and Related Documentation
 - a. Each Contractor must submit for all solicitations, bids or proposals, qualifications completed and signed M/WBE utilization forms as outlined below to be considered responsive. If the Contract Specific Goal is 0% and no M/WBE participation is proposed, including no M/WBE self-performance, the required forms should be noted as "Not Applicable". Note that Requests for Proposals and/or Qualifications include Business Diversity Evaluation Criteria which must be responded to in the proposal even if the Contract Specific Goal is 0%.
2. Request for Bids (RFB) – Goods and Services
 - a. **Commitment to MBE Participation** must be submitted at the time of bid submission.
 - b. **Final Schedule of Subcontractors** must be submitted at the time of bid submission.
 - c. **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Final Schedule of Subcontractors.
 - d. **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Final Schedule of Subcontractors.
 - e. **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.
3. Request for Bids (RFB) – Construction
 - a. **Commitment to MBE Participation** must be submitted at the time of bid submission.
 - b. **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.

- c. **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
 - d. **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
 - e. **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
 - f. **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.
4. Request for Qualifications (RFQ) – Architectural/Engineering Services, Design & Design Management Services
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - b. **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts. “To be determined” in lieu of a percentage is not acceptable.
 - c. **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule f Subcontractors.
 - d. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
 - e. **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
 - f. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
5. Request for Proposal (RFP) – Goods and Services including Best Value
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - b. **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated

percentage of participation of M/WBEs rather than specific dollar amounts. "To be determined" in lieu of a percentage is not acceptable.

- c. **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
 - d. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
 - e. **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
 - f. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
6. Request for Proposal (RFP) for Construction-related Services procured through Indefinite Delivery: task/delivery order, Job Order Contracts, Construction Manager-at-Risk Services, Program Management/Construction Management services:
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
 - b. **Certification Certificate for Prime** must be submitted at the time of proposal submission if a certified Prime is claiming credit for self-performance.
 - c. **Compliance Plan**: a draft Compliance Plan using the Airport's template must be submitted at the time of proposal submission. The final Compliance Plan shall be required after the conclusion of the solicitation process as a component of contract negotiations and award.
 - d. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
 - e. **Final Schedule of Subcontractors** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
 - f. **Certification Certificates for Subcontractors** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor listed on the Final Schedule of Subcontractors.
 - g. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.

7. Design Build

- a. **Commitment to M/WBE Participation (Construction)** must be submitted at the time of proposal submission.
- b. **Commitment to M/WBE Participation (Design)** must be submitted at the time of proposal submission.
- c. **Preliminary Schedule of Subcontractors (Design)** must be submitted at the time of proposal submission.
- d. **Certification Certificates (Design)** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
- e. **Final Schedule of Subcontractors (Design)** must be submitted with the best and final offer.
- f. **Intent to Perform as a Subcontractor (Design)** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
- g. **Compliance Plan (Construction)** a draft Compliance Plan must be submitted at the time of proposal submission. The final Compliance Plan shall be submitted after the conclusion of the solicitation process as a component of contract negotiations and award.
- h. **Final Schedule of Subcontractors (Construction)** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
- i. **Certification Certificates (Construction)** must be submitted with the Final Schedule of Subcontractors for each certified subcontractor.
- j. **Intent to Perform as a Subcontractor (Construction)** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor.
- k. **Good Faith Effort Documentation** If the Contractor fails to meet the M/WBE goal, the documentation must be submitted at the time of proposal submission.

8. Third Party Commercial Development or Concession Tenant Finish Out

- a. **Commitment to M/WBE Participation (Design)** must be submitted prior to processing an Official Board Action.
- b. **Commitment to M/WBE Participation (Construction)** must be submitted prior to processing an Official Board Action.
- c. **Preliminary Schedule of Subcontractors (Design)** must be submitted at the Airport's Initial Project Kick-Off Meeting.

- d. **Final Schedule of Subcontractors (Design)** must be submitted at the Airport's Pre-Construction Meeting.
 - e. **Preliminary Schedule of Subcontractors (Construction)** must be submitted at the Airport's Pre-Construction Meeting.
 - f. **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's 50% construction-completion review meeting.
 - g. **Accounting Reconciliation Statement** for the Contract must be submitted with the application for Certificate of Occupancy. A reconciliation statement shall include the total payments to the Prime Contractor and total payments made to each subcontractor listed on the Final Schedule of Subcontractors.
9. Any commitments to meet the Contract Specific Goal must be detailed on the **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form included with the bid/proposal. Submission of the form shall constitute a representation by the Contractor to the Airport Board that it commits to maintain the M/WBE participation level to which it committed to overall at the time of Contract award throughout the performance of the Contract. For contracts where the scope of work is defined and M/WBE subcontractors have been selected to perform a portion of the work, the Contractor also commits to maintain and/or exceed the percentage commitment to each individual M/WBE subcontractor.
 10. The **Schedule of Subcontractors** form must list all subcontractors and suppliers the Contractor intends to use in performing the work of the project, including non-M/WBEs, and detail the preliminary/final percentage and dollar commitment of the Contractor to M/WBE participation. Only certified M/WBEs identified and the levels of participation listed for each at the time of bid/proposal submission will be considered in determining whether the Contractor has met the Contract Specific Goal. All M/WBEs must be properly certified under the guidelines of the CERTIFICATION section. Modifications, substitutions or termination of the M/WBEs identified must follow the guidelines of the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
 11. Submission of the **Intent to Perform as a Subcontractor** form for each M/WBE shall constitute a representation by the Contractor to the Airport Board that it believes such M/WBE to be certified as an M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's relevant market area and the M/WBE is not affiliated with the Contractor as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with such M/WBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.
 12. The Contractor shall enter into formal agreements with the M/WBE firms for work as indicated on the **Final Schedule of Subcontractors** and **Intent to Perform** forms within 10 (ten) business days after receipt of the Contract executed by the Airport Board or Notice to Proceed executed by the Airport Board. The Contractor, if requested, shall provide to BDDD copies of those agreements within 5 (five) business days of execution. BDDD reserves the right to review selected agreements at random.

13. If the M/WBE subcontractor information or status changes after the forms have been submitted but prior to award of the Contract (pre-award), the Contractor must immediately notify BDDD of the changes and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in M/WBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount.
14. Post award, any substitution or termination of M/WBEs that occur after Contract award, must be processed using the Airport Board's Diversity Management System and follow the M/WBE Program Policy and Administrative Procedures stated in the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
15. Contractors must appoint and designate to BDDD a high-level official to administer and coordinate its contractual M/WBE commitments.
16. Alternative **Compliance Plan**
 - a. Contracts secured through a competitive selection process rather than a competitive bid process, the Vice President of BDDD may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize M/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin.
 - b. The development, scope and utilization of such compliance plans will be governed by the following considerations and requirements.
 - c. Basis for Determination
 - i. Unless otherwise authorized in writing by the Vice President of BDDD, a department may only require proposers to address a project goal by means of a compliance plan under the following conditions:
 - A. The project solicitation must include the procurement of construction services.
 - B. At the time of solicitation, the project design must not be complete or at a level of completeness allowing for final competitive pricing proposal; and
 - C. The project solicitation must not require a lump sum price proposal or the construction of the project upon which a contract award will be made.
17. Development of Compliance Plan
 - a. Upon a determination that a compliance plan will be required for a project, the compliance plan shall be developed in accordance with the following requirements:

- i. The Vice President of BDDD will require separate goals for project professional services and project construction services.
 - ii. The construction goal established for each project shall be expressed as a percentage of either:
 - A. The total amount of any lump sum construction contract awarded to complete a project
 - B. Total estimated “cost of work,” as that term is defined in any guaranteed maximum price contract awarded to complete a project, or
 - C. On a task/work order
 - b. The contracting department shall provide a good faith estimate of the construction cost upon which a goal shall be set, and the compliance plan proposer shall provide a refined estimate at the time of the submission of a proposed compliance plan, if the amount is not reflected in an executed contract.
 - c. BDDD shall establish a timetable for submittal and review of any proposed compliance plan. During the solicitation process as solicitation submittal requirement; and after the conclusion of the solicitation process as a component of contract negotiations and award.
 - d. Failure to comply with any submittal timetable established by BDDD may result in no further consideration of the proposed compliance plan.
- 18. Elements of a Compliance Plan. At a minimum, a proposed compliance plan shall address the following elements:
 - a. To the maximum extent applicable, the proposed compliance plan shall comply with the requirements of the M/WBE Program Policy and Administrative Procedures.
 - b. The proposed compliance plan shall set forth a detailed program for community outreach and support calculated to enhance participation opportunities.
 - c. The proposed compliance plan shall set forth a detailed program describing how the proposer will divide up the anticipated work into economically feasible units calculated to enhance participation opportunities.
 - d. The proposed compliance plan shall set forth a detailed methodology by which the Contractor shall meet the project goal.
 - e. The proposed compliance plan may be based upon a phased or packaged buy out of the project construction work and, if that is the case, will describe the process by which the proposer will address the project goal on a phased, package, or cumulative basis.
 - f. If appropriate, the proposed compliance plan shall address the subcontracting of normally self-performed work to meet the project goal.

- g. The proposed compliance plan shall set forth how the proposer will comply with the requirements of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions as part of the construction work, including use of Commitment forms, Intent to Perform, Schedule of Subcontractors forms or proposal pricing worksheet to adequately document committed participation attained.
- h. The proposed compliance plan shall contain a specific acknowledgement of the proposer's continuing duty, pursuant to the M/WBE Program Policy and Administrative Procedures, and Contract Provisions to maintain, throughout the duration of any project contract, compliance with the level of participation committed to under any approved compliance plan, and such commitment will be the basis for award of any contract. The plan will also detail the methodology the proposer will employ for maintain participation commitments.
- i. The proposed compliance plan shall set forth a detailed methodology for tabulation of participation performance and plan administration, as well as monitoring and reporting progress and participation performance to BDDD. The plan shall provide for review and reconciliation milestones during the project and for review and audit opportunities for BDDD.
- j. The proposed compliance plan will recommend methods for supporting BDDD administration and oversight of the plan, if approved.
- k. The proposed compliance plan will affirm that BDDD shall have prompt, full and complete access to all contractor and subcontractor personnel, books and records required to monitor and assure performance of the approved compliance plan. Additionally, the plan will acknowledge BDDD's right to impose withholding of payment in the event of noncompliance.
- l. The proposed compliance plan shall set forth a detailed methodology for issuance of notice(s) of non-compliance with the plan and a reasonable opportunity to cure.
- m. The proposed compliance plan shall set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.

19. Approval of Compliance Plan

- a. Upon receipt of a proposed compliance plan, BDDD shall review and either approve or initially reject, with comments, the proposed plan. In the event of a rejection of the proposed plan, the BDDD shall set a date for submission and if warranted, schedule a meeting to discuss any deficiencies that must be addressed in the re-submittal.
- b. In the event the Vice President of BDDD formally rejects a proposed compliance plan, the Vice President of BDDD shall notify the agency head in writing of its determination and such determination shall result in no further consideration of the contractor's proposal or in termination of the contract for cause, in the event a contract has been awarded. In no event shall a contract to construct a project be executed or continue without a compliance plan approved by the Vice President of BDDD.

- c. Upon approval, the compliance plan shall be incorporated and made a part of the contract with the plan proposer.

20. Compliance and Enforcement

- a. The Contractor shall be subject to the COMPLIANCE AND ENFORCEMENT section of the M/WBE Program Policy and Administrative Procedures and Contract Provisions. If upon approval, the Contractor acknowledges and accepts that any failure to comply with any material term or condition of an approved compliance plan or applicable provision of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions, including failure to satisfactorily address the project goal, maintain participation commitments or otherwise comply with any applicable requirements.

G. PAYMENT

1. Monitoring Contractual Commitments and Payments to M/WBEs

- a. It is Airport Board policy that all Contractor invoices in compliance with Contract payment terms and conditions be paid within 30 days of receipt.
- b. All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Airport Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Airport Board may withhold from any subcontractor its undisputed appropriate share of such payment.
- c. No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Airport Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Airport Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Airport Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
 - i. the percentage amount of retainage withheld/released;
 - ii. the schedule for withholding/releasing retainage;
 - iii. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
 - iv. the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially

complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);

- v. the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
- d. Each Contractor must address (and implement) in its subcontracts the retainage provisions so that each subcontractor is treated by the Contractor in the same manner as Airport Board treats the Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Airport Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Airport Board and/or withholding less retainage than Airport Board withholds to cover the value of punch-list work required to be completed before final completion certification.
- e. DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
- f. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
- g. BDDD may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
- h. The Airport Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this Contract or applicable law.
- i. In an effort to remove the race- and gender-neutral barrier of the length of time for subcontractor payments on Airport Board procurements, the Airport Board has an Expedited Payment Policy for eligible Contractors that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Airport Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.
- j. To ensure that the Contractor meets its M/WBE contractual commitment, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions from the original Contract

period. The M/WBE commitment is determined by the total M/WBE utilization in relation to the total dollar value of contract as paid to the Prime Contractor. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit verifying information as outlined below, concurrent with the Contractor's submission of each payment request. The information provided will be utilized to provide constant monitoring of the payments made to the M/WBE as well as non-M/WBE subcontractors in relation to the percentage of work performed. Failure to submit this information with the payment request will result in the invoice being returned to the Contractor. The Prime Contractor can be determined to be non-compliant, if utilization commitments to individual M/WBE subcontractors are not achieved, even if the total M/WBE contractual commitment is being met by disproportionate M/WBE subcontractor utilization not originally listed by the Prime Contractor's Final Schedule of Subcontractors and Intent to Perform forms without a sufficient modified Good Faith Effort justification.

- i. As of 2012, Contractors with new Contracts are required to report all payments online utilizing the Airport Board's Diversity Management System (B2Gnow) and submit a Compliance Audit Summary with each payment request. The Compliance Audit Summary confirmation is a print out of what was entered into the system.
 - ii. Contracts prior to 2012, are required to submit the original Pay Period Activity Report form with the payment request, unless they choose to report online, when then defaults to Paragraph j.i.
2. Training for the Airport Board's Diversity Management System: The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the Airport Board's Diversity Management System (B2Gnow). This includes all subcontractors who the Contractor will be utilizing on the contract and will be verifying reported sub payments online.
3. Contract Close Out: To ensure that the Contractor meets all its M/WBE contractual commitments, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment.
 - a. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit a Final B2Gnow Compliance Audit Summary concurrent with the Contractor's submission of final payment request.
 - b. Once all sub payments have been verified by the subcontractors in the Airport Board's Diversity Management System, the contract will be reviewed for compliance with the program requirements and the prime Contractor's M/WBE contractual commitment.
 - c. The Contractor 's performance will be reviewed, and a satisfactory/unsatisfactory determination will be provided in writing to the Contractor by BDDD.

- d. A Contractor's unsatisfactory determination may result in future bids or proposals being deemed non-responsive. In determining whether a future bid or proposal will be deemed non-responsive, BDDD will take into consideration the following: circumstances for non-compliance, the length of the period of non-compliance and the history of previous unsatisfactory determinations.
- 4. Dispute Resolution: BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.
- 5. On-Site Inspections: Compliance monitoring may also include on-site inspections. The Contractor is responsible for providing BDDD, if requested, a project work scheduler together with a list of all subcontractors for the scheduled work.
- 6. All reports of noncompliance will be referred by BDDD to the contract administrator, and if appropriate, to the Legal Department.

H. M/WBE SUBSTITUTIONS OR TERMINATIONS

- 1. If change orders, amendments or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract that impact the participation of M/WBEs on the contract.
- 2. If change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its M/WBE contractual commitment with existing M/WBEs first. If the Contractor is unable to meet its M/WBE contractual commitment with existing M/WBEs, the Contractor shall satisfy its commitment, as it relates to changed scope of work, modifications, and or amendments, by soliciting new M/WBEs and must submit a **Request for Approval of Change to Final Schedule of Subcontractors**, through the Airport Board's Diversity Management System and must be approved in writing by BDDD.
- 3. The Contractor cannot terminate, substitute or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for an M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.

- a. The Contractor shall utilize the specific M/WBEs listed in the Final Schedule of Subcontractors to perform the work and supply the materials for which each is listed unless the Contractor obtains BDDD written consent as provided in this section; and
- b. The Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed M/WBE.
- c. The Contractor shall document good cause to terminate or substitute an M/WBE. For purposes of this paragraph, good cause includes the following circumstances:
 - i. The listed M/WBE subcontractor fails or refuses to execute a written Contract.
 - ii. The listed M/WBE 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 M/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
 - iii. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - iv. The listed M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
 - v. The listed M/WBE subcontractor is ineligible to work on public works projects because of suspension and applicable state law.
 - vi. It has been determined that the listed M/WBE subcontractor is not a responsible Contractor.
 - vii. The listed M/WBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
 - viii. The listed M/WBE is ineligible to receive M/WBE credit for the type of work required.
 - ix. An M/WBE owner dies or becomes disabled with the result that the listed M/WBE contractor is unable to complete its work on the Contract.
 - x. Other documented good cause that BDDD determines compels the termination of the M/WBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate an M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the M/WBE subcontractor was engaged or so that the Contractor can substitute another M/WBE or non-M/WBE subcontractor after Contract award.
- d. Before transmitting to BDDD its request to terminate and/or substitute an M/WBE subcontractor, the Contractor must give notice in writing to the

M/WBE subcontractor, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the reason for the request.

- e. The Contractor must give the M/WBE subcontractor five business days to respond to the Contractor's notice. The M/WBE subcontractor must advise BDDD and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why BDDD should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), BDDD may provide a respond period shorter than five days.
4. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for M/WBE firms put forward by bidders/proposals in bids/proposals.
 - a. When an M/WBE subcontractor is terminated as provided in this section or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another M/WBE subcontractor to substitute for the original M/WBE. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the M/WBE commitment established for the Contract. The good faith efforts shall be documented by the Contractor. 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, and BDDD shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.
 5. The Contractor must submit an **Intent to Perform as a Subcontractor** form for each proposed new M/WBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
 6. All changes to the **Schedule of Subcontractors** form must be submitted for review and approval through the Airport Board's Diversity Management System utilizing the **Request for Approval of Change to Final Schedule of Subcontractors** form when adding, changing, or deleting any subcontractor.
 7. Failure by the Contractor to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or such other remedies set forth in Compliance and Enforcement section.

I. COMPLIANCE AND ENFORCEMENT

1. These provisions address the additional contractual remedies available to the Airport Board as a result of the Contractor's failure to comply with the obligations set forth in the M/WBE Program Policy and Administrative Procedures. The contractual remedies set forth are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to the Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Airport Board's recovery of its actual damages for such unrelated breaches.

2. The Contractor must attend and participate in onboarding, progress, non-compliance meetings and site visits upon request. The Contractor must forward all necessary documents and information during the course of performance and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for M/WBE participation on the Contract.
3. BDDD is empowered to receive and investigate complaints and allegations by M/WBEs, third parties or Airport Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Airport Board or its representatives concerning the investigation and Contractor's compliance with the Program requirements.
4. The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Airport Board or its representatives to exercise any remedy available in this Contract, the Program requirements or applicable law. In addition, the failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements may be considered and have a bearing on future contract award considerations.
5. Any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements may be reported to the Airport Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
6. If Contractor is in breach of any of the Program requirements, the Airport Board or its representatives may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
 - a. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
 - b. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
 - c. termination of the Agreement/Contract;
 - d. suspension/debarment of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
7. With respect to a firm not meeting a goal on a previous contract or the underutilization of an M/WBE (or SBEs, if applicable) on a previous contract, BDDD shall regard as non-responsive any bid, proposal or competitive selection process proposal received that includes the Contractor, consultant as a Contractor, consultant, subcontractor, subconsultant, joint venture, supplier, manufacturer's representative, or broker.
8. With respect to M/WBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

(End of M/WBE Special Contract Provisions)

**COMMITMENT TO MINORITY/WOMEN
BUSINESS ENTERPRISE (M/WBE) PARTICIPATION FORM**
(This form is required as part of the bid/proposal submission.)

The M/WBE goal for Solicitation/Contract # _____ is _____%.

NOTE: The BDDD will only credit M/WBE participation that is certified by an approved certification entity at the time of bid/proposal submission. DBE/SBE certificates are not accepted for M/WBE credit. Effective 06/01/2020, in addition to having a valid certification, M/WBEs must also have a place of business in the Airport's market area¹ at the time of bid/proposal submission for credit towards meeting a contract goal.

The undersigned Contractor has satisfied the requirements of the bid/proposal specifications in the following manner (Please check (✓) the appropriate space):

- _____ Self-Performance: The proposer, a certified M/WBE firm, is committed to meeting or exceeding the M/WBE goal through self-performance.
- _____ Self-Performance & Percentage Participation: The proposer, a certified M/WBE firm, is committed to meeting or exceeding the M/WBE goal, with a minimum of _____% self-performance and a minimum of _____% M/WBE subcontracting participation on this contract.
- _____ Percentage Participation: The proposer is committed to meeting or exceeding the M/WBE goal, with a minimum of _____% M/WBE subcontracting participation on this contract.
- _____ The Contractor is unable to meet the M/WBE goal of _____% and is committed to a minimum of _____% M/WBE utilization on this contract and submits documentation demonstrating good faith efforts.
- _____ The Contractor is unable to meet the M/WBE goal of _____% and submits documentation demonstrating good faith efforts.

Name of Prime Contractor: _____

Signature Title

Printed Name Date

¹ The Airport's market area is defined as Dallas, Tarrant, Collin and Denton counties.

SCHEDULE OF SUBCONTRACTORS¹ (PRELIMINARY)

Prime Bidder/Contractor: _____

☐ MBE ☐ WBE ☐ NON-M/WBE

Contract Number: _____ Contract Name: _____

As part of the procedures for the submission of a completed bid/proposal, all bidders/proposers are required to identify ALL participating subcontractors applicable to the above project and include this completed form as part of the bid. Check all Certification Status categories that apply to each subcontractor. Verify that the proposed M/WBE subcontractor has a place of business in the Airport's Relevant Market Area³ (not applicable to DBE goals). **NOTE: Certification certificate(s) MUST be attached to this form or bid/proposal will be deemed non-responsive.** The submission of this information is considered an issue of responsiveness, and the Airport Board will not award a contract to any Contractor who has not supplied this documentation. Use additional sheets if necessary.

Name of Subcontractor(s)	Certification Status ² (check the applicable)			Relevant Market Area ³	Description of Material or Service Being Provided or Performed	NAICS Commodity Code	Dollar Amount and Percentage of Work	
	MBE	WBE	NON	COUNTY			\$\$\$	%
	Dollar Amount & Percentage: Work to be completed by Non-M/WBE Subcontractors							
	Dollar Amount & Percentage: Work to be completed by M/WBE Subcontractors							
	Dollar Amount & Percentage: Work to be self-performed by the Prime							
	Total Dollar Amount & Percentage of Work (The Total Amount shall equal the amount proposed on summary of bid/proposal page).							100%

PRIME CONTRACTOR'S CERTIFICATION

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that if awarded the contract, this certification shall be attached thereto and become a part thereof. Failure to provide accurate and complete information or exercise positive, good faith efforts (as defined by the Board's M/WBE Program) in support of the Board's minority/woman-owned business intent and objective may result in being considered non-responsive to the Board's requirements. Furthermore, it is understood and agreed that, if awarded a contract by the Airport Board, the Contractor will not make additions, deletions or substitutions to this certified list of M/WBE subcontractors without the consent of the Board's Vice President of Business Diversity & Development Department (BDDD) or designee through the submittal of the *Form 102, Request for Approval of Change to Final Schedule of Subcontractors* if this is determined to be the final schedule. The BDDD reserves the right to ensure compliance with the Board's M/WBE programs as deemed necessary including but not limited to audits of submitted M/WBE information applicable to the Contractor/subcontractors participating on the contract.

Name and Title of Authorized Representative: _____

(Please print or type)

Date: _____

Signature: _____

E-mail Address: _____

¹ Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime Contractor on an Airport contract at any tier.

² In order to credit the participation of minority and woman-owned businesses, firms must be certified as M/WBEs by a certification agency approved by the Airport Board as defined in the M/WBE Policies and Administrative Procedures.

³ In addition to having a valid certification, the M/WBE must have a place of business in the Airport's relevant market area at the time the bid/proposal is submitted for credit towards meeting an M/WBE goal.

SCHEDULE OF SUBCONTRACTORS¹ (FINAL)

Prime Bidder/Contractor: _____

☐ MBE ☐ WBE ☐ NON-M/WBE

Contract Number: _____ Contract Name: _____

As part of the procedures for the submission of a completed bid/proposal, all bidders/proposers are required to identify ALL participating subcontractors applicable to the above project and include this completed form as part of the bid. Check all Certification Status categories that apply to each subcontractor. Verify that the proposed M/WBE subcontractor has a place of business in the Airport's Relevant Market Area³ (not applicable to DBE goals). **NOTE: Certification certificate(s) MUST be attached to this form or bid/proposal will be deemed non-responsive.** The submission of this information is considered an issue of responsiveness, and the Airport Board will not award a contract to any Contractor who has not supplied this documentation. Use additional sheets if necessary.

Name of Subcontractor(s)	Certification Status ² (check the applicable)			Relevant Market Area ³ COUNTY	Description of Material or Service Being Provided or Performed	NAICS Commodity Code	Dollar Amount and Percentage of Work	
	MBE	WBE	NON				\$\$\$	%
	Dollar Amount & Percentage: Work to be completed by Non-MWBE Subcontractors							
	Dollar Amount & Percentage: Work to be completed by M/WBE Subcontractors							
	Dollar Amount & Percentage: Work to be self-performed by the Prime							
	Total Dollar Amount & Percentage of Work (The Total Amount shall equal the amount proposed on summary of bid/proposal page).							100%

PRIME CONTRACTOR'S CERTIFICATION

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that if awarded the contract, this certification shall be attached thereto and become a part thereof. Failure to provide accurate and complete information or exercise positive, good faith efforts (as defined by the Board's M/WBE Program) in support of the Board's minority/woman-owned business intent and objective may result in being considered non-responsive to the Board's requirements. Furthermore, it is understood and agreed that, if awarded a contract by the Airport Board, the Contractor will not make additions, deletions or substitutions to this certified list of M/WBE subcontractors without the consent of the Board's Vice President of Business Diversity & Development Department (BDDD) or designee through the submittal of the *Form 102, Request for Approval of Change to Final Schedule of Subcontractors* if this is determined to be the final schedule. The BDDD reserves the right to ensure compliance with the Board's M/WBE programs as deemed necessary including but not limited to audits of submitted M/WBE information applicable to the Contractor/subcontractors participating on the contract.

Name and Title of Authorized Representative: _____

(Please print or type)

Date: _____

Signature: _____

E-mail Address: _____

¹ Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime Contractor on an Airport contract at any tier.

² In order to credit the participation of minority and woman-owned businesses, firms must be certified as M/WBEs by a certification agency approved by the Airport Board as defined in the M/WBE Policies and Administrative Procedures.

³ In addition to having a valid certification, the M/WBE must have a place of business in the Airport's relevant market area at the time the bid/proposal is submitted for credit towards meeting an M/WBE goal.

INTENT TO PERFORM CONTRACT AS A M/WBE SUBCONTRACTOR¹ (Rev 07-01-2020)

Submission of the **Intent to Perform as a M/WBE Subcontractor** form for each M/WBE firm shall constitute a representation by the Prime Contractor to the Airport Board that it believes such M/WBE to be certified as a M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's market area and the M/WBE is not affiliated with the Contractor as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter in a subcontract with such M/WBE for the work described at the approximate price and percentage set forth.

PRIME CONTRACTOR / CONSULTANT			
Contract / Solicitation Number:			
Name of Prime Contractor:			
Address, City, State and Zip Code:			
The Prime Contractor designates the following person as their high-level official designated to administer and coordinate the efforts to carry out the M/WBE policy on behalf of the Prime Contractor.			
Name:		Title:	
E-Mail Address:		Phone Number:	
DECLARATION OF PRIME CONTRACTOR			
I HEREBY DECLARE AND AFFIRM that as a duly authorized representative of the Prime Contractor stated above, I have personally reviewed the material and facts set forth in this form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true and the owner or authorized agent of the M/WBE firm stated above signed this form in the place indicated, and no material facts have been omitted. The undersigned affirms that the Prime Contractor has no ownership or financial interest in the M/WBE subcontracting firm stated below. Except as authorized by the Vice President of Business Diversity & Development Department or his designee, the undersigned shall enter into a formal agreement (which shall include all audit and records provisions required by the Board) with the listed M/WBE firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Airport. The undersigned will, if requested, provide said Vice President or his designee a copy of that agreement within five (5) business days of the written request. Pursuant to State Law, any person [entity] who makes a false or fraudulent statement in connection with the participation of a M/WBE in any locally funded project or otherwise violates applicable program requirements may be referred for prosecution.			
Signature of Prime Contractor:		Date	
M/WBE SUBCONTRACTOR / SUBCONSULTANT / SUPPLIER AT ANY TIER			
The Airport requires that minority/women business enterprises be certified as M/WBEs by an approved certification agency as defined in the M/WBE Program Policy and Procedures. Effective 06-01-2020, in addition to having a valid certification, M/WBEs must have a place of business in the Airport's market area ¹ at the time of bid/proposal submission for credit towards meeting a contract goal.			
The undersigned M/WBE subcontractor has a place of business in the Airport's market area.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
The undersigned M/WBE subcontractor is not affiliated with the Prime Contractor as defined in the M/WBE Program Policies and Procedures.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Name of M/WBE Subcontractor:			
Address, City, State and Zip Code:			
Contact Person:			
E-Mail Address:		Phone Number:	
Scope of Work: (where applicable specify "supply" or "install" or both)			
Price and Percentage:		\$ (%)	
M/WBE Certification #:		Certification Agency:	
If the M/WBE shown above is not a direct first tier subcontractor, subconsultant or supplier to the Prime Contractor shown above, please indicate the name of the subcontractor, subconsultant or supplier <u>and</u> tier level that will be utilizing your participation for M/WBE credit.			
Percentage (%) of the proposed subcontract described above will be sublet and/or awarded to a Non-M/WBE subcontractor. (Complete this box ONLY if subcontracting to a Non-M/WBE subcontractor.)		_____ %	
DECLARATION OF M/WBE SUBCONTRACTOR			
I HEREBY DECLARE AND AFFIRM that as a duly authorized representative of the Subcontractor stated above, the facts and representations contained in this form are true. The undersigned affirms that the Prime Contractor has no ownership or financial interest in the M/WBE subcontracting firm stated above. I also agree, for good and valuable consideration (including the opportunity to participate in this solicitation as a proposed subcontractor), the receipt and sufficiency of which is hereby acknowledged, that if the Subcontractor performs any work for the Prime Contractor as the result of a contract awarded to the Prime Contractor for this solicitation, the Subcontractor will maintain and the Board shall have the right to examine and make copies of all records, documents, books, statements, checks, invoices, and any other supporting evidence deemed necessary by the Board to substantiate compliance with the terms of this Contract, including any Change Orders. Such right of examinations shall include, but not be limited to, reasonable access to and cooperation by all Subcontractor personnel. Subcontractor agrees to provide the Board with retrievals of computer-based records or transactions that the Board determines to be necessary to conduct any audits. Subcontractor agrees that there shall be no charge to the Board for Subcontractor's costs of providing records, documents, and assistance for audits, and to provide to the Board within seven (7) calendar days all records, documents, retrievals, and other assistance requested.			
Signature of M/WBE Subcontractor		Date	

¹ Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime contractor on an Airport contract at any tier.

² The Airport's market area is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin and Denton counties.

GOOD FAITH EFFORT (GFE) Criteria

NOTE: Include a response to GFE criteria and support documentation in bid/proposal only if the M/WBE goal is not achieved.

The following factors are taken into account when assessing a good faith effort response. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the applicable contract-specific Minority/Women Business Enterprise (M/WBE) goal. These factors should not be considered as a template, checklist or some quantitative formula. Proposers are required to meet all factors outlined below and provide support documentation in order for the good faith effort plan to be assessed. Mere pro forma efforts are not good faith efforts to meet the M/WBE contract requirements. This means that a bidder/proposer must show that it took all necessary and reasonable steps to achieve an M/WBE goal or other requirement of this GFE which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient M/WBE participation, even if they were not fully successful. DFW will evaluate the GFE on quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer has made, based on the regulations and the guidance in Code of Federal Regulations. **NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FAITH EFFORT.** Proposers are not limited to these particular areas and may include other efforts deemed appropriate. Complete form and attach support documentation only if the M/WBE goal is not achieved. For additional guidance concerning Good Faith Efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 part 26 Appendix A).

GOOD FAITH EFFORT FACTORS
<p>Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. <i>The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.</i></p>
<p>Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.</p>
<p>Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.</p>
<p>Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work.</p>
<p>A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.</p>

Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. <i>A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.</i>
Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs.
At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over a M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
A promise to use M/WBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

FOR DFW BUSINESS DIVERSITY & DEVELOPMENT USE ONLY:

Plan Reviewed by: _____

Date: _____

Signature of M/WBE Business Specialist/Manager: _____

Recommendation: Approval: _____ Denial: _____

REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL SCHEDULE OF SUBCONTRACTORS

Contract/Solicitation Number _____

Project Name _____

Contractor Name _____, requests approval of the following addition(s) and/or deletion(s) on the **SCHEDULE OF SUBCONTRACTORS (M/WBE Form No. 90)**, as originally submitted as part of the bid/proposal on the above-named project.

CHANGE

Check (X) block for each transaction.

ADD	DELETE	COMPANY NAME	TRADE	M/WBE STATUS	RELEVANT MARKET AREA COUNTY	DOLLAR AMOUNT

JUSTIFICATION

The Contractor must demonstrate good cause to terminate or substitute the M/WBE and seek BDDD approval prior to taking any termination or substitution action. Good cause includes the following circumstances: 1. The listed M/WBE subcontractor fails or refuses to execute a written contract. 2. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements. 3. The listed M/WBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness. 4. The listed M/WBE is ineligible to work on Airport projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations. 5. BDDD has determined that the listed M/WBE subcontractor is not a responsible contractor. 6. The listed M/WBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal. 7. The listed M/WBE subcontractor is ineligible to receive credit for the type of work required. 8. The M/WBE owner dies or becomes disabled with the result that the listed M/WBE subcontractor is unable to complete its work on the Contract. 9. Other good cause as determined in BDDD's sole discretion. Attach additional sheets as necessary.

CERTIFICATION OF AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that this certification shall become a part of my contract with the Dallas/Fort Worth International Airport Board.

Name of Authorized Representative: _____ E-mail Address: _____
(Please print or type)

Signature _____ Date: _____

Routed To:

Approved by:

(Check One)

____ Design, Code & Construction Dept.
____ Procurement & Materials Management Dept.

____ Vice President or Designee
____ Business Diversity & Development Dept.



COMPLIANCE PLAN

for

Prime Contractor Name:

Contract Number:

Contract Name:

Date:

Check applicable Business Diversity Program(s):

- ☐ Disadvantaged Business Enterprise (DBE)
- ☐ Minority/Women Business Enterprise (D/M/WBE)

Compliance Plan

- A. Contracts secured through a competitive selection process rather than a competitive bid process, the Vice President of BDDD may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize D/M/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin.
- B. The development, scope and utilization of such compliance plans will be governed by the following considerations and requirements.
- C. Basis for Determination
 - 1. Unless otherwise authorized in writing by the Vice President of BDDD, a department may only require proposers to address a project goal by means of a compliance plan under the following conditions:
 - a. The project solicitation must include the procurement of construction services.
 - b. At the time of solicitation, the project design must not be complete or at a level of completeness allowing for final competitive pricing proposal; and
 - c. The project solicitation must not require a lump sum price proposal or the construction of the project upon which a contract award will be made.
- D. Development of Compliance Plan
 - 1. Upon a determination that a compliance plan will be required for a project, the compliance plan shall be developed in accordance with the following requirements:
 - a. The Vice President of BDDD will require separate goals for project professional services and project construction services.
 - b. The construction goal established for each project shall be expressed as a percentage of either:
 - i. The total amount of any lump sum construction contract awarded to complete a project
 - ii. Total estimated "cost of work," as that term is defined in any guaranteed maximum price contract awarded to complete a project, or
 - iii. On a task/work order
 - c. The contracting department shall provide a good faith estimate of the construction cost upon which a goal shall be set, and the compliance plan proposer shall provide a refined estimate at the time of the submission of a proposed compliance plan, if the amount is not reflected in an executed contract.
 - d. BDDD shall establish a timetable for submittal and review of any proposed compliance plan. During the solicitation process as solicitation

submittal requirement; and after the conclusion of the solicitation process as a component of contract negotiations and award.

- e. Failure to comply with any submittal timetable established by BDDD may result in no further consideration of the proposed compliance plan.

E. Elements of a Compliance Plan. At a minimum, a proposed compliance plan shall address the following elements:

1. To the maximum extent applicable, the proposed compliance plan shall comply with the requirements of the D/M/WBE Program Policy and Administrative Procedures.
2. The proposed compliance plan shall set forth a detailed program for community outreach and support calculated to enhance participation opportunities.
3. The proposed compliance plan shall set forth a detailed program describing how the proposer will divide up the anticipated work into economically feasible units calculated to enhance participation opportunities.
4. The proposed compliance plan shall set forth a detailed methodology by which the Contractor shall meet the project goal.
5. The proposed compliance plan may be based upon a phased or packaged buy out of the project construction work and, if that is the case, will describe the process by which the proposer will address the project goal on a phased, package, or cumulative basis.
6. If appropriate, the proposed compliance plan shall address the subcontracting of normally self-performed work to meet the project goal.
7. The proposed compliance plan shall set forth how the proposer will comply with the requirements of the D/M/WBE Program Policy and Administrative Procedures, and Contract Provisions as part of the construction work, including use of Commitment forms, Intent to Perform, Schedule of Subcontractors forms or proposal pricing worksheet to adequately document committed participation attained.
8. The proposed compliance plan shall contain a specific acknowledgement of the proposer's continuing duty, pursuant to the D/M/WBE Program Policy and Administrative Procedures, and Contract Provisions to maintain, throughout the duration of any project contract, compliance with the level of participation committed to under any approved compliance plan, and such commitment will be the basis for award of any contract. The plan will also detail the methodology the proposer will employ for maintain participation commitments.
9. The proposed compliance plan shall set forth a detailed methodology for tabulation of participation performance and plan administration, as well as monitoring and reporting progress and participation performance to BDDD. The plan shall provide for review and reconciliation milestones during the project and for review and audit opportunities for BDDD.

10. The proposed compliance plan will recommend methods for supporting BDDD administration and oversight of the plan, if approved.
11. The proposed compliance plan will affirm that BDDD shall have prompt, full and complete access to all contractor and subcontractor personnel, books and records required to monitor and assure performance of the approved compliance plan. Additionally, the plan will acknowledge the Airport Board's right to impose withholding of payment in the event of noncompliance.
12. The proposed compliance plan shall set forth a detailed methodology for issuance of notice(s) of non-compliance with the plan and a reasonable opportunity to cure.
13. The proposed compliance plan shall set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.

F. Approval of Compliance Plan

1. Upon receipt of a proposed compliance plan, BDDD shall review and either approve or initially reject, with comments, the proposed plan. In the event of a rejection of the proposed plan, the BDDD shall set a date for submission and if warranted, schedule a meeting to discuss any deficiencies that must be addressed in the re-submittal.
2. In the event the Vice President of BDDD formally rejects a proposed compliance plan, the Vice President of BDDD shall notify the agency head in writing of its determination and such determination shall result in no further consideration of the contractor's proposal or in termination of the contract for cause, in the event a contract has been awarded. In no event shall a contract to construct a project be executed or continue without a compliance plan approved by the Vice President of BDDD.
3. Upon approval, the compliance plan shall be incorporated and made a part of the contract with the plan proposer.

G. Compliance and Enforcement

1. The Contractor shall be subject to the Compliance and Enforcement in accordance with the D/M/WBE Program Policy and Administrative Procedures and Contract Provisions. If upon approval, the Contractor acknowledges and accepts that any failure to comply with any material term or condition of an approved compliance plan or applicable provision of the D/M/WBE Program Policy and Administrative Procedures, and Contract Provisions, including failure to satisfactorily address the project goal, maintain participation commitments or otherwise comply with any applicable requirements.

**Prime Contractor Name:
Compliance Plan**

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- I. Methodology for Final Reconciliation**

Attachments

- 1. Commitment to D/M/WBE (as applicable) Form
- 2. Invitation to Bid Sample
- 3. Potential Construction/Construction Support Services
- 4. Potential Workscopes or Bid Packages and estimated D/M/WBE Participation Projections
- 5. Other Sample Forms

A. Commitment to the Business Diversity Program Goal(s)

Check applicable Business Diversity Program(s):

- ☐ Disadvantaged Business Enterprise (DBE)
☐ Minority/Women Business Enterprise (D/M/WBE)

(*Prime Contractor Name*), the Prime Contractor for the (Project Name) has prepared this Compliance Plan, submitted pursuant to Dallas Fort Worth International Airport Board's Disadvantaged or Minority/Women Business Enterprise (D/M/WBE) Program Policies and Administrative Procedures.

(Prime Contractor Name), The Invitation for Bid/Request for Proposal provided a Contract Specific Goal of % for this Contract. We are committed to achieving % D/M/WBE (*as applicable*) participation as a percentage of the total contract value including change orders and/or modifications. We understand that the D/M/WBE (*as applicable*) participation percentage commitment made by our Firm at the time of the Contract award is deemed to be contractual. The Commitment Form (Attachment 1) included in our bid/proposal indicates our commitment to the applicable Contract Specific Goal which will be met through the construction process. The participation percentage commitment will be met through various potential Construction/Construction Support Services showing the potential Work scopes or Bid Packages providing opportunities to subcontractors and suppliers to participate in the Project. The actual dollar values and percentages will vary for each Bid Package, which will be dependent upon the final design, quantities and the quotations received. While the overall commitment will be met, D/M/WBE (*as applicable*) participation may not be realized in the amounts shown for every bid package/work scope.

B. Key Personnel - Duties and Responsibilities

The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out the Business Diversity contractual commitments.

Name & Title is responsible for overseeing the implementation of the contract's Business Diversity contractual commitments, including the following duties:

Description

Name & Title is responsible for the community outreach efforts and oversees the outreach program to insure maximization participation by D/M/WBE (*as applicable*) subcontractors and suppliers. A detailed list of those efforts are outlined below:

Description

Name & Title is responsible for the execution of the subcontractor contracts and completion of the work, including the following duties:

Description

Name & Title is responsible for the collection and coordination of the Business Diversity documentation and monthly online diversity spend reports for all subcontractors and

suppliers on the project. These reports will be turned in by the 10th of each month for the preceding month.

C. Community Outreach Efforts

The following outreach efforts will be utilized to maximize D/M/WBE (*as applicable*) participation:

Description

D. Methodology for Structuring Bid Packages & Potential Construction/Construction Support Services

Provide a narrative which describes the proposed methodology for structuring bid packages and maximizing D/M/WBE (*as applicable*) participation to meet the D/M/WBE (*as applicable*) contractual commitment. Indicate the potential construction/construction support services, the potential work scopes or bid packages, and the estimated participation for each work scope which in aggregate will exceed the Diversity contractual commitment.

Description

E. Bid/Procurement Process

Provide a narrative which describes the bid/procurement/subcontractor selection process and the integration of a D/M/WBE (*as applicable*) business process.

Description

F. Compliance Reporting

Provide a narrative which describes Contractor's understanding of the required D/M/WBE (*as applicable*) forms and online reporting of Diversity spend.

Description

G. Methodology for Dispute Resolutions

Provide a narrative which describes Contractor's process for handling any subcontractor disputes, resolution process, documentation process and notification to the Business Diversity & Development Department as required.

Description

H. Compliance and Enforcement

Provide a narrative which describes Contractor's understanding of the Board's Compliance and Enforcement policies and provisions for failure to comply with the Compliance Plan including developing a remediation plan.

Description

I. Methodology for Final Reconciliation of D/M/WBE (*As Applicable*) Participation

Provide a narrative which describes Contractor's efforts to provide all final payments to subcontractors and all required close out documentation to the BDDD office.

Description

**MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)
PROGRAM**

**ATTACHMENT 3
OFFICIAL BOARD ACTION, ADOPTION OF EXPEDITED
PAYMENT POLICY**

DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD

OFFICIAL BOARD ACTION/RESOLUTION

Date	Committee	Subject	Resolution #	
10/04/2007	Finance/Audit	Adoption of Expedited Payment Policy	2007-10-288	
Action That the Airport Board does hereby adopt an Expedited Payment Policy.				
Description <ul style="list-style-type: none">• The Airport Board recognizes that typically the standard work/pay cycle could approach up to ninety (90) days for a subcontractor to receive payment, once it begins work and submits an invoice to a prime contractor. The standard work/payment cycle for payment of subcontractor"s invoices can be a barrier to participation.• To remove this obstacle, the Airport Board endorses a policy supporting prompt payment of invoices to first tier subcontractors under an expedited payment program. The goal of this policy is to reduce the standard work/payment cycle for such first tier subcontractors to thirty seven (37) days.• It is the Airport Board"s policy that maintenance and construction prime contractors that have a direct contractual relationship with the Airport may participate in an expedited payment program to pay first tier subcontractors, including small, minority and women-owned businesses, within seven (7) days of receipt of an invoice for services or labor performed under a fixed price subcontract.• It is the policy of the Airport Board that a prime contractor that voluntarily agrees to participate in the expedited payment program shall as a condition to such participation, agree to provide such administrative support as is necessary to properly administer the program. A prime contractor shall be eligible to participate in the expedited payment program if awarded a multi-year contract for construction and/or maintenance services of at least \$10,000,000 in contract value.• The Airport Board"s policy is to pay interest to the prime contractor on eligible expedited payments from the date the payment is made to the subcontractor for work performed during the billing period through the date that the Prime Contractor submits its invoice to the Airport. This period shall not, under any circumstance, exceed 30 days. The Airport Board"s Chief Executive Officer is directed to develop procedures for the implementation of this Policy, including a standard method for calculating the interest payment to be made to the prime contractor and an annualized escalation, as appropriate.				
D/M/WBE Information <ul style="list-style-type: none">• N/A				
Schedule/Term <ul style="list-style-type: none">• N/A				
Contract #	Agreement #	Purchase Order #	Action Amount	Revised Amount
			\$0.00	\$0.00
For Information contact	Fund	Project #	External Funding Source	Amount
Don O"Bannon 3-5502				\$0.00

- As a condition to participation in the expedited payment program established by this Policy, the first tier subcontractor shall agree to pay any lower tier subcontractors in a direct contractual relationship with it within (7) days of receipt of the invoice payment. The Prime Contractor also, as a condition to participation, agrees to submit invoices to DFW Airport on a monthly basis.
- The Airport Board will pay interest to the prime contractor at an interest rate that equates to the federal funds rate plus 100 basis points. Currently, this equates to an interest rate of 5.75%. The rate would be determined annually and would be subject to a minimum rate of 6% and a maximum rate of 8%. This interest rate would be applied to the subcontractor payment amounts and only from the time that the subcontractors were paid until the prime submits its invoice to the Airport or approximately 30 days maximum.
- The estimated maximum interest paid to primes, should all eligible primes volunteer for the expedited payment program, would be approximately \$60,000 in FY 2008 and \$200,000 in FY 2009. This represents approximately .25% of eligible contracts amounts for these years.
- The implementation of this policy will be contingent on the availability of funding.

Justification

- Expedited payments will alleviate some of the typical cash flow constraints experienced by small, minority and/or women-owned subcontractors on large multi-year projects.
- Expedited payments will improve the ability of all subcontractors, including small, minority and/or women-owned businesses, to do business with the Airport Board. It will enhance the Airport Board's business environment for subcontractors and ultimately contribute to a stronger pool of businesses that can provide goods and services to the Board and contribute the North Texas economy.

Additional Attachments: **N**

BE IT RESOLVED BY THE DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD

That the Airport Board does hereby adopt an Expedited Payment Policy.

Approved as to Form by



Gary Keane
General Counsel
Oct 3, 2007 10:53 am

Approved as to Funding by



Max Underwood
Vice President
Finance
Oct 3, 2007 11:54 am

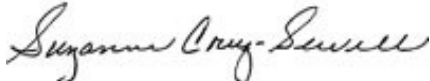
Approved as to M/WBE by



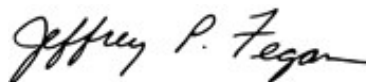
Don O'Bannon
Vice President
Small & Emerging Business
Oct 3, 2007 10:49 am

SIGNATURE REQUIRED FOR APPROVAL

Approved by



Department Head
Small & Emerging Business
Oct 3, 2007 10:49 am



Chief Executive Officer

Oct 4, 2007 1:26 pm

Date