

**DEPARTMENT OF TRANSPORTATION**  
**DBE PROGRAM – 49 CFR PART 26**  
**POLICY STATEMENT**

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

The City of Augusta, Kansas, owner of the Augusta Municipal Airport (3AU), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The city has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the city has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

The Airport Manager has been delegated as the DBE Liaison Officer. In that capacity, the Airport Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the city in its financial assistance agreements with the Department of Transportation.

The city has disseminated this policy statement to the Augusta City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the city DOT-assisted contracts. The distribution was accomplished by publishing this document on the city's website.

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City Manager

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Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives.**

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

### **Section 26.3 Applicability.**

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

### **Section 26.5 Definitions.**

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

### **Section 26.7 Nondiscrimination Requirements.**

The city will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

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

#### **Reporting to DOT**

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

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

The city will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The city will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

#### **Bidders List**

The city will use contractor information from the Kansas Department of Transportation (KDOT) for a bidders list. The purpose of the list is to provide data about the universe of DBE and non-DBE contractors and subcontractors who may seek to work on the city DOT-assisted contracts, for use in helping to set overall goals. The list will include the name, address, DBE, and non-DBE status.

This information will be collected by consulting with KDOT and obtaining information from their website.

Records retention and reporting:

The city, as a member of the Kansas UCP established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the state of certified DBE firms in the UCP Directory controlled by the following:

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

**Section 26.13 Federal Financial Assistance Agreement.**

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

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

The city shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The city shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The city DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the city of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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

termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

## **ADMINISTRATIVE REQUIREMENTS**

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

The city is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The city is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the city is in compliance with it and Part 26. The city will continue to carry out this program until all funds from DOT financial assistance have been expended. The city does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement.**

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

### **Section 26.25 DBE Liaison Officer (DBELO).**

The following individual has been designated as the DBE Liaison Officer for the city:

Airport Manager  
Augusta Municipal Airport  
4800 W. Beech Dr., Ste. 1  
Augusta, KS 67010  
Office: 316-733-1326  
rseif@augustagov.org

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

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO obtains assistance from the city attorney and consultant engineers to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the city's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information in preparing bids.

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

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

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

The city requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the city established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the city.

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

The city holds retainage from prime contractors and provides for prompt and regular incremental acceptances of portions of the prime contract, pays retainage to prime contractors based on these acceptances, and requires a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

To implement this measure, the city includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

**90-06 Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

- a. From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:
  - (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.
  - (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

**Section 26.31 Directory.**

The city is a non-certifying member of the Kansas Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

**Section 26.33 Over-concentration.**

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

**Section 26.35 Business Development Programs.**

The city has not established a Business Development Program.

**Section 26.37 Monitoring Responsibilities.**

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

The city monitors participation by maintaining a tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

The city undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the investigation of complaints from subcontractors.

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

Prompt Payment Dispute Resolution

The city will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29. The city will convene a meeting of the parties to the dispute for the purpose of dispute resolution and include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

The city has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage: A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting the prime directly regarding payment or is unable to resolve payment discrepancies with prime, the subcontractor shall contact the DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the city to resolve prompt payment disputes, the affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### Enforcement Actions for Noncompliance of Participants

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

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime, where allowed by state and local law and when these payments are determined to be AIP eligible.

The city will actively implement the enforcement actions detailed above.

### Monitoring Contracts and Work Sites

The city reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the consultant engineer. Contracting records are reviewed by the consultant engineer. The city will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation.**

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

The small business element may be incorporated as an Attachment to this DBE Program. When implemented, the program elements will be actively implemented to foster small business participation.



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

### **Section 26.43 Set-asides or Quotas.**

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

### **Section 26.45 Overall Goals.**

The city will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the city will submit its Overall Three-year DBE Goal to the FAA, as required by the schedule established by and posted to the following website of the FAA.

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The city will use DBE Directory information and Census Bureau Data to determine the base figure. The city understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The city will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the city will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the city to establish a level playing field for the participation of DBEs. The consultation may include a scheduled exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the city is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the city engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the city will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be posted on the city's official internet web site. If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the city. This notice will provide that the city and the FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1<sup>st</sup> deadline.

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

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

### Project Goals

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

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

#### Prior Operating Administration Concurrence

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

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

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

The city understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. The city will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to the FAA upon request.

**Section 26.49 How are overall goals established for transit vehicle manufacturers.**  
Not applicable.

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

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

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing technical assistance and other services;
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors); and
- (4) Ensuring distribution of the DBE directory, through electronic means, to the widest feasible universe of potential prime contractors.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

The city will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

### Contract Goals

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

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

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

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

#### Demonstration of good faith efforts (pre-award)

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

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
  - a. No later than 2 days after bid opening as a matter of responsibility.

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

#### Administrative reconsideration

Within 2 days of being informed by the city that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: City Manager, 113 East 6th Avenue, Augusta, KS 67010, Office: 316-775-4510, [jshaw@augustagov.org](mailto:jshaw@augustagov.org)

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

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

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

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

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

Such written consent will be provided only if the city agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

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

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

Each prime contract will include a provision stating:

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

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

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

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

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

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.



## **SUBPART D – CERTIFICATION STANDARDS**

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

The city is a non-certifying member of the [State] Unified Certification Program (UCP). The Kansas UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Kansas UCP members make all certification decisions based on the facts as a whole.

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

Office of Civil Rights  
Kansas Department of Transportation  
Eisenhower State Office Building  
700 SW Harrison, Topeka, KS 66603-3745  
Doria.Watson@ks.gov  
785-296-7940

The Uniform Certification Application form and documentation requirements are found at: [www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBE\\_Application.pdf](http://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBE_Application.pdf)

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The city is the member of a Unified Certification Program (UCP) administered by the Kansas Department of Transportation. The UCP will meet all of the requirements of this section.

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

### **Section 26.101 Compliance Procedures Applicable to the city**

The city understands that if it fails to comply with any requirement of this part, the city may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

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

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

The city, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The city understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26 (website link)
- Attachment 2 Organizational Chart
- Attachment 3 DBE Directory (website link)
- Attachment 4 Overall Goal Calculations
- Attachment 5 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 DBE Certification Application Form (website link)
- Attachment 8 State's UCP Agreement (website link)

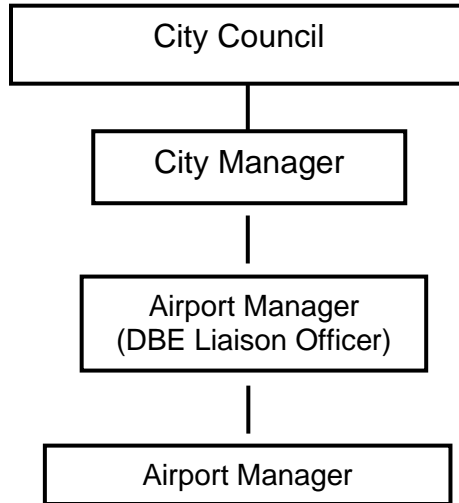
## **ATTACHMENT 1**

Regulations: 49 CFR Part 26 can be found at:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

**ATTACHMENT 2**

**Organizational Chart**



### **ATTACHMENT 3**

Kansas DBE Directory can be found at:

<https://kdotapp.ksdot.gov/dbcontractorlist/>

**ATTACHMENT 4**

Overall DBE Three-Year Goal Methodology

**Name of Recipient:** Augusta Municipal Airport, City of Augusta, Kansas

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

<b>DOT-assisted contract amount:</b>	FY-2022	\$	0
	FY-2023	\$	11,305,706
	FY-2024	\$	0
	<b>Total</b>		<b>\$11,305,706</b>

**Overall Three-Year Goal:** 2.25%, to be accomplished through 2.25% RC and 0% RN

**Total dollar amount to be expended on DBEs:** \$254,007

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

Contracts Fiscal Year #1

- 1. None

Contracts Fiscal Year #2

- 1. Runway reconstruction, extension, and lighting

Contracts Fiscal Year #3

- 1. None

**Market Area:** The market area was determined based on available information indicating that the substantial majority of contractors and subcontractors will come from this area. Information from Kansas Department of Transportation was also utilized. We selected the following geographical areas (counties) from the north central Kansas, which will be used to seek contractors for the projects during the various years.

Counties: Allen, Anderson, Barton, Barber, Butler, Chase, Chautauqua, Coffey, Cowley, Dickinson, Douglas, Ellis, Ellsworth, Elk, Franklin, Greenwood, Harper, Harvey, Kingman, Labette, Lyon, Marion, McPherson, Montgomery, Morris, Neosho, Osage, Pratt, Reno, Rice, Russell, Saline, Sedgwick, Stafford, Sumner, Wilson, Woodson

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

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

Method: Use DBE Directories from Kansas Department of Transportation, found at: <https://kdotapp.ksdot.org/dbecontractorlist/>

and Census Bureau Data from: <https://www.census.gov/data/datasets.html>

Weighted Availability of DBE firms:

For FY-2022-2023-2024, awards of the following contracts are anticipated

Fiscal year	NAICS	Type of Work	Total DBE Firms	Total All Firms	% DBE Firms	Contract Amount	DBE Contract Amount
2022		No Project					
2023	237310	Paving (major)	0	56	0.00%	\$3,511,616	\$0
	237310	Paving (minor)	10	56	17.86%	\$718,401	\$128,286
	238210	Electrical	0	259	0.00%	\$1,534,597	\$0
	238910	Grading	4	159	2.52%	\$4,629,558	\$116,467
	541330	Engineering	2	197	1.02%	\$911,534	\$9,254
					<b>Subtotal</b>	<b>\$11,305,706</b>	<b>\$254,007</b>
				<b>FY 2023 Base Goal</b>	<b>2.25%</b>		
2024		No Project					
					<b>Total</b>	<b>\$11,305,706</b>	<b>\$254,007</b>
					<b>3-Year Base Goal</b>	<b>2.25%</b>	

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability
- Total for All Trades

Dividing the weighted DBE totals by the total estimate for all trades gives a base DBE availability figure for the projects anticipated during the goal-setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Base of DBE Goal:  $\$254,007 / \$11,305,706 = 2.25\%$

**Step 2: Adjustments to Step 1 base figure**

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

Past History Participation. Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, the city is adopting the Step 1 base figure as the overall goal for this three-year goal period.

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



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

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
3. Ensuring that DBEs are notified on DOT-assisted contract lettings
4. When requested, conduct debriefing sessions to explain why certain bids were unsuccessful
5. Provide information on certification procedures, subcontracting, and bonding requirements to small businesses upon request.

The city estimates that in meeting the established overall goal of 2.25%, it will obtain 0% from RN participation and 2.25% through RC measures.

The City does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 2.25% is to be obtained through race-conscious participation.

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

## **PUBLIC PARTICIPATION**

### **Consultation:**

In establishing the overall goal, the city provided for consultation and publication. This process included attempts for consultation with minority, women’s, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the city’s efforts to establish a level playing field for the participation of DBEs. There are no certified DBE firms in the county and no minority or contractor groups in the county or adjacent counties. Thus, a scheduled, direct, interactive exchange was not possible. Therefore, we consulted with the Kansas Department of Transportation to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor’s efforts to establish a level playing field for the participation of DBEs. This was conducted before the goal methodology was submitted to the operating administration for review.

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

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

A notice of the proposed goal was published on the city's official website before the methodology was submitted to the FAA. If the proposed goal changes following review by the FAA, the revised goal will be posted on city's official website.

### **PUBLIC NOTICE**

The city hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 2.25% for FAA-funded contracts and agreements. The proposed goal pertains to federal fiscal years 2022 through 2024. The proposed goal and its attendant methodology are available for inspection between 8:00 a.m. and 5:00 p.m. Monday through Friday at the city office, 113 East 6th Avenue, Augusta, KS for 30 days from the date of this publication.

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

Ray Seif  
Airport Manager  
4300 W. Beech Dr, STE 1, PO Box 489,  
Augusta, KS 67010  
rseif@augustagov.org

AND

Ofelia Medina  
Compliance Specialist  
Disadvantaged Business Enterprise Program  
FAA Office of Civil Rights  
777 S. Aviation Blvd Suite #150  
El Segundo, CA 90245  
Ofelia.Medina@faa.gov

**ATTACHMENT 5**

**Demonstration of Good Faith Efforts - Forms 1 & 2**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

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

Bidder/offeror has not met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FORM 2: LETTER OF INTENT**

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

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

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

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

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_

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

**Classification:**  Prime Contractor  Subcontractor  Joint Venture  
 Manufacturer  Supplier

Work item(s) to be performed by DBE	Description of Work Item	Quantity	Total

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

DBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION:**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

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

## **ATTACHMENT 6**

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

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to state and local laws, statutes, and regulations.

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

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

## **ATTACHMENT 7**

DBE Certification Application Form can be found at:

[www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBE\\_Application.pdf](http://www.ksdot.org/Assets/wwwksdotorg/bureaus/divAdmin/Documents/DBE_Application.pdf)

## **ATTACHMENT 8**

State's UCP Agreement can be found at:

[https://www.ksdot.org/Assets/wwwksdotorg/bureaus/offChiefCoun/Documents/DBEPROGRAM  
MANUAL.pdf](https://www.ksdot.org/Assets/wwwksdotorg/bureaus/offChiefCoun/Documents/DBEPROGRAM%20MANUAL.pdf)