

# PERMIT

<b>PERMIT NUMBER:</b>	
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<b>PARTIES AND ADDRESSES:</b>	
<b>“BOARD”:</b>	DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD  Attn: Revenue Management Department Post Office Box 619428 DFW Airport, Texas 75261 Telephone: 972-574-1131 Fax: 972-574-2760  <u>All Courier Mail route to:</u> DFW Airport Headquarters Revenue Management - 3 <sup>rd</sup> Floor 2400 Aviation Drive DFW Airport, TX 75261
<b>“PERMITTEE”:</b>	

For Operation of XXXXX  XXXX (YEAR to YEAR)
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The Dallas/Fort Worth International Airport Board (hereinafter called "Board") hereby grants to Permittee the hereinafter described privilege at the Dallas/Fort Worth International Airport (hereinafter called "Airport"), in accordance with the Terms and Conditions set forth below:

1. PERMIT NUMBER:
2. PERMITTEE:
3. PERMITTEE'S ADDRESS:
4. PRIVILEGE: To operate \_\_\_\_\_ as reflected in Exhibit "A"
5. RENTS AND FEES:
  - A. Permittee shall pay rents equal to:
    1. \_\_\_\_\_ Percent ( ) of all Gross Receipts for the sale of food and non-alcoholic beverages, hereafter known as Category 2.
    2. \_\_\_\_\_ Percent ( ) of Gross Receipts for the sale of nonprescription drugs, sundries, snacks, candy, chewing gum, mints, stationery, water, bottled/canned soft drinks and beverages and prepared food, hereafter known as "Category 13".
    3. \_\_\_\_\_ Percent ( ) of Gross Receipts from the sale of apparel, hats, souvenirs, tobacco products, film, batteries, and all other retail merchandise not listed in other categories, hereafter known as "Category 11".
    - 4.
    5. \_\_\_\_\_ Percent ( ) of all other Gross Receipts not listed above, hereafter known as Category MISC.
    6. \_\_\_\_\_ Percent ( ) of Branding Fees, Marketing Fees, Merchandising Fees, Promotional Allowances, Retail Display Allowance (RDA), and any type of Ancillary Advertising, hereafter known as Category ALLO.
  - B. Permittee shall pay a Minimum Annual Guarantee of \$ \_\_\_\_\_.
  - C. An Administrative Fee of \$100.00, payable in advance of Permit effective date.
  - D. A \$\_\_\_\_\_ Property Damage and Security Deposit shall be paid in advance of Permit effective date and maintained during the term of the Permit.
6. SCHEDULE OF CHARGES: Permittee shall pay Concessionaire Charges, as set forth in the Dallas/Fort Worth International Airport Schedule of Charges, as may be amended from time to time, with the following exceptions: **XXXXXXX**
7. EFFECTIVE DATE:
8. EXPIRATION DATE: or upon receipt of 30-day notification by DFW.
9. SPECIAL PROVISIONS: As part of the Airport's Growth and Partnership (GAP) program Concessionaire agrees to cooperate fully with the Board's implementation of Sustainability Initiatives, Point of Sale integration, Mobile Ordering and Service Level Agreements. In addition, all locations serving food shall offer an employee menu consisting of entrée and beverage or minimum discount of 15%, all other locations, including retail and services, shall offer a minimum of 10% employee discount. During the Term of this Agreement the Airport reserves the right to implement additional initiatives and Concessionaire will make all reasonable efforts to accommodate these initiatives.

The Lease will be Amended to reflect that Concessionaire shall file with the Board a

weekly Gross Receipts report stating Gross Receipts by and from each location comprising the Premises. The weekly Gross Receipts reports shall be submitted through the Concessionaire Submittal Application (CSA) and shall be filed no later than the day the Department of Concessions specifies for the activity of the immediate prior week. During the term of the Agreement, the Board reserves the right to require Concessionaire to use other Board specified applications or methods to submit and/or report weekly Gross Receipts. If Concessionaire fails to comply, Non-Compliance fees may apply.

Concessionaire shall comply with Products and Pricing. **1 – Airport Brands.**

## **USE OF AIRPORT**

No Leasehold Interest. Although Permittee may be instructed or allowed to use particular areas of the Airport (Designated Operating Areas) for the exercise of the privileges hereunder, Permittee acknowledges that this Permit is not a lease, that there is no leased premises, and that this Permit does not create a leasehold interest in any part of the Airport. The Board may change the Designated Operating Areas at any time and for any reason, in the Board's sole discretion, provided that a relocation of the Designated Operating Area does not interfere with Permittee's privilege hereunder.

No Warranties of Suitability. Permittee acknowledges that the Board has made no representations whatsoever concerning the suitability of any Airport property or facilities for the exercise of the above-stated privileges.

Ingress and Egress. Permittee, its employees, invitees and those doing business with it shall have the right of ingress and egress to the Airport, subject to applicable parking fees, traffic regulations, and other operational rules prescribed by the Board.

Nuisances and Board Rules. Permittee, its employees, invitees, and those doing business with it shall conduct its operations in such a manner so as not to annoy, disturb or be offensive to others at the Airport, and shall maintain all property under its control in a clean and orderly manner as prescribed by the Board. Permittee shall obey all rules and regulations of the Board as they may be amended from time to time. The Board or its agents shall have the right at any reasonable time to inspect Permittee's activities pursuant to this Permit.

Repairs and Improvements. Permittee shall promptly repair or replace any property of the Board or Airlines damaged by Permittee's operations hereunder. If Permittee fails to promptly repair or replace Board property damaged by Permittee's operations, Board may perform such repair or replacement itself and apply Permittee's Property Damage and Security Deposit ("Deposit") toward the cost of such repair or replacement. If Deposit is insufficient to cover the Board's entire cost of such repair or replacement hereunder, Board shall bill Permittee for, and Permittee shall promptly pay, the balance of Board's cost to perform the work. Permittee within 10 days of receipt of such notice shall pay the Board that amount necessary to return the Deposit to the original amount required by this Permit. Permittee shall make no improvements or alterations to Airport property without prior approval, in writing, by the Board's Vice President of Revenue Management or designee.

## **COMPLIANCE WITH APPLICABLE LAWS**

General. Permittee shall pay all taxes, fees and excises which may be assessed, levied, exacted or imposed on its property or operations hereunder, and shall make all applications, reports, and returns required in connection therewith. Permittee shall provide to Board, to the Cities of Dallas or Fort Worth, or to the municipality in which the operation is situated, upon ten days notice and at no cost, any information deemed necessary by them to verify taxes paid as to Permittee's operations, or any other information directly or indirectly concerning amounts to be received by Board or other municipalities pursuant to interlocal tax or revenue sharing agreements. Permittee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the operations of Permittee at the Airport which may be necessary for Permittee's operations. Permittee shall promptly comply with the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to Permittee's operations at the Airport, including the requirements of the Americans with Disabilities Act. Permittee's obligations to comply with governmental requirements are provided herein for the purpose of assuring proper safeguards for the protection of persons and property and are not to be construed as a submission by the Board to such requirements or any of them.

Environmental. Permittee shall immediately inform the Board of any suspected or discovered violation of any applicable environmental rule, regulation, or law. The Board reserves the right to notify the appropriate authorities concerning any such suspected or discovered violation. Permittee agrees to comply with all environmental laws, rules, regulations, orders and/or permits applicable to Permittee's operations on or in the vicinity of the Airport, including but not limited to required National Pollutant Discharge Elimination System Permits and all applicable laws relating to the use, storage, generation, treatment, transportation, and/or disposal of hazardous or regulated substances. Permittee shall not knowingly use, store, generate, treat, transport or dispose of any hazardous or regulated substances or waste on or near the Airport without first obtaining prior written approval from the Board's Environmental Services Section and all required permits and approvals from all authorities having jurisdiction over Permittee's operations on or near the Airport. If Permittee determines at any time through any means that any

threat of any potential harm to the environment, including but not limited to any release, discharge, spill or deposit of any hazardous or regulated substance, has occurred or is occurring which in any way affects or threatens to affect the Airport, or the persons, structures, equipment, or other property thereon, Permittee shall immediately notify, in person or by telephone: (1) the Board's Environmental Services Section, (2) the Board's Fire Marshal, and (3) all emergency response centers and environmental or regulatory agencies, as required by law or regulation, and shall follow such verbal report with written confirmation within seventy-two (72) hours. Permittee agrees to cooperate fully with the Board in promptly responding to, reporting, and remedying any threat of potential harm to the environment, including without limitation any release or threat of release of hazardous or regulated substances into the drainage systems, soils, ground water, waters or atmosphere, in accordance with applicable law or as authorized or approved by any agency having authority over environmental matters. Permittee shall be responsible to the Board, including remediation and all costs associated therewith, for Permittee's action or inaction which is directly or indirectly responsible for any failure of the Airport to materially conform to all then applicable environmental laws, rules, regulations, orders and/or permits. The rights and obligations set forth in this paragraph shall survive the termination of this Permit.

Other.

- A. Permittee, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Permit for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 23 and 26, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- B. Permittee, as a part of the consideration hereof, does hereby covenant and agree that:
1. no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
  2. in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and
  3. Permittee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23 and 26, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.
- C. Permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Permittee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods:
1. the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  2. the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

## **AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES**

Permittee agrees to adhere to all statements and representations contained in AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE SPECIAL CONTRACT PROVISIONS which is attached as Exhibit "C", provided however in the event of any inconsistencies with other terms of this Permit, said other terms shall control.

### **INDEMNITIES**

**Permittee agrees to indemnify, hold harmless, defend and insure the Airport Board, the Cities of Dallas and Fort Worth, their directors, officers, agents, councils and employees from and against any and all claims and causes of action, administrative proceedings, judgments, penalties, fines, damages, losses, demands, liabilities, or expenses whatsoever (including reasonable attorney's fees and costs of litigation, mediation and/or administrative proceedings) which may be brought, alleged, or imposed against the Board, the Cities of Dallas and Fort Worth, their directors, officers, agents, councils, or employees arising directly or indirectly from or in any way connected with (1) any property damage or loss, personal injury, including death, or adverse effect on the environment, arising out of Permittee's action or inaction with regard to the operations of Permittee hereunder; (2) the failure of the Permittee, its agents or employees, to comply with the terms and conditions of this Permit, or to comply with any applicable federal, state, or local laws, rules, regulations, ordinances, or orders including, but not limited to, any and all applicable environmental laws, rules, regulations, or orders; and/or (3) release of any hazardous or regulated substances or waste onto, into, or from the Airport, connected in any way with Permittee's operations or action or inaction of Permittee, its agents or employees, regardless of whether the act, omission, event, or circumstance constituted a violation of applicable law at the time of the occurrence. The rights and obligations set forth in this paragraph shall survive the termination of this Permit.**

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Permittee shall promptly advise the BOARD in writing of any claim or demand against the BOARD or Permittee known to Permittee related to or arising out of Permittee's activities under this permit.

### **INSURANCE**

Permittee shall, at its expense, maintain in effect not less than the following coverage and limits of insurance, which Permittee shall maintain with insurers, policy forms and deductibles satisfactory to the Board. If the coverage fails to comply with these requirements, Permittee agrees to amend, supplement or endorse the existing coverage to comply, at no additional cost to the Board, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. Any deviation from the requirements outlined below requires the prior written approval of the Department of Risk Management.

All policies must be written through a licensed company authorized by the Texas State Board of Insurance to transact that class of insurance business in the State of Texas, with a minimum rating of "A -", and "VII" by A. M. Best Company or by an approved surplus lines carrier. If the rating of any insurer should fall below this standard, Permittee shall cause the policy to be replaced promptly by an acceptable insurer.

All policies shall designate the following parties as "Additional Insured's":

*"Dallas/Fort Worth International Airport Board and the cities of Dallas and Fort Worth, Texas"*

Should this Lease require the use of contractors, it will be the sole responsibility of Permittee to require contractors to provide and maintain the insurance limits and coverage required herein, or to provide said insurance coverage for the contractors by designating the contractors as additional insureds, either by a blanket additional insured endorsement or by specific endorsement.

All policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.

If any policy is in excess of a deductible or self-insured retention (SIR), the amount of such deductible or SIR must be clearly identified, and may not exceed one (1%) percent of Permittee's net worth. The Board reserves the right to reject any deductible or SIR, or require Permittee to provide a bond at no additional cost to the Board.

All policies must be primary with respect to coverage provided for the Board.

All policies must be non-contributory with other coverage or self-insurance available to the Board.

## B. REQUIRED COVERAGE AND LIMITS

Workers' Compensation:

Statutory Coverage

All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for the Board, or entering upon the Board's premises, must be covered by Workers Compensation.

If Permittee is a sole proprietorship without employees and will not be using any subcontractors in the performance of this Lease, it may substitute the following for workers compensation insurance: Permittee must provide the Board's Risk Management Department with proof of medical insurance covering the sole proprietor and, as sole proprietor.

Workers' Compensation or act rejection medical policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.

Employer's Liability:

\$ 500,000 Each Accident

\$ 500,000 Each Disease, Each Employee

\$ 500,000 Each Disease Policy Limit

Commercial General Liability (CGL):

\$1,000,000 Limit Any One Occurrence

\$ 5,000 Medical Payments

\$ 100,000 Damage to Rented Premises

\$1,000,000 Personal and Advertising Injury

\$2,000,000 Policy Aggregate (per location or per project)

\$2,000,000 Products and Completed Operations Aggregate

Should the Permittee or its hired contractors or subcontractors perform remodeling, construction, alterations or refurbishments, CGL coverage shall include completed operations for not less than two (2) years following substantial completion of the work. The CGL shall be endorsed to include coverage contractual liability and Independent Contractors.

CGL coverage applies unless Permittee provides only trucking, (no premises or operations other than driving, loading/unloading), or garage operations (see below).

Business Automobile Liability:

\$500,000 Combined Single Limit for Each Accident

Coverage must apply to all vehicles (owned, non-owned, or hired) operating on the Board's site/location, or transporting the Board's personnel or property off the Board's site, except vehicles operated by Permittee or Permittee's employees commuting in personal vehicles to the Board's parking facilities, in which case Permittee must carry only Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.

Hauling any materials, property, cargo or equipment that contains or may contain hazardous waste must include a Motor Carrier Act (MCS 90) form or broadened pollution liability endorsement. Trailers and other towed equipment and trailer interchange coverage shall be included where applicable.

If your operations are solely a garage (vehicle maintenance and repair), Permittee must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

All liability policies, except Pollution & Professional, must be written on an "Occurrence Form." Neither "Modified Occurrence" nor "Claims-Made" policies are acceptable. If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of Permittee's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Aggregate limits of all liability policies shall be "per project" or "per location," as appropriate. If any aggregate limit is reduced by 25% or more by reserved or paid claims, Permittee must notify the Board and promptly reinstate the required aggregates.

All liability policies shall name the Board and the Cities of Dallas and Fort Worth as "Additional Insureds," including coverage for Products/Completed Operations.

All liability shall include Broad Form Contractual Liability covering the indemnification provisions of this Lease. All liability policies shall cover loss caused by Permittee's subcontractors, independent contractors, suppliers or other parties providing goods or services in connection with this Lease.

All liability policies must contain a "severability of interests" provision.

All liability policies must cover cross-suits between insureds.

If Permittee's operations involve any construction, no liability policy shall contain exclusions for hazards of explosion or collapse.

If Permittee's operations involve any construction, reconstruction, repair or similar work, no liability policy may contain any exclusion for such work.

### C. ADDITIONAL COVERAGE AND LIMITS

Excess / Umbrella Liability:

Provide applicable coverage

Air Operations Area:

\$10,000,000 (When work is required within air operations area)

Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

Secure/Sterile Side Operations:

\$5,000,000 (When work is required within secure side of terminal, but outside air operations area)

Excess/Umbrella Liability coverage must apply in excess of all required primary liability insurance, and must be at least as broad as the underlying liability insurance.

Excess/Umbrella Liability coverage limit may be satisfied by adding the amounts of CGL and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000. The same would be applicable for Business Auto Liability and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000.

Pollution Liability Insurance:

\$1,000,000

If Permittee has any exposure to asbestos, lead, mold, (including any work that could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, Permittee shall provide appropriate Pollution Liability or Environmental Impairment insurance.



If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Liquor Liability:

\$3,000,000 (if liquor is served by Permittee or subtenant)

Not limited to "host liquor" coverage.

Permittee, Contractors or Subcontractors Property and Equipment:

If Permittee, Contractors or Subcontractors utilize any mobile or other equipment, tools or machinery for their work or operations, they shall maintain all-risk Property and Contractors Equipment coverage for personal property including all owned and non-owned property in their care, custody or control or for which they are legally liable or for which they have agreed to insure or be responsible and include a Waiver of Subrogation in favor of the Board. Permittee, Contractors and Subcontractors will ensure, where and when applicable that proper insurance and coverage limits are in place as respects owning and/or operating lifting or crane and rigging equipment and provide such evidence of insurance on their COI and/or by attaching a copy of the policy endorsement.

Deductibles and Retention:

Permittee, Contractors or Subcontractors shall be responsible for any and all deductibles or self-insured retention amounts with respect to losses and related investigations, claim administration and defense expenses pertaining to the requisite liability coverages, workers compensation and excess/umbrella insurance policies specified herein.

Aggregate Limits:

If any of the insurance coverages required contain aggregate limits applying to other operations of Permittee, Contractors or Subcontractors outside of this Agreement and these limits are diminished by any incident, accident, occurrence, claim, settlement or judgment against their insurance, Permittee, Contractors and Subcontractors shall take immediate steps to restore aggregate limits or shall provide other insurance protection for the aggregate limits.

Completed Operations:

Permittee shall be responsible for claims that may arise out of the Permittee's operations or completed operations whether such operations or completed operations are by the Permittee or its hired Contractors, Subcontractors or Independent Contractors.

Adequacy Regarding Coverage:

By requiring insurance herein, Permittee does not represent that coverage and limits will necessarily be adequate to protect the Board and such coverage and limits shall not be deemed as a limitation or cap on Permittee's liability or indemnities granted to the Board in this Contract.

#### D. CERTIFICATION OF INSURANCE

Permittee or its insurance agents or brokers shall email a Certificate of Insurance to the Board Certificate Inbox, [dfwcoi@dfwairport.com](mailto:dfwcoi@dfwairport.com) or fax to 972.973.5651. Permittee shall cause Permittee's insurance data to be kept current for the period of time Permittee is responsible pursuant to this Agreement.

Permittee, upon oral or written request, shall furnish copies of policies, certified by an authorized representative of the insurers, within ten (10) days of request.

All insurance policies shall contain a provision that written notice shall be given to the Board's Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium. In the event Permittee is not notified that an insurer intends to terminate or not renew a policy or reduce coverage below requirements of this Lease, Permittee shall arrange acceptable alternate coverage to comply with said requirements and cause replacement coverage data to be obtained. In addition, Permittee shall cause its agent, broker or insurer to enter a cancellation date into the Board's designated automated insurance reporting system, as soon as the effective date is known to the agency, brokerage, or insurer (if insurer enters data).

No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance requirements of this Lease.

Approval, disapproval or failure to act by the Board regarding any insurance obtained by Permittee shall not relieve Permittee of responsibility or liability for damages and accidents as set forth herein, nor shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Permittee from liability.

In addition to the Certificate of the Board reserves the right to request from Permittee, Contractors or Subcontractors directly or indirectly employed by Permittee copies of insurance coverage endorsements or exclusions as requested herein either by attachment to a COI or by individual submission. The "Project or Contract Name", "Contract Number" and a 'brief' description of the work or contract shall be listed within the Description of Operations box on all COIs as reference to which project, contract, operations or work the COI is intended to apply. Should Permittee or Contractors or Subcontractors fail to provide evidence of compliant insurance and COIs prior to the start of work or operations, the Board reserves the right to disallow them from entering the project, work site or performing operations.

## **FINANCIAL REPORTING**

### Regular Reporting.

Permittee shall file with the Board a weekly Gross Receipts report stating Gross Receipts by and from each location comprising the Premises. The weekly Gross Receipts reports shall be submitted through the Concessionaire Submittal Application (CSA) and shall be filed no later than the day the Department of Concessions specifies for the activity of the immediate prior week.

Gross Receipts submitted into this application will be totaled at the conclusion of each calendar month to determine the amount of percentage rent due where applicable. Permittee must calculate the amounts due in accordance with this Permit and payment should be received no later than the 20<sup>th</sup> of each month following the month of accrual. As the CSA process is enhanced, the Permittee 's payment due date may be adjusted accordingly.

Permittee shall prepare and maintain in accordance with Generally Accepted Accounting Principles complete and accurate books and records that include all income, expenses, Gross Receipts, and other economic transactions under this Permit, and the Board shall have the right, through its representatives, and at all reasonable times, to inspect the books and records of Permittee, any sublessees, or other participants in the operations authorized in this Permit. Permittee's system of accounts shall allow each location of Permittee's operations under this Permit to be distinguished from all other locations or operations of Permittee. Permittee shall maintain source documents sufficient to support Permittees books, records, and reports.

The Board reserves the right to require such additional information be reported as deemed necessary by the Board and in a format as developed by the Board from time-to-time. Permittee shall pay a fee per the Schedule of Charges if Permittee fails or refuses to file any Gross Receipts report due hereunder within twenty-four (24) hours of its required filing.

All Gross Receipt reports shall be filed using the technology and procedures designated by the Board. If the Board instructs Permittee to file the reports using future technology, the Board shall not be obligated to furnish Permittee with the equipment or systems necessary to do so.

"GROSS RECEIPTS", sometimes called Gross Revenues or Gross Sales, shall include all monies paid or payable to Permittee for sales made and for services rendered at or from the Premises, to include catering and

internet sales, regardless of when or where the order therefor is received (including outside the Premises), and any other receipts, credits, rebates, allowances, or revenues of any type arising out of or in connection with Permittee's operations (or those operations of Permittee agents or sublessees) at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, retail display allowances (RDA), and any type of ancillary advertising or product placement fees/allowances, provided, however, that Gross Receipts shall not include:

1. Any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by Permittee;
2. Amounts and credits received in settlement of claims for loss of, or damage to merchandise;
3. Amounts and credits received from suppliers for products and merchandise returned by Permittee;
4. Receipts that are later refunded to a customer for merchandise returned;
5. Insurance proceeds;
6. Bulk sales as defined by the U.C.C;
7. Tax rebates;
8. Inter-store transfers; and
9. Amounts for coupons and other forms of discounts (including, but not limited to, complimentary customer and employee meals), such that only the amounts actually received are ultimately included in Gross Receipts.

When properly recorded and accounted for, Permittee may also deduct from Gross Receipts the Mixed Beverage Taxes paid to the State of Texas and levied as a percentage of the amounts charged by Permittee for mixed beverages; provided Permittee lists said Mixed Beverage Taxes on reports of Gross Receipts submitted to the Board.

Audits. The Board shall have the right until three (3) years after the expiration or termination of this Permit, through its representatives, and at all reasonable times, to review all books, records, and agreements of Permittee (and where applicable, all individuals or other business entities who are party to this Permit) requested by the Board's representatives to substantiate the accuracy of reported Gross Receipts and Permittee's compliance with other provisions of this permit. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Permittee personnel (including, but not limited to, cooperation in sending confirmations to Permittee's suppliers or others, assisting the Board in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by the Board's representatives to complete the audit. All such books, records, and agreements shall be kept for a minimum period of five (5) years after the close of each calendar year.

Audits will be conducted at Dallas/Fort Worth International Airport. However, if first agreed to by the Director of Audit Services or designee, the audit can be conducted off the Airport, in which event Permittee shall reimburse the Board for reasonable transportation, food and lodging costs associated with the audit. Permittee shall allow the Board's representatives to copy any records the representatives determine to be necessary to conduct and support their audit. Permittee shall provide the Board's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the audit. Permittee shall not charge the Board for reasonable use of Permittee's copy machine while conducting the audit, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical, microform or other media. Permittee shall provide all records and retrievals requested, within seven calendar days. If such records are not received within 14 calendar days, the Board may assess liquidated damages in the amount of \$100 per day for each record or retrieval not received. Such damages may be assessed beginning on the 15th day following the date the request was made.

If, as a result of the audit, it is established that Permittee underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or more for the period audited, the entire expense of the audit shall be borne by Permittee. Any additional payments due shall forthwith be paid by Permittee to the Board with interest thereon at the same rate specified for late fees, from the date the subject rent or fees became due. If it is established that Permittee underreported Gross Receipts or underpaid fees related to Gross Receipts by five percent (5%) or more for the period audited, the Board shall be entitled to terminate this Permit for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid.

## **MONETARY OBLIGATIONS**

Rents. Percentage rent for each month is due and payable by the 20th day of each month following the month of accrual, without issuance of an invoice. Payment will be considered late if not received by the 20th day of the same month and late payments will be accrued as set forth in the Airport's Schedule of Charges. If the rent commencement date occurs other than on the first day of the calendar month or if the expiration date occurs other than on the last day of the month, then the minimum guarantee and the percentage rent shall be prorated for said month. All payments shall be made to:

Dallas/Fort Worth International Airport  
P.O. Box 974551  
Dallas, TX 75397-4551

Or as may otherwise be designated in writing by the Revenue Management Department.

Schedule of Charges. Permittee shall timely pay to the Board beginning with the month of the Effective Date all applicable charges as set forth in the Schedule of Charges, as may be amended from time to time, including without limitation all Permittee Charges, unless specifically waived by this Permit. All charges based upon square footage shall be calculated using the square footage allocable to the Designated Operating Area. Upon expiration of this Permit, Permittee shall pay to the Board accrued and unpaid fees and charges to the date of vacancy, with final payment to be received within thirty (30) days following the date of vacancy or receipt of a final statement, whichever occurs first.

## **RULES OF BUSINESS OPERATION**

General Standards. Permittee shall conduct its business in a first-class, businesslike, efficient, courteous and accommodating manner. The Board shall have the right to make reasonable objections to the character of the service rendered the public, and Permittee agrees to promptly discontinue or remedy any such objectionable practice.

Non-Competition. Permittee agrees to take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it at the Airport and agrees that Permittee will not divert or cause or allow to be diverted any business from the Airport.

Permissible Goods. Permittee has caused to be attached hereto as Exhibit "B" a complete list of all goods and/or services Permittee is allowed to sell at the Airport as well as the prices to be charged to the public. Permittee shall not add, delete or sell merchandise of categories not reflected on the aforesaid exhibit without first receiving written approval from the Board, which shall not be unreasonably withheld or delayed.

Street-Level Pricing. Permittee understands the Board's objective to achieve street level pricing of all goods and services sold to the public at the Airport. Accordingly, Permittee warrants and represents that prices charged at the Airport shall not be more than ten percent (10%) higher than prices charged at non-airport locations. It is agreed that prices derived from local area malls best represent that similarity sought by the Board. If a comparison of non-airport locations finds the Permittee to be charging more than ten percent (10%) above the average street price for the same or similar items, then the Permittee will be required to reduce prices to the ten percent level.

Prior to the effective date of the Permit, the Permittee must submit a product and price list for approval by the Vice President of Revenue Management or his designee. This product and price list must identify the shops and locations used as a basis for establishing the prices charged by the Permittee.

Hours of Operation. Permittee agrees that each business location will open daily at least one hour prior to the scheduled departure of the first flight originating from a holdroom area within five column lines either side of the location and each business location will remain open for customers until the last departure in the evening from a similarly located holdroom area. Further, any flight delays within the five column lines distance shall require the Permittee to remain open to the public to provide its service until said flight leaves the subject gate.

Personnel. Permittee agrees to employ or permit the employment of only such personnel as will assure a high standard of service to the public. All the personnel, while on or about the Airport, shall be clean, neat in appearance, uniformly attired (with appropriate identification badge displaying no less than the Permittee and employee name), and courteous at all times. No personnel employed by the Permittee, while on or about the Airport, shall use improper language, act in a loud, boisterous, or otherwise improper manner, or be permitted to solicit business in a manner that is offensive or otherwise unprofessional.

Deliveries. Permittee agrees to protect the landside curb utilization integrity and the terminal security entry points for the flow of airline passengers during any merchandise deliveries. Permittee agrees that the Board, in its sole discretion and upon advance written notice, may require that all products delivered to the terminal be limited to certain entry points and certain delivery times. Permittee further agrees that the Board in its sole discretion and upon sixty (60) days advance written notice may require a merchandise distribution operator. The Permittee using the system will pay all costs associated with the operation of any distribution or delivery system and any related security or screening costs.

## **DEFAULT, REMEDIES, AND TERMINATION**

Default. If the Board is required or reasonably elects to pay any sum or sums, or incurs any obligations or expenses due to the failure, neglect or refusal of Permittee to perform or fulfill any one or more of the conditions, covenants, or agreements set forth in this Permit, or as a result of an act or omission of Permittee contrary to said conditions, covenants and agreements, Permittee agrees to pay within thirty (30) days the sum or sums so paid or the expenses so incurred, including all interest, costs, damages and penalties, and the same may be added to fees due hereunder.

Termination. The Chief Executive Officer of the Board may terminate this Permit at any time or require Permittee to immediately cease any operations hereunder, with or without cause, upon thirty (30) days written notice to Permittee. If the Permit is terminated without cause, the Board shall refund to Permittee the fees paid for that Permit year, pro rata.

Restoration of Property. Upon termination of this Permit, Permittee shall at its sole expense restore any Airport property under its control to its original condition as required by the Board, exclusive of normal wear and tear. If Permittee fails to promptly so restore Board property, Board may perform the restoration itself and apply Permittee's Property Damage and Security Deposit (hereafter "Deposit") toward the cost of such restoration. If Deposit is insufficient to cover the Board's entire cost of any such restoration, Board shall bill Permittee for, and Permittee shall promptly pay, the balance of Board's cost to perform the work. Any property of Permittee placed on or kept at the Airport by virtue of this Permit shall be removed within thirty (30) days of the expiration or earlier termination of the Permit.

Holdover by Permittee. In the event Permittee shall hold over and continue its activities under this Permit after the expiration of the term of this Permit, such holding over shall not be construed to operate as a renewal or extension of this Permit, but shall operate and be construed as a tenancy at sufferance. Failure to cease activities under this Permit upon its expiration shall subject Permittee to a holdover penalty of \$100 per day, in addition to all fees due hereunder, until such activities are ceased.

## **MISCELLANEOUS**

No Assignment. This Permit shall not be assigned, sold, conveyed, mortgaged, or pledged (other than to an affiliated or related company) without the prior written approval of the Board.

Entire Agreement. This Permit constitutes the entire agreement of the parties as to the subject matter contained herein and may not be changed, modified, discharged, or extended except by written instrument duly executed on behalf of the parties.

Authority of Vice President. The Vice President of Revenue Management or designee is authorized to act for the Board in the administration of this Agreement. Any consent or approval hereunder given by said Vice President shall be deemed to be the consent or approval of the Board.

Article Headings The titles and headings contained in this Permit and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Permit.

Notices. All notices hereunder may be delivered or mailed to the Board at the following address, or such other address as designated in writing by the Board:

D/FW International Airport Board  
P.O. Box 619428  
DFW Airport, Texas 75261-9428  
Revenue Management Department  
Telephone: 972-574-1131

**DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD**

Signature: \_\_\_\_\_  
Chief Executive Officer (or his Designee)

Print Name: Zenola Campbell \_\_\_\_\_

Title: Vice President Concessions \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Legal Counsel for the Board

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

**Permit Number:** \_\_\_\_\_

**Designated Operating Area**

I.

<b>Terminal</b>	<b>ID Number</b>	<b>Gate</b>	<b>Square Footage</b>	<b>Name of Business</b>



**EXHIBIT B**

**Permit Number:** \_\_\_\_\_

**MERCHANDISE/PRICE LIST**

**To be added upon execution of this Permit**

Permit Number: \_\_\_\_\_

**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) SPECIAL  
CONTRACT PROVISIONS**

**An ACDBE participation commitment has been established for this Agreement, as noted in Article One (1) of this Agreement and stated in its Commitment to Airport Concessions Disadvantaged Business Enterprise (ACDBE) Participation form. Such participation is a contractual commitment upon execution of this Agreement.**

**A. GENERAL REQUIREMENTS**

1. It is the policy of DFW International Airport ("Airport" or Board") that ACDBEs as defined in 49 CFR Part 23 ("Part 23") shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Airport has developed and implemented an ACDBE program as required under Department of Transportation 49 CFR Part 23. The ACDBE program objective is to ensure full and fair access to concession opportunities for all businesses and in particular for ACDBE businesses.
2. Concessionaire acknowledges that it is a "concessionaire" as that term is defined in 49 C.F.R. § 23.3.
3. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the performance of this Agreement or any management agreement, subcontract, purchase agreement, or other agreement covered by 49 CFR Part 23. Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Board deems appropriate.
4. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with all the Airport's Business Diversity Programs, policies and procedures. The Airport's Vice President of BDDD has been designated as the ACDBE Liaison Officer. In that capacity, the Vice President is responsible for compliance with all aspects of the ACDBE program. The Vice President has established an overall, annual ACDBE goal for the Airport.
5. Concessionaire specifically agrees to comply with all applicable provisions of the Board's ACDBE Policy and Procedures Manual and any amendments thereto. ACDBE and Non-ACDBE business partners, sub-concessionaires and vendors shall also be required to agree to comply with all applicable provisions of the Board's ACDBE Policy and Procedures Manual ("Manual").
6. BDDD and or the Airport may make changes to the existing policy, procedures and contract provisions. Any future changes supersede past policies, procedures, contract provisions. The Concessionaire, business partners and sub concessionaires are responsible to be aware of future changes.
7. Concessionaire shall maintain records showing:
  - a. Subcontract/supplier awards, including awards to ACDBEs;

- b. Specific efforts to identify and award such contracts to ACDBEs;
  - c. Executed contracts with ACDBEs showing actual ACDBE participation.
8. Failure to comply with the Airport's ACDBE policies or 49 CFR Part 23, or any other applicable laws or regulations, shall constitute a material breach of this Agreement, and shall be cause for termination of this Agreement and entitle to Airport to any and all remedies available at law or equity.

**B. ADMINISTRATIVE REQUIREMENTS**

- 1. Concessionaire is charged with knowledge of and is solely responsible for complying with each requirement of Part 23 in maintaining its participation commitment or demonstrating a good faith effort as described below. Should any questions arise regarding specific circumstances, Concessionaire must consult Part 23, appropriate DOT Rules and Regulations, or may contact the BDDD office at 972-973-5500.
- 2. Concessionaire shall appoint a high-level official, who will report directly to Concessionaire's chief executive officer or equivalent to administer and coordinate Concessionaire's ACDBE contractual commitments and obligations under 49 CFR Part 23.
- 3. Concessionaire agrees to submit monthly reports of payments and subcontract and/or supplier awards to ACDBEs and Non-ACDBEs in such form and manner and at such times as the Board shall prescribe.
- 4. Concessionaire shall provide BDDD access to all books, records, accounts and personnel. Such access will be used for, among other purposes, determining ACDBE participation and compliance with the ACDBE Policy and Procedures Manual. Concessionaire may be subject to interim and post-contract ACDBE audits. Audit determination(s) regarding Concessionaire's compliance with the ACDBE Policy and Procedures Manual may be considered and have a bearing on consideration of Concessionaire for award of future contracts.

**C. GOALS AND GOOD FAITH EFFORTS**

- 1. Under the Policies, BDDD establishes an ACDBE Goal for each concessions package. The ACDBE Goal for each package is stated in the Request for Proposal. The ACDBE Goal is a percentage of annual gross receipts for each package.
- 2. To comply with the proposal requirements of the Policies, a Concessionaire must either meet the ACDBE Goal or demonstrate that it made sufficient good faith efforts to meet the ACDBE Goal. If the Concessionaire will not meet the ACDBE 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 ACDBE Goal. This good faith effort documentation must be submitted with the Concessionaire's proposal.
- 3. In evaluating a Concessionaire's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
- 4. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)

- a. Responsive – compliance with requirements. If a proposal meets the ACDBE Goal or shows an adequate good faith effort in accordance with the Policies, then BDDD shall notify the procuring department to regard the proposal as responsive.
  - b. Non-Responsive - failure to meet requirements. If a proposal subject to an ACDBE Goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard proposal as non-responsive. Such determination shall result in no further consideration of the proposal by the Airport. This decision is not appealable.
5. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the good faith effort criteria under the guidance of 49 CFR Part 26. The responses to the criteria are considered when assessing whether a Concessionaire made good faith efforts to meet the ACDBE Goal. The criteria are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the ACDBE Goal. The criteria should not be considered as a template, checklist or some quantitative formula. A Concessionaire is required to meet all criteria outlined and provide support documentation for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the ACDBE Goal. This means that a Concessionaire must show that it took all necessary and reasonable steps to achieve an ACDBE Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the ACDBE Goal, even if they were not fully successful. Failure of the Concessionaire to demonstrate adequate good faith efforts as to any one of the outlined criteria shall render the overall good faith showing insufficient and the proposal non-responsive. The Airport will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the Concessionaire 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 FIATH EFFORT. Concessionaires are not limited to these particular areas and may include other efforts deemed appropriate. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A).
6. Post award, the Concessionaire has a continuing obligation as a covenant of performance to meet the ACDBE utilization to which it committed to at Contract award. If amendments or other modifications are made to agreements with ACDBEs, and if said changes affect the ownership interest, dollar value or scope of work of said ACDBEs, Concessionaire shall immediately inform BDDD in writing of such changes, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification. Concessionaire must make good faith efforts to maintain its ACDBE

participation commitment. Concessionaire cannot terminate or otherwise change the terms of its ACDBE commitment without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Concessionaire seeks to perform work originally designated for an ACDBE with its own forces or those of an affiliate, a non-ACDBE or another ACDBE. If Concessionaire during Agreement performance must replace an ACDBE for any reason, it must follow the provisions herein governing the substitution of ACDBEs and make documented good faith efforts to meet its original ACDBE participation commitments.

7. Concessionaire must demonstrate good cause to terminate an ACDBE business partner, contractor or supplier. Good cause includes the following circumstances:
  - a. The listed ACDBE business partner, contractor or supplier fails or refuses to execute a written contract.
  - b. The listed ACDBE business partner, contractor or supplier fails or refuses to meet Concessionaire's reasonable, nondiscriminatory bond requirements.
  - c. The listed ACDBE business partner, contractor or supplier becomes bankrupt, insolvent or exhibits credit unworthiness.
  - d. BDDD has determined that the listed ACDBE business partner, contractor or supplier is not a responsible firm.
  - e. The listed ACDBE business partner, contractor or supplier voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
  - f. The listed ACDBE business partner, contractor or supplier is ineligible to receive credit for the type of work required.
  - g. The ACDBE owner dies or becomes disabled with the result that the listed ACDBE business partner, contractor or supplier is unable to complete its work on the contract.
  - h. Other documented good cause as determined by the BDDD.

Good cause does not include where Concessionaire seeks to terminate a ACDBE it relied upon to obtain this Agreement so that Concessionaire can self-perform the work or substitute another ACDBE or non-ACDBE business partner, contractor or supplier to perform the work for which the ACDBE was engaged or listed in the proposal.

Concessionaire must give the ACDBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. Please reference CFR, Part 26.53 for additional requirements.

8. Good faith efforts during Agreement performance must include, but are not limited to:
  - (a) Solicitation of ACDBEs that are certified in the applicable area of work or specialty;
  - (b) Providing interested ACDBEs with adequate information about the plans, specifications, scope of work and requirements of this Agreement;
  - (c) Fairly investigating and evaluating the interested ACDBEs regarding their capabilities, not rejecting ACDBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement

giving Concessionaire's reasons for its conclusion that it rejected each non-utilized ACDBE because the ACDBE was not qualified;

- (d) Negotiating in good faith with interested ACDBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested ACDBEs, and providing written documentation why Concessionaire and any of the ACDBEs contacted failed in negotiating an agreement; and
  - (e) Effectively using the services of available minority and women community organizations; chambers and concessionaire groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of ACDBEs.
9. If Concessionaire is found not to have made continuing good faith efforts to meet its ACDBE contractual commitment, it may request administrative review and final reconsideration by the Vice President of BDDD. Concessionaire may elect to meet in person to discuss whether Concessionaire made continuing good faith efforts in accordance with the Policies.
10. Concessionaire may not require exclusive subcontracting or teaming agreements with other concessionaires, sub-concessionaires, contractors or vendors.
11. In evaluating Concessionaire's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
12. Concessionaire must submit an *Intent to Perform* form for each proposed new ACDBE business partner, contractor or supplier. BDDD will approve or disapprove the substitution based on Concessionaire's documented compliance with these provisions.
13. BDDD will look not only at the different kinds of efforts that Concessionaire has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the commitments, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, Concessionaire's efforts could reasonably be expected to produce a level of ACDBE participation sufficient to meet the ACDBE Goal.
14. The amount and type of ACDBE participation proposed will become a firm commitment upon execution of BDDD approval, Lease Agreement/Board Approval and will be monitored by BDDD. The Concessionaire agrees, as an expressed condition of its performance, to comply with the requirements of 49 CFR Part 23 and the appropriate provisions under the lease agreement.

#### D. COUNTING ACDBE PARTICIPATION

- 1. BDDD will evaluate each proposal to determine the responsiveness of the proposal to the Policies. In determining if a Concessionaire's committed levels of participation meet or exceed the solicitation's ACDBE Goal, BDDD shall base its determination solely on the information provided in the proposal submission.
- 2. If a joint venture is proposed to meet the ACDBE Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the ACDBE will perform with its own workforce, reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.

3. When calculating participation levels, percentages and dollar amounts for each ACDBE, Concessionaire cannot round up in determining whether or not the total of these amounts meets or exceeds the ACDBE Goal.
4. The participation of an ACDBE whose ownership interest percentage is less than 10% is deemed as not performing a commercial useful function and therefore shall not count towards an ACDBE goal that is greater than 10%.
5. A Concessionaire cannot require an ACDBE to enter into an exclusive arrangement for purposes of submitting its proposal or require the ACDBE to enter into a non-compete arrangement post award.
6. Post award, the Concessionaire may count towards its ACDBE contractual commitment an ACDBE that is certified by an approved entity during the performance of the Agreement if the ACDBE is added to the Agreement or substituted for a ACDBE pursuant to the SUBSTITUTIONS OR TERMINATIONS section herein.
7. Post award, the participation of a firm not certified as an ACDBE, in accordance with the standards of Subpart D of this section, at the time of the execution of the contract, shall not count towards an ACDBE commitment, except as provided for in §26.87.
8. Concessionaire may not count toward its ACDBE contractual commitment the dollar value of work performed by a ACDBE after it has ceased to be certified as an ACDBE, except where the ACDBE is no longer certified because it has exceeded the size standard.
9. ACDBE Prime Concessionaires can count their self-performance toward meeting the ACDBE Goal, but only for the scope of work and at the percentage level they will self-perform.
10. When an ACDBE participates in a lease agreement, Concessionaire shall count only the value of the work actually performed by the ACDBE toward the ACDBE Goal.
11. Concessionaire may meet its ACDBE obligations in any of the following ways:
  - (a) 100% ACDBE Participation: If the concessionaire is a certified ACDBE, count the total amount of the dollar value of the gross receipts the ACDBE earns under this Agreement or the total value of a management contract or subcontract with an ACDBE toward the ACDBE Goal. An ACDBE prime concessionaire can count its self-performance toward meeting the ACDBE Goal, but only for the scope of work and at the percentage levels it will self-perform. If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
  - (b) Percentage Participation: For this option, a percentage of the business is designated to be owned, operated and/or maintained by a certified ACDBE through a sub-lease, management, operating and/or franchise agreement. Count only the portion of the gross receipts earned by the ACDBE under its agreement with the Prime.
  - (c) Joint Venture Participation: For this option, a proposer enters into a joint venture agreement with a certified ACDBE partner. If the ACDBE Goal is to be met through a joint venture agreement with an ACDBE partner, count the portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces. To be eligible for credit towards meeting the ACDBE Goal, the ACDBE partner must share in the financial risks and rewards commensurate with the amount of proposed ACDBE participation sought to be credited towards the ACDBE Goal. For purposes of

ACDBE participation, joint ventures are not certified as ACDBEs. If Concessionaire will form a new joint venture for any purpose that has not been previously approved by the Airport, it must submit a Draft Joint Venture Agreement to the Airport. Joint Venture Agreements shall be specific to the proposed concept and location.

- (d) Percentage of Goods/Services towards Vendor Purchases: For this option, the proposer designates a percentage of the gross revenue that will be committed to the purchase of goods and services from ACDBE certified vendors. Count the entire amount of fees or commissions charged by an ACDBE for a *bona fide* service, provided that BDDD determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial services.
  - (e) Other Legal Arrangement: For this option, the proposer may propose some other legal arrangement so long as it meets the eligibility standards in 49 CFR Part 23.
12. Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the “build-out”) do not count towards the ACDBE participation commitment.
13. Concessionaire may count the percentage of ownership or equity of an ACDBE towards the ACDBE participation commitment only if the ACDBE is performing a commercially useful function. For purposes of these provisions, the term commercially useful function has the same meaning as in 49 C.F.R. § 26.55(c).
- (a) An ACDBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the ACDBE 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 ACDBE is performing a commercially useful function, BDDD will 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 performing, the ACDBE credit claimed for its performance of the work, and other relevant factors.
  - (b) An ACDBE 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 to obtain the appearance of ACDBE participation. In determining whether an ACDBE is such an extra participant, BDDD will examine, among other relevant factors, similar transaction, particularly those in which ACDBEs do not participate.
  - (c) When an ACDBE is presumed not to be performing a commercially useful function as provided in this section, the ACDBE may present evidence to rebut this presumption. BDDD will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.
14. BDDD will count ACDBE participation where the ACDBE or business partner performs a portion of work on the contract and the percentage of ownership or equity of the ACDBE 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 ACDBE business partner performs with its own forces toward the ACDBE commitment and for which it is at risk.

#### E. CERTIFICATION

1. In order to count the participation of ACDBEs towards the ACDBE Goal, the ACDBE must be certified by an approved entity of the Texas Unified Certification Program ("TUCP"). Other certifications are not acceptable.
2. Affiliate/Affiliation: Regardless of certification by a recognized agency, the ACDBE must be an independent business and not an affiliate of any other business. Affiliate means any business entity that is affiliated with an ACDBE or with owners of such ACDBE or any other business enterprise. Business enterprises are affiliates of each other when:
  - a. One either directly or indirectly, through one or more intermediaries, controls or has the power to control the other; or
  - b. A third party or parties controls or has the power to control both; or
  - c. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
  - d. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
  - e. *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.
3. The Airport Board in its sole discretion shall determine whether an applicant is an independent business.
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.

Concessionaire must submit to BDDD a properly completed ACDBE certificate or letter, with all required attachments, for all ACDBEs proposed to be utilized as business partners, sub-concessionaires or suppliers to meet the contract ACDBE Goals at the time of proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the ACDBE Goal, in its sole discretion. Such rejections shall be in writing and state the reason(s) for the rejection. A Concessionaire whose proposed certified firm is rejected for ACDBE Goal credit may request reconsideration of the rejection to the BDDD in writing. The request for reconsideration must be received by the BDDD within two (2) business days of the notification of rejection. BDDD's decision on the request shall be final.

5. A firm must be certified as an ACDBE at the time of proposal submission to be counted towards meeting the ACDBE Goal for purposes of determining Contract award.
6. A firm must be certified as an ACDBE at the time of substitution or replacement to be counted towards the participation commitment.
7. BDDD, the Texas Department of Transportation (TxDOT) and the Federal Aviation Administration (FAA) maintain current listings of certified ACDBEs. Concessionaire must utilize these Directories to assist them in locating ACDBEs for the work required on the contract. The ACDBE Directories are located at:
  - BDDD: <https://dfw.diversitysoftware.com/>
  - TxDOT: <https://txdot.txdotcms.com/>
  - FAA: <https://faa.dbesystem.com/Default.asp>
8. ACDBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

F. ACDBE UTILIZATION FORMS AND RELATED DOCUMENTATION

1. Concessionaire must submit completed ACDBE utilization forms as required by BDDD.
2. **ACDBE Commitment Form:** Commitment to meet the ACDBE Goal must be detailed on the ACDBE Commitment Form and be submitted at the time of proposal submission. Submission of the form shall constitute a representation by the Concessionaire to the Airport Board that it commits to maintain the ACDBE participation level to which it committed to at the time of Agreement award throughout the performance of the Agreement.
3. **ACDBE Intent to Perform Form:** Submission of the form shall constitute a representation by the Concessionaire to the Airport Board that it believes such ACDBE to be certified as a ACDBE to perform the work as designated and the ACDBE is not an affiliate with the Concessionaires as defined herein. It shall also represent a commitment by the Concessionaire that it is awarded the Agreement, it will enter into an agreement with such ACDBE for the work described at the ownership interest percentage set forth in the ACDBE Intent to Perform form. The form must be submitted at the time of proposal submission for each ACDBE business partner identified in the proposal.
4. **Concessionaire Information Form:** Must be submitted at the time of proposal submission.
5. **Good Faith Effort Documentation:** Must be submitted at the time of proposal submission if the concessionaire fails to meet the ACDBE Goal.
6. **Request for Approval of Change to Original Joint Venture Commitment Form:** For Concessionaire's participation commitment, where an ACDBE firm is a business partner or sub concessionaire, if the ACDBE's information or status changes, Concessionaire must immediately notify BDDD of the change and provide a written explanation for the change by submitting a Request for Approval of Change to Original Joint Venture Commitment form. No change in the use of an ACDBE firm will change Concessionaire's participation commitment. Any change in the use of an ACDBE firm shall be governed by the SUBSTITUTIONS OR TERMINATIONS provisions herein.
7. If requested, Concessionaire must provide the BDDD copies of all agreements with ACDBE business partners within five (5) business days of the written request.

8. Concessionaire shall timely submit reports and verifications within ten (10) business days as requested by the Vice President of BDDD and shall provide such financial information or other information deemed necessary to support and document the ACDBE commitment and ACDBE participation for this Agreement. The Board shall have the right until five (5) years after the expiration or termination of this Agreement, to review books, records and financial information of Concessionaire, and where applicable, all individuals, business partners or other business entities that are engaged in concession activity under this Agreement, to substantiate compliance with 49 C.F.R. Part 23, as amended, and any guidance issued by the Federal Aviation Administration regarding the interpretation of the federal regulations.

#### G. COMPLIANCE AND ENFORCEMENT

1. These compliance and enforcement provisions address the additional contractual remedies available to Board as a result of Concessionaire's failure, if any, to comply with the obligations set forth in the ACDBE Program requirements. The contractual remedies set forth in the ACDBE Program are also applicable to any 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 any failure by Concessionaire to comply with other obligations under this Agreement unrelated to the Program requirements or preclude Board's recovery of its actual damages for such unrelated breaches.
2. The Concessionaire and its ACDBE business partners must attend and participate in onboarding, progress, or non-compliance meetings and site visits upon request. The Concessionaire must forward all necessary documents and information during the course of performance under this Agreement and to close out the agreement and must cooperate with BDDD in providing any information, including the final accounting for ACDBE participation on this Agreement.
3. BDDD is empowered to receive and investigate complaints and allegations by ACDBEs, third parties or Board Staff, or to initiate its own investigations, regarding Concessionaire's compliance with the ACDBE Program requirements. If BDDD determines that an investigation is warranted, Concessionaire must fully cooperate with the investigation and provide complete, truthful information to the Board concerning the investigation and Concessionaire's compliance with the ACDBE Program requirements.
4. The failure of Concessionaire to meet the ACDBE contractual commitment or comply with any other aspect of the ACDBE Program requirements may constitute a material breach of this Agreement, entitling the Board to exercise any remedy available in this agreement/contract, the Program requirements or applicable law.
5. The Board may report any suspected false, fraudulent or dishonest conduct relating to the Concessionaire's performance of the Program requirements to the 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 Concessionaire is in breach of any of the ACDBE Program requirements, the Board may exercise any of following remedies, in addition to any other remedies available to it under this agreement/contract or at law or in equity:
  - (a) withholding funds payable under this agreement/contract, including, but not limited to, funds payable for work self-performed by the Concessionaire or applicable retainage;
  - (b) temporarily suspending, at no cost to the Airport Board, Concessionaire performance under the Agreement;

- (c) termination of this Agreement;
  - (d) suspension/debarment, in accordance with applicable law, of Concessionaire from participating in any solicitations issued by the Airport Board for severity of breach of contract; and
7. With respect to a concessionaire not meeting its ACDBE commitment on a previous agreement or the underutilization of an ACDBE on a previous agreement, BDDD shall regard as non-responsive any proposal or competitive selection process proposal received that includes the Concessionaire.
  8. With respect to ACDBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

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

An M/WBE participation commitment has been established for this Agreement, as noted in Article One (1) of this Agreement and stated in its *Commitment to Minority/Women Business Enterprise (M/WBE) Participation* form. The M/WBE participation commitment is a percentage of the total dollar value associated with the design and construction of tenant finish outs/improvements, including any change orders and/or modifications. Such participation is a contractual commitment upon execution of this Agreement.

Concessionaires are directed to review the attached M/WBE Special Contract Provisions and the related forms below for compliance requirements.

**SPECIFIC TO CONCESSION TENANT FINISH OUTS: M/WBE UTILIZATION FORMS AND RELATED DOCUMENTATION**

Pre-Award: Concessionaire must submit completed M/WBE utilization forms as required by BDDD.

- *Commitment to M/WBE Participation* must be submitted at the time of proposal submission.
- *M/WBE Compliance Plan* must be submitted at the time of proposal submission.
- *Certification Certificates* must be submitted at the time of proposal submission for each M/WBE identified in the proposal.
- *Good Faith Effort Documentation* must be submitted at the time of proposal submission if the Concessionaire fails to meet the M/WBE Goal.

Post Award: Concessionaire through its selected Contractor must submit completed M/WBE utilizations forms as required by BDDD:

- *Preliminary Schedule of Subcontractors (Design)* must be submitted at the time of the Airport's 35% Design Review Meeting
- *Final Schedule of Subcontractors (Design)* must be submitted at the time of the Airport's 95% Design Review Meeting
- *Preliminary Schedule of Subcontractors (Construction)* must be submitted at the time of Building Permit Application
- *Final Schedule of Subcontractors (Construction)* must be submitted at the time of request for Certificate of Occupancy

## **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.

### **D. GENERAL REQUIREMENTS**

9. 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 construction-related professional services prime contracting and subcontracting opportunities.
10. 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.
11. 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 Policies and Administrative Procedures in proposing and performing hereunder.
12. 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 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.
13. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with the Airport Board's M/WBE 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.
14. The Contractor specifically agrees to comply with all applicable provisions of the Airport Board's M/WBE 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 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.
15. 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.

#### E. ADMINISTRATIVE REQUIREMENTS

5. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in making a bid 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. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
6. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its M/WBE contractual commitments.
7. 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.
8. 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.

#### F. GOALS AND GOOD FAITH EFFORTS

15. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)
  - a. Each Contractor must comply with the terms and conditions of the Policies 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 Policies, 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 meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, 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.
  - b. Under the Policies, BDDD establishes a Contract Specific Goal for each Contract. The specific goal for this Contract is stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the Policies, a Contractor must either meet the M/WBE 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 M/WBE goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.

- c. For 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. The Airport Board 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 FIATH 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). The required M/WBE good faith efforts are set forth below:
  - 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 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.
- f. BDDD will review not only at the different kinds of efforts that the Contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. 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 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 and responsible. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the good faith efforts decision. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts to meet the M/WBE Contract goal 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  
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.

16. 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 must notify BDDD immediately to request a Goal Modification.
- 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 Policies. BDDD's determination shall be final.

#### D. COUNTING M/WBE PARTICIPATION

15. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the Policies. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's Contract Specific Goal, BDDD shall base its determination solely on the information provided in the bid or proposal document.
16. 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, reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
17. 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.
18. 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.
19. 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
20. Post award, the Contractor may count towards its M/WBE contractual commitment a M/WBE 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 a M/WBE pursuant to M/WBE SUBSTITUTIONS OR TERMINATIONS section herein.
21. The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by a M/WBE after it has ceased to be certified as an M/WBE.
22. 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.
23. 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.
24. When a 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.
25. 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.
26. When a Contractor utilizes an M/WBE staffing service to perform work and the employees of the staffing firm are Contract employees that do not receive paid benefits,

the Contractor shall count only the amount of fees or commissions charged by the staffing service for providing labor force.

27. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate subcontractor, as defined in the M/WBE Program Policy and Administrative Procedures, Glossary of Definitions.
28. 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).
29. When a 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 a M/WBE. Work that a M/WBE subcontracts to a non-M/WBE does not count toward M/WBE goal.
30. The Contractor will count expenditures to a M/WBE subcontractor toward the M/WBE goal only if the M/WBE is performing a commercially useful function on the Contract.
  - a. A 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 a 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. A 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 a 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 a 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 a 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.
31. The Contractor shall use the following factors in determining whether a 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 a 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 also lease trucks from a non-M/WBE, including from an owner-operator. The M/WBE who leases trucks from a non-M/WBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The M/WBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a M/WBE.
  - f. 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.
32. 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.
  - 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.
33. If a 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. 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.
34. 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.
35. The Contractor shall not count the participation of a M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
36. 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 the Airport Board 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.

37. Joint Ventures: The Airport Board shall encourage where economically feasible joint ventures to encourage 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.

38. Teaming Agreements

- a. If the bidder or proposer submits a teaming agreement that includes one (1) or More M/WBEs, the value of the commercially useful function to be performed by the M/WBEs in the teaming agreement as the distinct, clearly defined portion of the work of the teaming agreement that the M/WBE performs with its own forces or for which it is separately at risk shall count toward satisfaction of the project goal. The teaming agreement is subject to review and approval by the BDDD, and the teaming agreement shall be provided to BDDD at least ten (10) days prior to the date of bid opening or the date of final project-specific proposal, in the case of a competitive selection process unless otherwise set forth in the request for bids or proposals, as required by BDDD. Teaming agreement participation will count toward the satisfaction of the project goal upon confirmation by the BDDD of the utilization in the teaming agreement arrangement and full integration of work forces by the teaming agreement parties.
- b. BDDD will establish prior to issuing the request for bids or the request for proposals any criteria to evaluate the use of teaming agreements for the project. As to each teaming agreement under this Section, a written teaming agreement must be completed by all parties to the teaming agreement and executed, which clearly delineates the rights and responsibilities of each teaming party, complies with any requirements of the BDDD department as set forth in the bid documents or otherwise, and provides that the teaming agreement shall continue for, at a minimum, the duration of the project.
- c. BDDD shall review and approve all contractual agreements regarding the terms and provisions of each teaming agreement prior to the award of a contract, including agreements pertaining to:
  - i. Actual participation of the teaming members on the project;
  - ii. The high value work to be performed by the teaming members;
  - iii. The method by which disputes are resolved; and
  - iv. Any additional or further information required by BDDD as set forth in the bid documents or otherwise.
- d. Teaming parties may submit agreements for pre-approval no later than ten (10) calendar days prior to the date set for receipt of bids or proposals on a project, but in no event later than designated in the bid documents or requests for proposals. A bid or proposal submitted by a teaming relationship that does not include a satisfactory written teaming agreement as applicable, in accordance with the requirements of this Section shall be deemed non-responsive and rejected.
- e. The teaming parties shall provide the BDDD access to review all records pertaining to teaming agreements before and after the award of a contract in order to reasonably assess compliance with the policy and procedures.
- f. 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.

- g. 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.

- 39. The parties shall provide all records pertaining to the joint venture or teaming arrangement before and after the award of a Contract reasonably necessary to access compliance with these requirements, including but not limited to, certification and financial records.

#### E. CERTIFICATION

- 9. In order to count the participation of M/WBEs towards the Contract 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.
- 10. 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 market area at the time the bid or proposal is submitted for credit towards meet the M/WBE goal, which is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties.
- 11. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Use of a P.O. Box address, another person's or firm's office space, virtual offices or staffing services are not considered a place of business.
- 12. 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:
  - a. One either directly or indirectly, through one or more intermediaries, controls or has the power to control the other; or
  - b. A third party or parties controls or has the power to control both; or
  - c. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
  - d. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
  - e. *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.
  - f. 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.

13. The Airport Board in its sole discretion shall determine whether an applicant is an independent business.
14. 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. A Contractor whose proposed certified firm is rejected for goal credit may request reconsideration of the rejection to the BDDD in writing. The request for reconsideration must be received by the BDDD within two (2) business days of the notification of rejection. BDDD's decision on the request shall be final.
15. A firm must be certified as a M/WBE at the time of bid or proposal submission to be counted towards meeting the goal for purposes of determining Contract award.
16. Dollars paid to a firm prior to them obtaining an approved certification are not retroactive.
17. BDDD maintains a listing 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 its Directory to assist them in locating M/WBEs for the work required on the Contract however the certifications should be verified through the approved certification agency.
  - The M/WBE Directory is located at:  
<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>
18. M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

#### E. PRE-AWARD COMPLIANCE PROCEDURES

9. M/WBE Utilization Forms and Related Documentation
  - a. Each Contractor must submit for all solicitations, bids or proposals, completed 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".
10. 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.
  - **Certification Certificates** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
  - **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.

- **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 the best and final offer and prior to processing an Official Board Action.

11. Request for Proposal (RFP) – Construction-related Professional 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.
- **Certification Certificates** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
- **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 the best and final offer and prior to processing an Official Board Action.

12. Request for Proposal (RFP) - Indefinite Delivery: task/delivery order, Job Order Contracts, Construction Manager-at-Risk Services:

- **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
- **Compliance Plan** 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.
- **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 Schedule of Subcontractors for each M/WBE listed on the Schedule.
- **Intent to Perform as a Subcontractor** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor.

13. Request for Proposal (RFP) – Design Build (Two Programs Apply)

- **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. Contractor need list only the anticipated percentage of participation of M/WBEs rather than the specific dollar amounts.
- **Certification Certificates (Design)** must be submitted at the time of proposal submission for each M/WBE identified on the Preliminary Schedule of Subcontractors.
- **Intent to Perform as a Subcontractor (Design)** must be submitted at the time of proposal submission for each M/WBE subcontractor identified on the Preliminary Schedule of Subcontractors.
- **Final Schedule of Subcontractors (Design)** must be submitted with the best and final offer and prior to processing an Official Board Action.
- **Commitment to MBE Participation (Construction)** must be submitted at the time of proposal submission.

- **Compliance Plan (Construction)** 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.
  - **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's Initial Project Kick-Off Meeting for Construction.
  - **Certification Certificates for Subcontractors (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 Schedule of Subcontractors for each certified subcontractor.
  - **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the M/WBE and/or MBE goal.
14. Commercial Development – Third Party Tenant Leases (Two Programs Apply)
- **Commitment to M/WBE Participation (Design)** must be submitted prior to processing an Official Board Action.
  - **Commitment to MBE Participation (Construction)** must be submitted prior to processing an Official Board Action.
  - **Final Schedule of Subcontractors (Design)** must be submitted at the Airport's Initial Project Kick-Off Meeting.
  - **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's Pre-Construction Meeting.
15. 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 at the time of Contract award throughout the performance of the Contract.
16. 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 and/or 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.
17. 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 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 affiliate with the Contract 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.
18. 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. The Airport Board reserves the right to review selected agreements at random.

19. 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.
20. 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 Policy and Administrative Procedures stated in Section XII. CONTRACT SPECIFIC COMMITMENT MODIFICATIONS OR M/WBE SUBSTITUTIONS.
21. Contractors must appoint and designate to BDDD a high-level official to administer and coordinate its contractual M/WBE commitments.
22. Alternative **Compliance Plan**
  - a. Bids/Proposals with the provision of Indefinite Delivery for a period of time and with no delineation of the dollar amount for specific on-call projects, the Contractor shall submit only the anticipated overall percentage of M/WBE contractual commitment and a completed Compliance Plan at the time of bid/proposal submission to demonstrate compliance with the policy and procedures.
  - b. For contracts and/or proposals that are not determined to utilize a Compliance Plan and that do not delineate the dollar amount of a specific project, the bidder or proposer need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts.
  - c. The Compliance Plan shall be developed in accordance with the following requirements:
    - 1) BDDD may require separate Contract Specific Goals for professional services and for construction services, or set a project aggregate Contract Specific Goal. The Compliance Plan may be required to address the professional services goal and the construction services goal, one or the other, or any project aggregate goal in BDDD's discretion.
    - 2) The professional services and/or construction services goal shall be expressed as a percentage of either the total amount of any lump sum Contract awarded to complete a project, or in the alternative, the total estimated "cost of the work" as that term is defined in any guaranteed maximum price Contract awarded to complete a project.
    - 3) Submission and review of a Contractor's proposed Compliance Plan will occur as a solicitation submittal requirement. Failure to comply with the submittal timetable may result in no further consideration of the proposed Compliance Plan and rejection of the proposal.
  - d. At a minimum, a proposed Compliance Plan must:
    - 1) Comply with the M/WBE Policy and Administrative Procedures, including affirming 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. The Contractor must acknowledge the Airport Board's right to impose

monetary penalties and/or withhold payment in the event of non-compliance and subject the Contractor to sanctions pursuant to the M/WBE Policy and Administrative Procedures.

- 2) Provide a detailed program for community outreach and support to enhance M/WBE opportunities.
  - 3) Provide a detailed program describing how the Contractor will divide up the anticipated work into economically feasible units calculated to enhance M/WBE opportunities.
  - 4) Describe in detail how the Contractor will make good faith efforts to meet the project goal(s), including work that the Contractor would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
  - 5) If the proposed Compliance Plan is based upon a phased or packaged buy out of the projected construction work, the Contractor will describe the process by which it will address the project goal(s) on a phased/package or cumulative basis.
  - 6) Describe how the Contractor will comply with the requirements herein as part of the subcontractor buyout of the construction work, including use of commitment forms, Schedule of Subcontractors, Intent to Perform and joint venture forms to adequately document committed participation attained.
  - 7) Contain a specific acknowledgement of the Contractor's continuing duty to meet the requirements of the M/WBE Policy and Administrative Procedures. The Compliance Plan must detail how the Contractor will make good faith efforts to maintain its M/WBE commitments.
  - 8) Set forth how the Contractor will comply with BDDD's Diversity Management System for tabulation of participation performance and plan administration and for monitoring and reporting progress and participation performance to BDDD.
  - 9) Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
  - 10) Set forth a detailed methodology for issuance of notice(s) of non-compliance to the Contractor's subcontractors with the Compliance Plan and a reasonable opportunity to cure.
  - 11) Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal(s) and Compliance Plan close out.
- e. BDDD shall approve or reject the proposed Compliance Plan. If the proposed Compliance Plan is rejected, BDDD will provide rejection comments and the Contractor may submit a revised Compliance Plan by a date set by BDDD. BDDD in its sole discretion may meet with the Contractor to discuss any deficiencies that must be addressed in the revised Compliance Plan. If BDDD determines the revised Compliance Plan is insufficient to meet the requirements of the M/WBE Policy and Administrative Procedures, it 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. In no event shall a Contract to construct a project be awarded, executed or continue without an approved Compliance Plan.

## 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 Airport Board'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 subject of retainage 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. The Airport Board 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. 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.
  - i. As of 2012, Contractors with new contracts are required to report all payments online utilizing the Airport Board's Diversity Management System and submit a data entry confirmation with each payment request. The 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 10.a.



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. 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. The Contractor must report all final M/WBE payments using the Airport Board's Diversity Management System and submit a data entry confirmation with the final payment request or **Final Pay Period Activity Report** if the Contract was awarded prior to 2012. In addition, the Contractor must ensure all subcontractor payment verifications are complete in order for BDDD to close out the Contract.
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, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
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 a 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 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 a M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.

4. 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:
  - a. The listed M/WBE subcontractor fails or refuses to execute a written Contract.
  - b. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
  - c. The listed M/WBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
  - d. The listed M/WBE is ineligible to work on Airport Board projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations.
  - e. BDDD has determined that the listed M/WBE subcontractor is not a responsible Contractor.
  - f. The listed M/WBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
  - g. The listed M/WBE subcontractor is ineligible to receive certification for the type of work required.
  - h. 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.
  - i. Other good cause as determined in BDDD's sole discretion,
5. Good cause does not include where the Contractor seeks to terminate an M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another M/WBE or non-M/WBE subcontractor to perform the work for which the M/WBE was engaged or listed on the **Final Schedule of Subcontractors**.
6. The Contractor must give the M/WBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. The Contractor and the M/WBE must attempt to negotiate a resolution of the situation, and if the negotiation is unsuccessful, the Contractor must document this effort before the Contractor seeks BDDD's approval to substitute the M/WBE.
7. Contractors must meet the above criteria and process before requesting prior written approval of any material change in the ownership, control, duties, functions and responsibilities of any M/WBE. The Contractor cannot make any changes to the **Final Schedule of Subcontractors** without the prior written consent of BDDD.
8. If the Contractor proposes to terminate or substitute a M/WBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute M/WBE subcontractor that is already certified for the original M/WBE to meet its M/WBE contractual commitment. Its good faith efforts shall be directed at finding another M/WBE to perform or provide at least the same amount of work, material or service under the Contract as the original M/WBE to the extent necessary to meet its M/WBE contractual commitment. The Contractor may also find additional M/WBEs and/or adjust the current/projected M/WBE participation to meet its M/WBE contractual commitment.

9. 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.
10. 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.
11. If the Contractor does not comply with these provisions relating to the modification or termination of, and/or substitution for a M/WBE subcontractor, the Airport Board may elect to apply Contract remedies as described in the M/WBE Policy and Administrative Procedures.

#### I. COMPLIANCE AND ENFORCEMENT

9. 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 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.
10. 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.
11. 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 concerning the investigation and Contractor's compliance with the Program requirements.
12. 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 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.
13. The Airport Board may report any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements 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.
14. If Contractor is in breach of any of the Program requirements, the Airport Board 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, in accordance with applicable law, of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
15. With respect to a firm not meeting a goal on a previous contract or the underutilization of an M/WBE(s) 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.
16. 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)*