



REVISED

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

FY 2023, 2024

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the City of Manhattan, Kansas to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the City of Manhattan’s policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

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

Manhattan Regional Airport has disseminated this policy statement by posting it on the airports website at www.flymhk.com and all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Manhattan Regional Airports DOT-assisted contracts. The distribution was accomplished by email dissemination.



Brandon Keazer, Airport Director

12-6-23
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The City of Manhattan will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

We will submit annually DO Form 4630, as modified for use by FAA recipients.

Bidders List: 26.11(c)

The City of Manhattan will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, and DBE and non-DBE status,

We will collect this information in the following ways:

1. Bidders will be required to list the names and addresses of the DBE firms intended to be used on the project
2. Description of work each DBE will perform.
3. The dollar amount to be awarded to each DBE firm.
4. Written documentation from the DBE firm of their intent to participate in the project.
5. Confirmation of the bidder of their commitment to use the DBE firm
6. If the contract goal is not met, evidence of good faith efforts.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

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

Contract Assurance: 26.13b

The City of Manhattan will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Kimberly A Boice
Assistant Airport Director
5500 Skyway Drive, Manhattan, KS 66503
785-587-4597
boice@cityofmnhk.com

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access to staff of legal counsel and consultants to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes City of Manhattan progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Determine contractor compliance with good faith efforts.
8. Participates in DBE training seminars.

Section 26.29 Prompt Payment Mechanisms

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

- The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as

required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance (90 percent) of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted. When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

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

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the Engineer to be a part of the final quantity for the item of work in question. No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection 90-09 titled ACCEPTANCE AND FINAL PAYMENT of this section.

Section 26.31 Directory

The *City of Manhattan* uses the State of Kansas DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

We will make the Directory available as follows by directing interested parties to the Kansas Department of Transportation's website. The Directory may be found at <http://www.ksdot.org/bureaus/divadmin/civilrights/>, this information is also shown on Attachment 3.

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The City of Manhattan has not established a business development program.

Section 26.37 Monitoring Responsibilities

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

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

- We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.

Monitoring Payments to DBEs and Non-DBEs

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

- The City of Manhattan will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form. With each pay request the prime contractor will be required to submit a list of all payments made to subcontractors, both DBE and non-DBE. A sample form is shown as Attachment 10, contractors will submit this form with each payment request or submit the information using their own format.

Following each payment made to prime contractor, sub-contractors will be notified of such payment by email.

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

- The City of Manhattan proactively reviews contract payments to subcontractors including DBEs once a quarter. Payment reviews will evaluate whether the actual amount paid to

DBE subcontractors is equivalent to the amounts reported to the City of Manhattan by the prime contractor.

- Prompt Payment Dispute Resolution
- The City of Manhattan will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.
- If the City of Manhattan is notified of a dispute involving work being satisfactorily completed, a meeting will take place where the prime contractor, subcontractor, project manager and airport director are present.
- The City of Manhattan has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage [examples of mechanisms include the following]:

The Owner may withhold payment in whole or in part on an approved request for payment to the extent necessary to protect the Owner from loss on account of any of the following causes discovered by the Engineer subsequent to approval of a request for payment.

- Evidence indicating the probable filing of claims by other parties against the
- Contractor.
- Failure of the Contractor to make payments to Sub-Contractors, material suppliers or
- labor.

Prompt Payment Complaints

- Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure
- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by [Recipient] to resolve prompt payment disputes, affected subcontractor may contact the responsible [operating administration] contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

- 5) Withholding monthly progress payments;
- 6) Assessing sanctions;
- 7) Liquidated damages; and/or
- 8) Disqualifying the contractor from future bidding as non-responsible.

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

Monitoring Contracts and Work Sites

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

Section 26.39 Fostering small business participation.

The City of Manhattan will structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The City of Manhattan’s small business element is incorporated as Attachment 4 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City of Manhattan will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City of Manhattan will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Hub Primary	All Regions	August 1 2021 (2022/2023/2024)	August 1, 2024 (2025/2026/2027)

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Manhattan does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the City of Manhattan will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of

discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

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

In establishing the overall goal, the City of Manhattan will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the City of Manhattan to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference). The goal submission will document the consultation process in which the City of Manhattan engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City of Manhattan will publish a notice announcing the proposed overall goal before submission to the [*operating administration*]. The notice will be posted on Manhattan Regional Airport’s official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by [*operating administration*], the revised goal will be posted on the official internet web site.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

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

Section 26.47 Failure to meet overall goals.

The City of Manhattan will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City of Manhattan awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) [Recipient] will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval. **(Note: Only to CORE (OEP) Airports. all other airports must retain**

analysis and corrective actions in records for three years and make it available to FAA on request.)

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

Section 26.51(d-g) Contract Goals

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

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

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

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

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

Kimberly Boice, Assistant Airport Director, with support from Airport Consultant, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive

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

Information to be submitted (26.53(b))

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

Responsiveness - Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by City of Manhattan that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Brandon Keazer, Airport Director, 5500 Skyway Drive, Suite 120, Manhattan KS, 66503, 785-587-4565, keazer@cityofmnhk.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of Manhattan will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

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

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

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

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the *City of Manhattan* to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 9 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Attachment 6: Demonstration of Good Faith Efforts or Good Faith Effort Plan, Forms 1 & 2 will be required from all firms submitting bids.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Manhattan does not certify DBE firms. The City of Manhattan will accept firms who have been certified by the State of Kansas.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Manhattan is not a member of a Unified Certification Program (UCP).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved

(e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

ATTACHMENTS

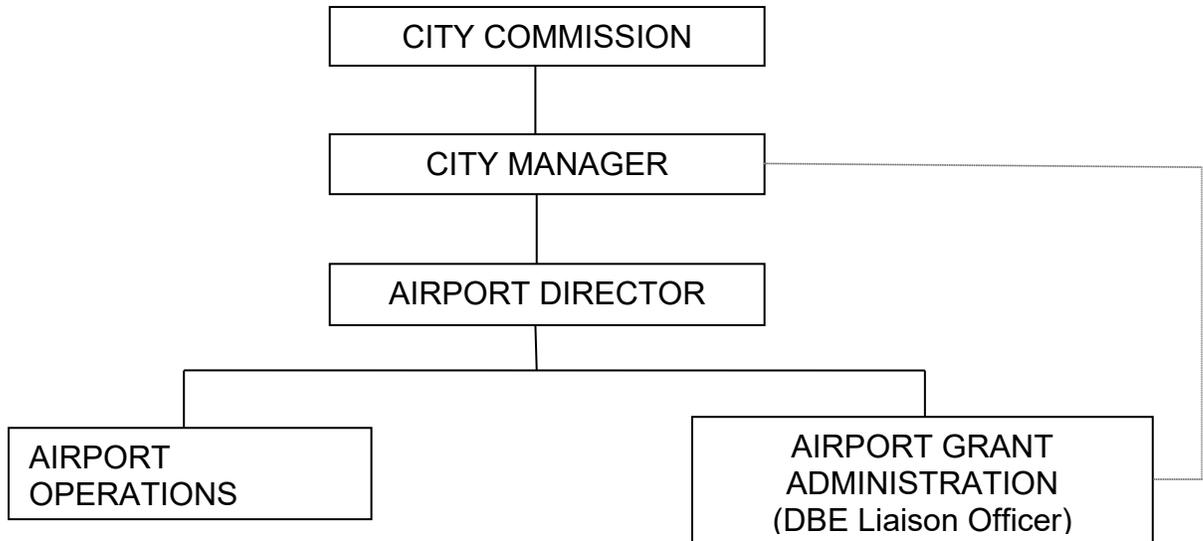
- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 DBE Directory or link to
- Attachment 4 Small Business Element
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms

ATTACHMENT 1

Regulations: 49 CFR Part 26

Regulation can be found at: <http://www.ecfr.gov>

ATTACHMENT 2
Organizational Chart



ATTACHMENT 3

DBE Directory

A current DBE Directory can be found from the Kansas Department of Transportation at:

<http://www.ksdot.org/bureaus/divadmin/civilrights/>

ATTACHMENT 4
Small Business Element

1. Objective 49 CFR Part 26.39

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The Sponsor is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary, the Sponsor will meet its objectives using a combination of the following methods and strategies:

- *Set asides: Where feasible, the Sponsor will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the Sponsor and its prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.*

- *Unbundling: The Sponsor, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Sponsor will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.*

- *When feasible, the overall goal will be met through race-neutral measures to ensure that a reasonable number of prime contracts are of a size that small businesses, including DBE’s, can reasonably perform.*

2. Definition

- *A small business is defined as a business that is organized for profit, has a place of business in the U.S, is independently owned and operated and is not dominant in its field on a national basis.*
- *DBE firms will be considered for the Small Business element of this program.*
- *In determining a small business, size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*

3. Verification

- *Attempts to verify eligibility of firms will be performed. Any discovery of fraud or abuse by a business will be reported to the Department of Transportation and the Small Business Administration.*

4. Monitoring/Record Keeping

- *At the time of award, contractors will identify businesses intended to be used that have been identified as a small business.*

5. Implementation Timeline

- *The Small Business Element will be implemented within 9 months of FAA's approval of this program.*

6. Assurance

- *The City of Manhattan makes the following assurances:*
 1. *assurance that the program is authorized under state law;*
 2. *assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;*
 3. *assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;*
 4. *assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and*
 5. *assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
 6. *assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*

ATTACHMENT 5

Section 26.45: REVISED Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Manhattan, Kansas

Goal Period: FY- 2023, 2024

DOT-assisted contract amount:	FY-2023	\$ 216,450
	FY-2024	\$ 4,443,600
Total		\$ 4,660,050

Overall Three-Year Goal: 3%, to be accomplished through 0% RC and 3% RN

Total dollar amount to be expended on DBE's: \$116,146

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

Projects Fiscal Year #2

- | | | |
|--|----|---------|
| 1. Acquire ARFF Foam Testing Equipment | \$ | 23,250 |
| 2. Hangar Construction (Design) Engineering Services (BIL) | \$ | 193,200 |

Projects Fiscal Year #3

- | | |
|--|-------------|
| 1. Hangar Construction (BIL) | \$2,643,600 |
| 2. Hangar Construction (CA) Engineering Services (BIL) | \$ 300,000 |
| 3. Acquire Snow Removal Equipment | \$1,500,000 |

Market Area: *The market area is identified as the area in which the substantial majority of the contractors and subcontractors that seek to do business with Manhattan Regional Airport are located. The market area includes the following counties adjacent to Riley County: Clay, Dickinson, Geary, Marshall, Pottawatomie and Washington. The following NE counties are included: Republic, Cloud, Ottawa, Saline, McPherson, Marion, Morris, Chase, Nemaha, Lyon, Jackson, Shawnee, Osage, Coffey, Brown, Doniphan, Atchison, Jefferson, Leavenworth, Wyandotte, Douglas, Johnson, Franklin, Miami, Anderson, Linn*

Step 1. Analysis: Actual relative availability of DBE's

Method: Use DBE Directories

<http://www.ksdot.org/bureaus/divadmin/civilrights/>

and Census Bureau Data

<https://data.census.gov/cedsci/advanced?d=ANN%20Business%20Patterns%20County%20Business%20Patterns>

Fiscal Year #1
 For FY-[2023], award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$)</i> <i>(= Trade \$ x DBE %)</i>
ARFF Foam Testing Equipment	<i>Equipment Manufactureing</i>	<i>Manufacturing</i>	333999	\$23,250	14	0	0%	\$0
Total Contract #1				\$23,250	14	0	0.00%	\$0
Hangar Construction (Design)	<i>Engineering Services</i>	<i>Engineering</i>	541330	\$193,200	308	17	5.5%	\$10,644
Total Contract #2				\$193,200	308	17	5.5%	\$10,664
Total FY-[2023]				\$216,450			4.9%	\$10,644

Fiscal Year #2
 For FY- [2024], award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$)</i> <i>(= Trade \$ x DBE %)</i>
Hangar Construction	<i>Asphalt, Concrete, Dust Control, Striping</i>	<i>Major Highway & Street Construction</i>	237310	\$631,600	57	0	0.00%	\$0
	<i>Foundation & Structure</i>	<i>Foundation & Structure</i>	238110	\$1,265,000	172	8	4.7%	\$58,837

	Electrical	Electrical Contractors	238210	\$225,000	355	11	3.1%	\$6,972
	Building Equipment Contractors	Mechanical Contractors	238220	\$55,000	542	6	1.1%	\$609
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$467,000	249	12	4.8%	\$22,506
Total Contract #1				\$2,643,600			3.4%	\$88,924
Hangar Construction – Engineering/C A Services	Engineering Services	Engineering	541330	\$300,000	308	17	5.5%	\$16,558
Total Contract #2				\$300,000			5.5%	\$16,558
Snow Removal Equipment	Engineering Services	Engineering	423100	\$1,500,000	54	0	0.0%	\$0
Total Contract #3				\$1,500,000			0.0%	\$0
Total FY-[2024]				\$4,443,600			2.4%	\$105,482
TOTAL FY23-24				\$4,660,050			2.5%	\$116,125

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$116,125
- Total for All Trades: \$4,660,050

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

Base of DBE Goal: 2.5%

Step 2: Adjustments to Step 1 base figure

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

Past History Participation

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

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of Work
		RC	RN	Total	RC	RN	Total	
FY 22	\$24,330,598.00	0%	6.7%	6.7%	0%	6.8	6.8%	Construction, Engineering Services
FY 21	\$0.00	0%	9%	9%	0%	0%	0%	
FY 20	\$3,094,100.00	0%	9%	9%	0%	9%	9%	Engineering Services
FY 19	\$0.00	0%	9%	9%	0%	0%	0%	

Arranging the historical data from low to high, (0%, 0%, 6.8%, 9%) the median is 3.4%

Step 1 Base Averaged with historical median: $(2.5\% + 3.4\%)/2 = 2.95\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of [3%]. The City of Manhattan believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

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

26.51(b) (1-9)

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

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

The recipient estimates that in meeting its overall goal 3%, it will obtain 3% from RN participation and 0% through RC measures.

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

Public Notice

Consultation:

The following notice was published on the Manhattan Regional Airport's website, www.flymnhk.com and in The Manhattan Mercury before the methodology was submitted to the FAA.

The City of Manhattan, Manhattan Regional Airport announces a revision to its Disadvantaged Business Enterprise (DBE) Program. The proposed DBE participation goal is set at 3%. A meeting for interested stakeholders will be held on:

Wednesday, December 6, 2023 at 2:00 p.m.

Location: Manhattan Regional Airport
Administration Office
5490 Skyway Drive
Manhattan KS, 66502

Questions and or comments may be sent to:

Kim Boice, Assistant Airport Director
Manhattan Regional Airport
5500 Skyway Drive, Suite 120
Manhattan KS 66503
boice@cityofmnhk.com.

There were no attendees at the December 6, 2023 meeting.

Contract Goals

The City of Manhattan will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the recipient's overall goal that is not projected to be met through the use of RN means.

The City of Manhattan will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBE's to perform the particular type of work).

We will express our contract goals as a percentage *of the Federal share of a DOT-assisted contract*.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

[Forms 1 and 2 will be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

Date: _____

(Title)

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

[Submit this page for each DBE subcontractor.]

ATTACHMENT 7

DBE Enforcement Mechanisms

Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Kansas Codes.

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

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

Monitoring Mechanisms

The City of Manhattan, Manhattan Regional Airport will use the following mechanisms for monitoring of DBE:

- Attachment 7. A. DBE Performing Scope of Services Review
- Attachment 7. B. Subcontract Review
- Attachment 7. C. DBE Payment Review

ATTACHMENT 7. A.

DBE Scope of Services Monitoring Mechanisms

The City of Manhattan, Manhattan Regional Airport will use the following mechanisms for monitoring of DBE reviews:

- Professional Services: A list of questions will be emailed to the individual identified on the Subcontractor.
- Contracting: When the DBE contractor is on site performing work, an interview of the supervisor on site will be conducted. This interview may be done at the same time as other interviews being conducted such as a Labor Standards Interview.

The purpose of the reviews will be to identify any red flags that may indicate the DBE firm is not performing the work as described in the scope of services.

Staff responsible for monitoring is Kimberly Boice, Assistant Airport Director. Interview(s) may be conducted by the project consultant/contract administrator.



DBE MONITORING CHECKLIST
Professional Services

Project Name: _____
AIP #: _____
Prime Contractor/Consultant: _____
Sub-Contractor/Consultant: _____
Date of Review: _____
Reviewed by: _____

1. All work described in the scope of work is being performed by employees of:
_____?
2. Do the individuals only work for _____ and not the prime consultant or another sub-consultant performing work on this project?
3. Is all work described in the scope of work being performed without assistance from the prime consultant or another sub-consultant?
4. All equipment used in the scope of work is either owned or rented by
_____?

For the purpose of monitoring professional services the above questionnaire will be emailed to the contact person of the subcontract.



DBE MONITORING CHECKLIST

Construction

Project Name: _____

AIP #: _____

Prime Contractor: _____

Sub Contractor: _____

Date of Review: _____

Reviewed by: _____

Does the DBE have employees on site to perform quality work? Yes No

Do the DBE employees only work for the DBE? Yes No

Is the DBE working without assistance from the prime contractor or another subcontractor? Yes No

Is the DBE only using equipment they own, rent or lease? Yes No

Is the DBE supervising its employees and their work? Yes No

Is the supervisor a full-time employee of the DBE? Yes No

Is the DBE performing work as described in their sub-contract? Yes No

Additional comments and/or observations:

Review of DBE will be conducted when DBE is on site performing work.

ATTACHMENT 7. B.

Subcontract Review

The City of Manhattan, Manhattan Regional Airport will review each subcontract prior to issuing a Notice to Proceed to the prime contractor. Should a sub contract be entered into following the start of the contract, the subcontract will be reviewed prior to work beginning.

A review checklist has been developed and will be completed for each subcontract. Each subcontract will be reviewed for:

- Required nondiscrimination and assurance language is included:
- Prompt Payment and retainage clauses
- Termination Provisions

Staff responsible for monitoring is Kimberly Boice, Assistant Airport Director.



Project Name: _____

AIP #: _____

Prime Contractor: _____

Sub-Contractor: _____

Date of Review: _____

Reviewed by: _____

Description of required language/clauses	Meets contract requirement(s) Yes/No
Required nondiscrimination and assurance language is included?	
All clauses, including prompt payment and timely release of retainage are included?	
Contains termination provisions?	

If above requirements are not met, action taken:

A review of each subcontract will be performed prior to issuing a Notice to Proceed to the prime contractor.

ATTACHMENT 7. C.

Prompt Payment Monitoring

The City of Manhattan, Manhattan Regional Airport will use the following mechanisms for monitoring of prompt payments:

Prompt Payment:

- Contract payment report will be submitted with each contractor/consultant request for payment. A sample is attached for use by contractor or the contractor may submit the information using their own form.
- City will make payment within 30 days of each approved payment request. If City is unable to meet this deadline, notification will be sent to the contractor/consultant.
- The day payment is sent to prime contractor/consultant, email notification will be sent to subs informing them of such payment.
- Contractor/consultant will make payment to sub within 30 days of receiving payment.

The payment report will also serve as tracking of DBE payments to commitments.

Staff responsible for monitoring is Kimberly Boice, Assistant Airport Director.