

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement


The City of Columbia, Missouri, owner of the Columbia 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 Columbia, Missouri has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Columbia, Missouri has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the City of Columbia, Missouri 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 Columbia, Missouri's policy to engage in the following actions on a continuing basis:

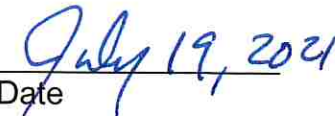
1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully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

The Purchasing Agent has been delegated as the DBE Liaison Officer. In that capacity, the Purchasing Agent 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 Columbia, Missouri in its financial assistance agreements with the Department of Transportation.

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



John Glascock, City Manager
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Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

The City of Columbia, Missouri is the recipient of federal aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The City of Columbia, Missouri is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105-178.

Section 26.5 Definitions

The City of Columbia, Missouri will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

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

DBE participation will be reported to DOT as follows:

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

Records retention and reporting:

The City of Columbia, Missouri will maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, the City of Columbia, Missouri will keep all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of City of Columbia, Missouri’s financial assistance agreement. Other compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

The City of Columbia, Missouri as a member of the Missouri UCP established pursuant to §26.81, will report to the Department of Transportation’s Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

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

Bidders List

The City of Columbia, Missouri will maintain and reference regularly 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 City of Columbia, Missouri DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

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

1. The City will use the statewide DBE directory maintained by the Unified Certification Program.
2. The City will track all DBE participation on Missouri DOT assisted contracts on a spreadsheet.
3. The City will seek out DBE's through attending vendor fairs, community outreach, Missouri Professional and Technical Assistance Centers, and communication with organizations that assist women-owned and minority-owned businesses.

Section 26.13 Federal Financial Assistance Agreement

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

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

The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient 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 recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanction 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: The City of Columbia, Missouri will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or

- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Columbia, Missouri 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 Columbia, Missouri is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City of Columbia, Missouri is in compliance with it and Part 26. The City of Columbia, Missouri will continue to carry out this program until all funds from DOT financial assistance have been expended. The City of Columbia, Missouri does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the City of Columbia, Missouri:

Cale Turner
Purchasing Agent
701 E Broadway
Columbia, MO 65201
573-874-7375
Cale.turner@como.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Columbia, Missouri complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager for the City of Columbia, Missouri concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 1 to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City of Columbia, Missouri's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Accesses certified DBE's through the Unified Certification Program (UCP) of the Missouri Regional Certification Committee (MRCC).
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Follows DBE requirements as necessary for sub-recipient, municipal agreements.

Section 26.27 DBE Financial Institutions

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

1. Consulted the Missouri Regional Certification Committee's (MRCC) Disadvantaged Business Enterprise (DBE) listings.
2. Reviewed the Census Bureau website.

To date, we have identified NO financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Missouri. The City of

Columbia, Missouri will continue to monitor the above listed services on an annual basis. When the City has identified financial institutions owned and controlled by socially disadvantaged individuals, the City will provide the names and addresses to contractors, subcontractors, and DBE organizations. In addition, the City of Columbia, Missouri will contact these institutions in order to determine services available and discuss innovative cooperative efforts to encourage contractors to use the services of the institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

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

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

The City of Columbia, Missouri 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 Columbia, Missouri has selected the following method to comply with this requirement:

The City of Columbia, Missouri declines to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed:

No retainage will be held by the Owner from progress payments due the prime.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the project work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

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

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from City of Columbia, Missouri. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Columbia, Missouri. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

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

Section 26.33 Over-concentration

The City has not identified that overconcentration exists in the types of work that DBEs perform. The City will annually review the number of DBE firms in the areas of work most frequently awarded to those DBE firms and compare those figures to the total number of non-DBE firms in the relevant work areas. If the number of DBE firms is determined to be disproportionately high, then overconcentration may exist. The City will then propose appropriate measures to remedy the concerns, and submit the measures to the appropriate DOT agency for review.

Section 26.35 Business Development Programs

The City of Columbia, Missouri has not established a Business Development Program. The City of Columbia, Missouri will reevaluate the need for such a program every two (2) years to determine if more extensive efforts are required beyond the small-business development activities in the City of Columbia, Missouri and local minority business associations.

Section 26.37 Monitoring Responsibilities

The City of Columbia, Missouri 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 sets forth these mechanisms in City of Columbia, Missouri's DBE program.

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

Monitoring Payments to DBEs and Non-DBEs

The City of Columbia, Missouri 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):

- *We will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by completing the Commercial Useful Function Audits by the City of Columbia, Missouri's Contract Compliance Officer as well as the Contractor Payment Affidavit included in this document as attachment 2.*
- *We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This will be done by using the prompt payment affidavits submitted with each contractor's application for payment.*

The City of Columbia, Missouri 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 Columbia, Missouri'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 Columbia, Missouri or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The City of Columbia, Missouri proactively reviews contract payments to subcontractors including DBEs at the completion of each project in which payment is required. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City of Columbia, Missouri by the prime contractor.

Prompt Payment Dispute Resolution

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

1. Attempt to resolve the issue by meeting with the representatives from the prime contractor as well as the subcontractors with whom there is a dispute.
2. Bring the concern 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 26.109.
3. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 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 procurement activities.

The City of Columbia, Missouri has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage

- Any contractor who fails to adhere to all parts of the written contracts, including issues with prompt payment and return of retainage, shall be considered in breach of contract and will be subject to all that entails. This includes termination of contract, liquidated damages and withholding of payments until such time as the breach can be remedied.

The following language can be found in all of the City of Columbia, Missouri's federally funded contracts as an enforcement method to this statement:

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the [Contractor | Consultant] or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [Contractor | Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor | Consultant] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the [Contractor | Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor | Consultant] fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A violation of the Owner's DBE Program by [Contractor | Consultant] shall constitute a material breach of the Agreement, and shall entitle Owner to: (a) exercise all rights and remedies that it may have at law or at equity for material breach of contract; (b) exercise all rights and remedies that it may have pursuant to the Agreement, including but not limited to termination of the Agreement and any other rights set forth herein; and (c) any other rights or remedies under the DBE policy. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

The Parties further agree that in addition to any other remedies Owner may have at law for material breach of this Agreement, Owner shall be entitled to exercise any one or more of the following remedies if [Contractor | Consultant] violates the DBE Program: (a) terminate this Agreement for default; (b) suspend this Agreement for default; (c) withhold payments due to [Contractor | Consultant] under this Agreement until such violation has been fully cured or Owner and [Contractor | Consultant] have reached a mutually agreeable resolution; (d) assess liquidated damages as provided in this Agreement; (e) offset any liquidated damages and/or amounts necessary to cure any violation of the DBE Program from any other amounts due to [Contractor | Consultant] pursuant to this Agreement. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

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.
- The DBELO will then contact the prime to initiate a resolution. If the conflict is unable to be resolved then the prime may be considered in breach of contract. Please see Attachment 3 for more information on our enforcement options.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City of Columbia, Missouri to resolve prompt payment disputes, affected subcontractor may contact the City Manager.
- 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 Columbia, Missouri will provide appropriate means to enforce the requirements of §26.29. These means include:

- *In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor:*

Liquidated Damages for Violation of the DBE Program. The Parties acknowledge and agree that Owner will incur costs if [Contractor | Consultant] violates the DBE Program in one or more of the ways set forth below. The Parties further acknowledge and agree that the costs Owner might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, [Contractor | Consultant] agrees to pay Owner liquidated damages at the rates set forth below for each specified violation of the DBE Program. [Contractor | Consultant] further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss City will incur as a result of such violation and that such liquidated damages are not penal in nature but rather the Parties' attempt to fairly quantify the actual damages incurred by the Owner: (a) failing to utilize a DBE that was originally listed at bid opening or proposal submission in order to satisfy Contract goals, or failing to allow such DBE to perform a commercially useful function, in violation of sections of the DBE program: one hundred percent (100%) of the amount originally counted for the DBE at bid opening or proposal submission; (b) modifying or eliminating all or a portion of the Scope of Work attributable to a DBE upon which the Contract was awarded, in violation of the DBE Program: one hundred percent (100%) of the amount of Work modified or eliminated; (c) terminating a DBE originally listed/utilized as a subcontractor, joint venture, supplier, or manufacturer in order to be awarded the Contract without obtaining prior approval by City for replacing such DBE with another DBE performing the same commercially useful function and dollar amount: one hundred percent (100%) of the amount originally counted for the DBE at bid opening or proposal submission; (d) participating in a conduit relationship with a DBE scheduled to perform Work on contract: one hundred percent (100%) of the amount counted for the DBE at bid opening or proposal submission; or (e) failing to provide any documentation or written submissions required under the DBE program within the time period set forth therein: fifty dollars (\$50.00) per day for each day that such documentation or written submission is overdue.

- *Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.*

BONDING

1. General Requirements. All bonds furnished by Contractor shall be in a form satisfactory to City of Columbia, Missouri. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

2. When Contractor delivers this Contract, executed, to the City of Columbia, Missouri, each bound Contract shall be accompanied by an original executed Performance Bond and Labor and Material Payment Bond, on forms provided by the City of Columbia, Missouri. Bonds shall be written by a company approved by City of Columbia, Missouri, each in an amount of one hundred percent (100%) of the Contract Price, guaranteeing complete and faithful performance of the Contract and payment of all bills of whatever nature which could become a lien against property and guaranteeing replacement of defective materials and workmanship for a period of one (1) year after completion of the Work and Final Acceptance.

- *In severe cases, the City of Columbia, Missouri is empowered to terminate the contract for default. Many examples of qualifying language exists. One example is as follows:*

TERMINATION FOR DEFAULT (CONSTRUCTION)

Default and termination of contract. The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract. If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the RPR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that

have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the RPR will be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

The City of Columbia, Missouri will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City of Columbia, Missouri 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 Contract Compliance Officer. Contracting records are reviewed by compliance team. City of Columbia, Missouri 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 Columbia, Missouri has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 5 to this DBE Program. The program elements will be actively implemented to foster small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City of Columbia, Missouri will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the City of Columbia, Missouri will submit its Overall Three-year DBE Goal to the FAA, FTA, and FHWA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA, FTA, and FHWA.

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

FTA:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-three-year-goal-setting-submission-schedules>

FHWA:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-three-year-goal-setting-submission-schedules>

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 Columbia, Missouri does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City of Columbia, Missouri will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

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

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The City of Columbia, Missouri will examine all

of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, The City of Columbia, Missouri 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 Columbia, Missouri to establish a level playing field for the participation of DBEs.

The consultation will be advertised as a formal public notice and will include a scheduled face-to-face meeting or video conference with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City of Columbia, Missouri is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City of Columbia, Missouri 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 Columbia, Missouri will publish a notice announcing the proposed overall goal before submission to the Department of Transportation on August 1st. The notice will be posted on the City of Columbia, Missouri's official internet web site. If the proposed goal changes following review by Department of Transportation, the revised goal will be posted on the official internet web site.

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

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

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

Project Goals

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

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

Prior Operating Administration Concurrence

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

Section 26.47 Failure to meet overall goals

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

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

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

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

Section 26.49 How are overall goals established for transit vehicle manufacturers?

The City of Columbia, Missouri will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

- (1) The City of Columbia, Missouri affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
- (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
- (3) The City of Columbia, Missouri is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

- (4) The City of Columbia, Missouri will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

1. Ensuring contracting barriers do not exist by using contracting arrangements (such as, arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules) that facilitate participation by DBEs and other small businesses and make contracts more accessible to them.
2. Configuring large contracts into smaller contracts to make contracts more accessible to small businesses, when feasible, providing it would not impose significant additional cost, delay or risk to the city.
3. Identifying components of the work that represent subcontracting opportunities and identifying the availability of DBE subcontractors. Contractors will be encouraged to consider DBE subcontractors for components of the work for which there is a known supply of ready, willing and able DBE subcontractors, as well as non-DBE subcontractors, in preparing their bids and proposals.
4. Assisting in overcoming limitations in bonding and financing, when requested and as appropriate.
5. Providing technical assistance and other business related services, as requested and as appropriate.
6. Providing outreach and communications programs related to contracting opportunities and procedures to ensure the inclusion of DBEs and other small businesses on mailing lists soliciting bids and proposals.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 6 to this program.

The City of Columbia, Missouri will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate

participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

The City will use contract goals to meet any portion of the overall goal the City does not project being able to meet using race-neutral 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 our overall goal that is not projected to be met through the use of race-neutral means.

The City 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 contract goals will be adapted depending upon such factors as the type of work, the location of work, and the availability of DBEs to perform the particular type of work.

The City will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

The City will use a Race Conscience goal in its contracts, as directed by the Missouri Department of Transportation for projects which receive Federal Highway (FHWA) funds.

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

Demonstration of good faith efforts (pre-award)

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

The Purchasing Agent 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.

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

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

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

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
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 contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative Reconsideration

Within 5 days of being informed by City of Columbia, Missouri that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mathew Lue, Director of Finance
701 E. Broadway, 5th Floor
PO Box 6015
Columbia, MO 65205
573-874-7368
Mathew.Lue@como.gov

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity

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

Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The City of Columbia, Missouri determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the City of Columbia, Missouri written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;

- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the City of Columbia, Missouri has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

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

The City of Columbia, Missouri will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the City of Columbia, Missouri requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor.

The City of Columbia, Missouri shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Section 26.55 Counting DBE Participation

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

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

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

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

MoDOT Application & Form Submittal
External Civil Rights Division
1617 Missouri Blvd.
P.O. Box 270

Jefferson City, MO 65102
573-526-2978
<https://www.modot.org/dbe-program>

The Uniform Certification Application form and documentation requirements are found in Attachment 6 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Columbia, Missouri is the member of a Unified Certification Program (UCP) administered by the Missouri Department of Transportation. The UCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Columbia, Missouri

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

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law or prohibited by Missouri law.

(2) As a recipient, the City shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

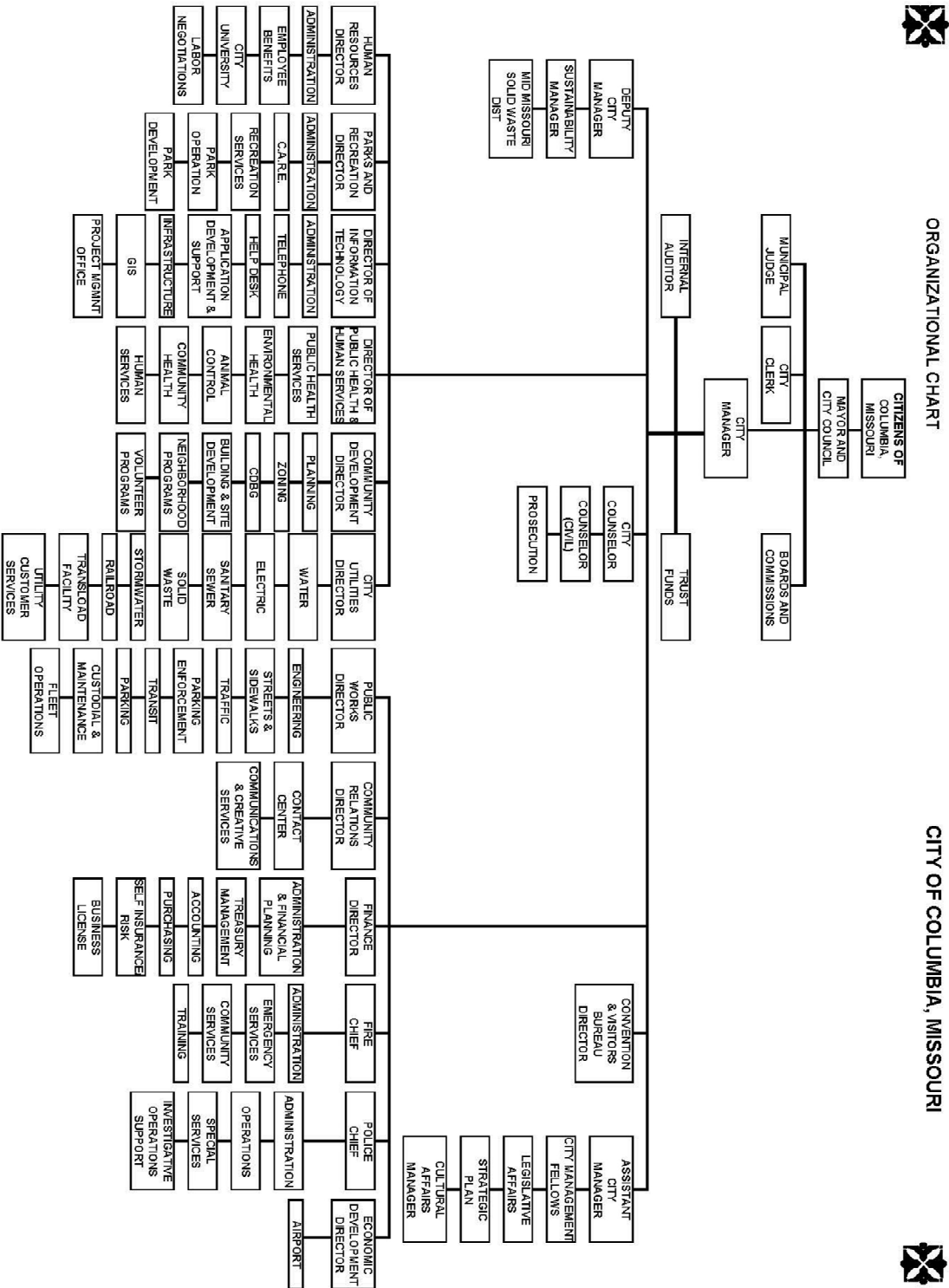
Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

- (b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.
- (c) *Cooperation.* 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).
- (d) *Intimidation and retaliation.* Neither the City, a contractor, or any other participant in the program, shall 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. If any party violates this prohibition, the party is in noncompliance with this part.
- (e) Missouri statutes can be found at the following link: [Missouri Open Government Statutes](#) . Further information on Missouri Sunshine Law can be accessed at the following link: [Missouri Sunshine Law](#)

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 Contractor Payment Affidavit
- Attachment 3 DBE Enforcement Attachment
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Small Business Element
- Attachment 6 DBE Certification Application Form Link
- Attachment 7 Regulations: 49 CFR Part 26 Link
- Attachment 8 Demonstration of Good Faith Efforts– Forms 1 and 2

Attachment 1: Organizational Chart



Attachment 2:

Contractor Payment Affidavit

To be submitted AFTER receipt of payment from the city of Columbia. Copy this form as needed.

Project Name: _____

Contractor Name: _____ Payment Request: # _____

Contract Number: _____ Payment Received: \$ _____

Payment Period: From: _____ To: _____ Date Payment Received from City: _____

Check # from City: _____ EFT: tracking and date: _____

If applicable, Date of Retainage Release, amount, & Check/EFT#: _____

☐ FINAL PAYMENT Check this box ONLY when submitting final pay request.

PAYMENTS TO SUBCONTRACTORS

Complete the chart below for ALL Subcontractors/Suppliers used on the Project/Contract regardless of dollar amount. (for compliance with 49 CFR §26.37)

Subcontractor's/Supplier's Name	Description of Work Performed or Material Provided	Date of Invoice from Sub	Date of Payment to Sub	Amount Paid this Period	Retainage Amount	Cumulative Payments

CERTIFICATION

The undersigned Contractor certifies the preceding chart is a true and accurate statement of invoices and payments made to subcontractors on this Project/Contract for the payment period listed above.

This _____ day of _____, 20____.

Signature_____
Print Name and Title

Attachment 3: DBE Enforcement Methods

Monitoring and Enforcement Mechanisms

The City of Columbia, Missouri has several remedies available 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. The City of Columbia, Missouri has the right to investigate prime contractors and its subcontractor(s) for DBE compliance.
3. The City of Columbia, Missouri will report to the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the DBE 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.
4. The City of Columbia, Missouri may cancel or suspend the construction agreement if the contractor is not in compliance with the DBE program or its certification.

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The City of Columbia, Missouri will implement various mechanisms to monitor program participants to ensure they comply with Part 26, including, but not limited to the following:

- We will implement the following additional monitoring and compliance procedures:
 - A. The Purchasing Agent or designated staff member shall attend the post award project meeting, i.e., preconstruction or kickoff meeting. Note: In some instances of professional services contracts, a post award meeting may not be held. At this meeting the staff discusses any DBE questions and/or procedures and ascertains any corrections or adjustments in the project schedule.
 - B. The Purchasing Agent or designated staff member determines a schedule for random on-site monitoring based upon the work that the DBE is to

perform and the contract schedule. This on-site monitoring verifies the work performed by the DBE, as only work performed by the DBE counts.

- C. On-site monitoring will be performed by contract compliance officer, department staff, project managers and other designated staff. Observations of the onsite visit will be documented on a monitoring checklist form. The form is to be completed, signed and dated by the staff person conducting the site visit.

- We will implement our compliance and monitoring procedures as follows:

A contractor or DBE who fails to comply with any portion of this section of the policy, and whose failure to comply continues for a period of 30 calendar days after the contractor or DBE receives written notice of such non-compliance from the DBELO, shall be subject to any or all of the following penalties:

- A. Withholding of all future payments under the eligible project until it is determined that the contractor/DBE is in compliance with the DBE policy.
- B. Cancellation of the eligible project.
- C. A determination by the DBELO that a DBE has failed to:
 - (1) Comply with policy on brokering services shall subject the offending party to the possible revocation of its certification as an DBE for a period not to exceed three years;
 - (2) If the contractor is a DBE, a denial or revocation of their certification as a DBE will be conducted for a period not to exceed three years;
- D. Refusal of participation on all future contracts or subcontracts with the City of Columbia, Missouri for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed.
- E. The DBELO may require such reports, information and documentation from bidders, contractors, DBE's, user departments and the head of any department or office of the City reasonably necessary to determine compliance with the requirements of this chapter.
- F. Criminal sanction for fraud.

If the DBELO determines that evidence is available indicating that fraud or other unlawful activity has been committed:

- A. By a DBE certification applicant;

- B. By a certified DBE falsely reporting the utilization of a DBE; or
- C. By an individual or firm attempting to benefit from or participate in the DBE program, through fronting activity, false representation of a commercially useful function, or other fraudulent or unlawful activity,

The matter shall be referred to the appropriate legal authorities and the City Counselor's Office for prosecution. In the event a conviction or guilty plea is obtained stemming from such criminal prosecution, the business entity and principals shall be barred from participation in City of Columbia, Missouri contracts for a minimum of one year and a maximum of three years to be determined by the Purchasing Agent/DBELO.

Alleged violations of the DBE program shall be addressed as set forth in this Section.

Potential violations during bid or proposal process

Bidders and Proposers that submit bids or proposal on a contract or proposal shall not:

- A. Make any false statements or material misrepresentations regarding any matter relevant to the DBE Program; or
- B. Fail to comply with the goal and good faith effort obligations set forth in the DBE Program; or
- C. List a DBE intended to serve as a conduit to satisfy a DBE participation goal; or
- D. Commit any other violations of the DBE Program, or rules and guidelines promulgated thereunder.

Potential violations during contract performance

A contractor that has been awarded a contract based upon a stated level of DBE participation shall not, at any time before or during the performance of such contract:

- A. Make any false statements of material misrepresentations regarding any matter relevant to the DBE Program; or
- B. Fail to in fact utilize a DBE that was originally listed at bid opening or proposal submission in order to satisfy contract goals, unless the Proposer or Bidder:

1. Substitutes another DBE performing the same commercially useful function at the same dollar amount without prior approval of the DBELO; or
2. Fails to allow a DBE functioning as a subcontractor, joint venture, supplier, or manufacturer, to perform the commercially useful function, the value of which was originally counted for that DBE in awarding the contract, unless the bidder or proposer shows that the DBE failed to perform in a reasonably satisfactory manner; or
3. Modifies or eliminates all or a portion of the scope of work attributable to a DBE upon which the contract was awarded, unless directed by the City of Columbia, Missouri; or
4. Terminates a DBE originally utilized as a subcontractor, joint venture, supplier, or manufacturer in order to be awarded the contract without replacing such DBE with prior approval, with another DBE performing the same commercially useful function and dollar amount; or
5. Participates in a conduit relationship with a DBE scheduled to perform work on the contract; or
6. Commits any other violations of the DBE Program, or rules and guidelines promulgated thereunder.

Investigation of Violations and Unfair Practices

DBEs shall report any alleged DBE Program violations or unfair practices involving the DBE Program with three (3) business days after the DBE first became aware of the act or omission in question. The DBELO may reject, as untimely, any report submitted after such date.

The DBELO shall not accept reports of violations or unfair practices that are submitted more than thirty (30) calendar days after the DBE first became aware of the act or omission in question.

- A. The DBELO is empowered to receive and investigate complaints and allegations by DBEs, third parties and/or City personnel, and/or to initiate its own investigations regarding compliance with the requirements and obligations of the DBE Program and the rules and guidelines promulgated thereunder. In the event the MBE/DBE Program office determines in its sole discretion that an investigation is warranted, the DBELO shall notify the party being investigated. Upon written notice of such investigation, the affected party shall be obligated to cooperate fully with the investigation and shall have a continuing burden of providing complete, truthful information to the DBELO

and of otherwise proving compliance with the requirements and obligations of the DBE Program.

- B. A violation of the DBE Program in the bid or proposal phase of a contract shall be grounds for disqualifying such Bidder or Proposer from further consideration for contract award. If the violation involves bad faith or dishonesty or may otherwise be indicative of the Bidder's or Proposer's qualification to perform certain future contracts, the City of Columbia, Missouri may consider such violation in awarding such future contracts.
- C. A violation of the DBE Program by a Contractor shall constitute a material breach of the contract, and shall entitle the City of Columbia, Missouri to:
 - 1) Exercise all rights and remedies that it may have at law or at equity for material breach of the contract;
 - 2) Exercise all rights and remedies that it may have under the contract, including but not limited to termination of the contract and any other rights set forth in Section below; and
 - 3) Any other rights or remedies set forth under this policy.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

Remedies for Violation of DBE Program

The parties further agree that in addition to any other remedies the City of Columbia, Missouri may have at law under an agreement for material breach, the City of Columbia, Missouri shall be entitled to exercise any one or more of the following remedies if the Contractor violates the DBE Program:

- A. Terminate contract for default;
- B. Suspend contract for default;
- C. Withhold all payments due to the contractor under the contract until such violation has been fully cured or the City of Columbia, Missouri and the Contractor have reached a mutually agreeable resolution;
- D. Assess liquidated damages as provided in the contract;
- E. Offset any liquidated damages and/or any amounts necessary to cure any violation of the DBE Program from any retainage being held by the City of Columbia, Missouri on the contract, or from any other amounts due to the contractor under the contract.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

Liquidated Damages

The City of Columbia, Missouri and the contractor acknowledge and agree that the City of Columbia, Missouri will incur costs if the contractor violates the DBE Program in one or more of the ways set forth below. The parties further acknowledge and agree that the costs the City of Columbia, Missouri might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the contractor agrees to pay the City of Columbia, Missouri liquidated damages at the rates set forth below for each specified violation of the DBE Program. The contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the City will incur as a result of such violation:

- A. Failing to utilize a DBE that was originally listed at bid opening or proposal submission in order to satisfy contract goals, or failing to allow such DBE to perform a commercially useful function, in violation of sections of the DBE Program: 100% of the amount originally counted for the DBE at bid opening or proposal submission;
- B. Modifying or eliminating all or a portion of the scope of work attributable to an DBE upon which the contract was awarded, in violation of the DBE Program: 100% of the amount of work modified or eliminated;
- C. Terminating a DBE originally listed/utilized as a subcontractor, joint venture, supplier, or manufacturer in order to be awarded the contract without obtaining prior approval for replacing such DBE with another DBE performing the same commercially useful function and dollar amount: 100% of the amount originally counted for the DBE at bid opening or proposal submission;
- D. Participating in a conduit relationship with a DBE scheduled to perform work on contract: 100% of the amount counted for the DBE at bid opening or proposal submission;
- E. Failing to provide any documentation or written submissions required under the DBE Program within the time period set forth therein: \$50 per day for each day that such documentation or written submission is overdue.

Attachment 4 – Link to DBE Directory

<https://www.modot.org/mrcc-directory>

ATTACHMENT 5

Small Business Element

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

The Plan affects contracts that fall within the DBE regulation. For purposes of the Plan, a Small Business Enterprise (SBE) is defined in Section 3 of the Small Business Act and Small Business Administration Regulations implementing it (13 CFR Part 121.101 - 201).

1. Objective/Strategies

- (1) In multi-year design-build contracts or other large contracts (over \$2,000,000.00), the City will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that SBEs and DBEs can reasonably perform.
- (2) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (3) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (4) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. The City will do this by unbundling large projects into smaller ones, rather than letting one large contract of a size that a SBE could not be expected to compete for as a prime contractor.
- (5) The City will actively work with small business development organizations, to keep DBEs apprised of contract opportunities.
- (6) The City will attend vendor outreach events such as vendor fairs and small business education seminars.

2. Definition

The City of Columbia, Missouri will accept the following certifications for participation in the Small Business Participation Plan:

- *DBE Certification by the MRCC which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by MRCC.*
- *Small Business Enterprise (SBE) Certification by the MRCC. All certification determinations are evidenced by a letter of SBE certification issued by MRCC.*

3. Verification

All certification determinations are evidenced by a letter of DBE or SBE certification issued by MRCC.

4. Monitoring/Record Keeping

The City of Columbia, Missouri will use the same race-neutral guidance when reporting is required. The City will also use a bidders' list to recruit and encourage DBE's, non-DBE's and SBE's to bid on projects.

5. Assurance

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

Attachment 6
Link to Uniform Certification Application

https://www.modot.org/sites/default/files/documents/Uniform%20Certification%20Application_1.pdf

Attachment 7
Regulations: 49 CFR Part 26 Link

Regulations: 49 CFR Part 26

[49 CFR Part 26](#)

Attachment 8

Demonstration of Good Faith Efforts - Forms 1 and 2

Forms 1 and 2 should 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 submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
Signature Title

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.

By _____
(Signature) (Title) (Date)

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.)