

Tri-Cities Airport Authority

Disadvantaged Business Enterprise Program

Updated January 2024





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**UNITED STATES DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
Tri-Cities Airport Authority
Blountville, TN**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

Tri-Cities Airport Authority (hereafter 'TCAA') has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. TCAA has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, TCAA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of TCAA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts. It is also the policy to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-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 USDOT assisted contracts;
6. Promote the use of DBEs in all types of federal-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace 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.

Mr. Christopher Stipo, Operations Manager, Tri-Cities Airport Authority, 2525 Highway 75, Suite 305, Blountville, TN 37617, 423-325-6055 has been designated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO 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 TCAA in its financial assistance agreements with the US Department of Transportation.

TCAA has disseminated this policy statement to its board members and all of the components of the organization. TCAA will distribute this statement to DBE and non-DBE business communities that perform work for the Airport on USDOT-assisted contracts in the following manner:



1. *This Policy statement will be prepared as a handout, and made available at pre-bid conferences, and/or outreach meetings conducted by TCAA.*
2. *Copies of the Policy statement will be mailed to all of the agencies/organizations consulted during the development of the DBE goal methodology. This will make TCAA's policy for the Tri-Cities Airport available to additional small, minority, and women business development agencies.*

Gene Cossey

Gene Cossey, Executive Director
Tri-Cities Airport Authority

23/01/2024

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

TCAA is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

TCAA will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-Discrimination Requirements

TCAA 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, TCAA 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 USDOT: 26.11(b)

TCAA will report DBE participation to USDOT as follows:

TCAA will submit annually the *Uniform Reports of DBE Awards or Commitments and Payments*, as modified for use by FAA recipients, via FAA DBE-Connect (<https://faa.civilrightsconnect.com/>).

Bidders List: 26.11(c)

TCAA will create and maintain a bidders' list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

TCAA will collect this information in the following ways:

- a. *Include a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.*
- b. *Include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report the approved information directly to the DBELO for inclusion in the bidder's list.*



- c. *Request the above information from all potential bidders who contact the Airport seeking bid information, and/or who attend pre-bid meetings, conferences, etc., at the Airport.*

*TCAA may also consider the use of the Bidders List Data Collection form, as shown in **Attachment 9**.*

Section 26.13 Federal Financial Assistance Agreement

TCAA has signed the following assurances, applicable to all USDOT-assisted contracts and their administration:

Assurance: 26.13(a)

Tri-Cities Airport Authority (hereafter 'TCAA') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. TCAA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. TCAA's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 TCAA of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

TCAA will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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 USDOT 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:

- a. *Withholding monthly progress payments;*
- b. *Assessing sanctions;*
- c. *Liquidated damages; and/or*
- d. *Disqualifying the contractor from future bidding as non-responsible.*



SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Update

TCAA will continue to carry out this program until all funds from USDOT financial assistance have been expended, and will provide to USDOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

TCAA has designated the following individual as its DBE Liaison Officer:

Mr. Christopher Stipo, Operations Manager, Tri-Cities Airport Authority, 2525 Highway 75, Suite 305, Blountville, TN 37617, 423-325-6055.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TCAA comply with all provision of 49 CFR Part 26. The DBELO has direct, independent access to TCAA's Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found 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, along with his staff, will administer the program. The duties and responsibilities include the following:

1. *Gathers and reports statistical data and other information as required by USDOT.*
2. *Reviews third party contracts and purchase requisitions for compliance with this program.*
3. *Works with all departments to set overall triennial 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 attainment and identifies ways to improve progress.*
6. *Analyzes the Airport's progress toward attainment and identifies ways to improve progress.*
7. *Participates in pre-bid meetings.*
8. *Advises TCAA on DBE matters and achievement.*
9. *Chairs the DBE Advisory Committee (when formed).*
10. *Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.*



11. Plans and participates in DBE training seminars.

12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of TCAA 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 USDOT-assisted contracts to make use of these institutions.

Specifically, **Citizens Savings Bank and Trust Company, 2013 Jefferson Street, Nashville TN 37208** has been identified as a minority-owned banking institution. TCAA will consider the services offered by the bank and refer the institution noted above.

Section 26.29 Prompt Payment Mechanisms

TCAA requires that all subcontractors performing work on USDOT-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, TCAA has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment made to the prime contractor.

TCAA 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, TCAA has selected the following method to comply with this requirement:

TCAA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after TCAA's payment to the prime contractor.

To implement this measure TCAA will include the following clause from the FAA Advisory Circular 150-5370-10H in each DOT-assisted prime contract.

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 TCAA for protection of TCAA's interests. Unless otherwise instructed by TCAA, the amount retained by TCAA will be in effect until the final payment is made except as follows:



- (1) Contractor may request release of retainage on work that has been partially accepted by TCAA in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by TCAA for partially accepted work.
- (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

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 TCAA 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 TCAA. When TCAA 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.

When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at TCAA'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. TCAA may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

TCAA uses the Tennessee Unified Certification Program (TN UCP) DBE Directory, maintained by the Tennessee Department of Transportation (TDOT). 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.

The Tennessee Department of Transportation updates the Directory as necessary. The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The Directory may be found at <https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>.

Section 26.33 Overconcentration

TCAA has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

TCAA has not established a business development program.



Section 26.37 Monitoring and Enforcement Mechanisms

TCAA 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 TCAA's DBE program.

TCAA 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

TCAA 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:

TCAA will require prime contractors to report documents of payments to subcontractors monthly. The DBELO will review and verify that payments have been made and retainage has been returned to subcontractors in accordance to section 26.29.

TCAA 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 TCAA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of TCAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

TCAA uses a number of DBE forms, examples of which can be found in Attachment 3, to collect DBE information for initial project setup and for ongoing monitoring of DBE participation:

- DBE Project Compliance Review Checklist
- Listing of DBE Subcontractors
- DBE Monthly Report
- DBE Commercially Useful Function Report

The DBELO or representative conducts onsite compliance reviews of FAA funded

projects. The DBELO reviews DBE subcontracts, payments, and evaluates any DBE firms working on the project during the date of the visit. The DBELO will conduct a CUF review at least once during the project for all DBEs. The DBELO also reviews monthly progress reports submitted by prime contractors to determine if they are on track to meet the DBE goal. Written certification will be documented by the DBELO on the DBE Project Compliance Review Checklist form.



Prompt Payment Dispute Resolution

TCAA will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

A meeting will be scheduled with the prime, sub, DBELO and other appropriate TCAA representative(s). Any meeting for the purpose of dispute resolution will include TCAA representative(s) authorized to bind each interested party, including TCAA representative(s) with authority to take enforcement action.

TCAA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

If the Prime contractor has not paid subcontractors in accordance with 26.29 TCAA will not reimburse the prime contractor for work performed by subcontractors until the prime is in compliance with 26.29.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting the prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact TCAA's DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by TCAA to resolve prompt payment disputes, affected subcontractor may contact the FAA Office of Civil Rights.
- 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

TCAA will provide appropriate means to enforce the requirements of §26.29. These means may 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.*



- *Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.*
- *Pay subcontractors directly and deduct this amount from the retainage owed to the prime.*
- *Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.*

TCAA will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

TCAA 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 with assistance from the resident project representative. Contracting records are reviewed by the DBELO. TCAA 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

TCAA has created an 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 program element is included as Attachment 8.

TCAA 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

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

Section 26.45 Overall Goals

TCAA will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT/FAA-funded prime contracts the cumulative total value of which exceeds \$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) TCAA will submit its overall three-year DBE goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	2025 (2026/2027/2028)
Small Hub Primary	All Regions	2026 (2027/2028/2029)
Non-Hub Primary	All Regions	2027 (2028/2029/2030)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	2025 (2026/2027/2028)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	2026 (2027/2028/2029)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	2027 (2028/2029/2030)

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

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

In establishing the overall goal, TCAA will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TCAA’s efforts 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) with as many interested stakeholders as possible focused on obtaining information relevant to TCAA's goal setting process, and it will occur before submitting the goal methodology to the FAA for review pursuant to paragraph (f) of this section. TCAA will document in the goal submission the consultation process that was utilized. Notwithstanding paragraph (f)(4) of this section, TCAA will not implement the proposed goal until this requirement is fulfilled.

In addition, TCAA will post a notice announcing the proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on TCAA's official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on the official internet web site. TCAA will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at the DBELO's office, and that TCAA 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.

TCAA's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

TCAA will begin using the overall goal on October 1 of each year, unless it has received other instructions from USDOT. If TCAA establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrence

TCAA understands that it is not required to obtain prior operating administration concurrence with the overall goal. However, if the operating administration's review suggests that the overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with TCAA, adjust the overall goal or require that TCAA do so. 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 Goal Setting and Accountability

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



The TCAA 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.

If the awards and commitments shown on TCAA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, the Airport will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Maintain a copy of the plan on file for at least three (3) years.

Section 26.49 Transit Vehicle Manufactures Goals

N/A

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. This section of the program will be updated when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

TCAA will use contract goals to meet any portion of the overall goal it 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 the overall goal that is not projected to be met through the use of race-neutral means.

TCAA will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. TCAA 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).

TCAA will express their contract goals as a percentage of the federal share of a USDOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder is to make good faith efforts to meet the DBE goal. The bidder 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 49 CFR Part 26.



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

TCAA will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before it commits to the performance of the contract by the bidder.

Information to be submitted (26.53(b))

TCAA treats bidders' 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 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;*
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.*

This information will be collected using the forms found in Attachment 5.

Administrative reconsideration (26.53(d))

Within ten (10) days of being informed by TCAA that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official: **Mr. Gene Cossey, Executive Director, Tri-Cities Airport Authority, 2525 Highway 75, Suite 301, Blountville, TN 37617, 541-217-8160**. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with TCAA's administrative reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. TCAA will send the bidder 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 US Department of Transportation.



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

TCAA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without TCAA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to TCAA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to TCAA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise TCAA of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, TCAA will require the prime 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. TCAA 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, TCAA will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, TCAA's 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 Tri-Cities Airport Authority, as of the Tri-Cities Airport, 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, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder 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'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);
- (6) If the contract goal is not met, evidence of good faith efforts.

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.

TCAA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

TCAA will refer all matters pertaining to certification to the Tennessee Department of Transportation in accordance with the State's UCP program. The Tennessee Department of Transportation will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Tennessee Department of Transportation will 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:

Small Business Development Program
James K. Polk Building, Suite 1800
505 Deaderick Street



Nashville, TN 37243

Phone 615.741.3681

<https://www.tn.gov/tdot/civil-rights>

A link to certification application forms and documentation requirements are found in Attachment 6 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Tri-Cities Airport Authority is a member of the Unified Certification Program (UCP) administered by the Tennessee Department of Transportation (TDOT). The UCP will meet all of the requirements of this section. Tennessee’s UCP program uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT/FAA-assisted contracts. Under the TN UCP Program, only TDOT will conduct DBE certifications. To be certified as a DBE, a firm must meet all certification eligibility standards. TCAA will refer all certifications to TDOT.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Compliance Procedures Applicable to TCAA

TCAA understands that if it fails to comply with any requirements of this part, TCAA 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 program, actions consistent with 49 U.S.C. 47106(d), 4711(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

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

Monitoring Payments to DBEs

TCAA will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of TCAA or USDOT. This reporting requirement also extends to any certified DBE subcontractor.



TCAA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.



ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 DBE Forms
- Attachment 4 Overall Goal Calculation; Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 5 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 6 Certification Application Forms
- Attachment 7 Regulations: 49 CFR Part 26
- Attachment 8 Fostering Small Business Participation
- Attachment 9 Bidder's List Data Collection Form

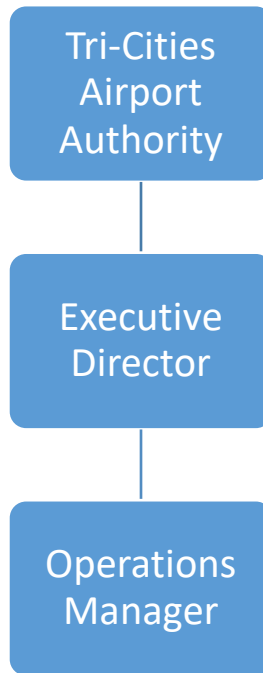


ATTACHMENT 1

Organizational Chart



Tri-Cities Airport Authority
Tri-Cities Airport
Blountville, TN





ATTACHMENT 2

DBE Directory

<https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>



ATTACHMENT 3

DBE Forms

DBE Project Compliance Review Checklist

Project:
AIP Number:
Prime Contractor:

Pre-Bid Checklist

- Review project to determine if a DBE contract goal is needed.
- Attend pre-bid meeting to inform bidders of DBE requirements.

Pre-Award Project Checklist

- Collect the Listing of DBE Subcontractors form.
- Collect letters of intent for all committed DBEs.
- If prime contractor is unable to meet the DBE goal, collect documentation of its good faith effort.

Post Award (Pre-Construction/Design) Project Checklist

- Collect fully executed (signed) subcontracts for all DBE firms.
- Review DBE subcontract(s) to ensure scope of work is consistent with what has been committed.
- Review Contracts to verify that all required contract clauses are included.
- Ensure dollar value of DBE subcontract(s) is/are equal to or greater than the amount committed.

During Construction and/or Design Checklist

- Complete form DBE Commercially Useful Function Report, to verify that the DBE's are performing a commercially useful function.
- Verify that business names on equipment and vehicles are not covered with paint or magnetic signs (visual inspection of vehicles on site).
- Verify who employs the workers on site (visually inspect badges/id's; establish reporting relationships of workers on site/review certified payrolls).
- Review supplier invoices and cancelled checks to verify what firm orders and pays for the necessary supplies being used by the DBE subcontractor.
- Ensure all DBE firms are paid promptly (within 30 days of payment to prime contractor per 49 CFR 26.29) by collecting and reviewing the DBE monthly report form.
- Document and file any correspondence related to terminations, substitutions or deletions of DBE firms.
- If terminations, substitutions, or deletions were approved, collect documentation of prime contractor's good faith effort to find a replacement firm

Post Construction/Design Checklist

- Ensure DBE goal has been achieved by collecting and reviewing the final DBE report.
- If a shortfall exists, collect Good Faith Effort documentation from prime contractor explaining reasons shortfall took place.

Certification:

I, _____ hereby certify that the contracting records for the federally funded project have been reviewed and the work site has been visited/monitored.

Signature: _____

Date: _____

**Listing of DBE Subcontractors
To Be Submitted With The Bid**

Project: _____

The Bidder hereby proposes the following DBE participation:

DBE Subcontractor/Supplier	Work to be performed	NAICS Code	Subcontract Amount	Amount Applicable to Goal (suppliers = * .60)
Total DBE Participation				
Base Bid Amount				
DBE Participation Proposed (%)				
DBE Participation Goal (%)				

Bidder (Firm Name)	Signature	Date

DBE Monthly Report

Contractor:
Project:
AIP Number:
Date:

DBE Subcontractor/Supplier	Committed Award	Total Prior Payments	Current Payment	Total	Date Paid to Vendor / Sub this Invoice	Percent
Totals						

Contractor Name:	Signature:	Title:	Date:

DBE Commercially Useful Function Report

Project:
AIP Number:
Prime Contractor:
DBE Firm:
DBE Start/Complete
CUF Review Date:

GENERAL

Yes No N/A

1. Does the DBE have its own employees on the job to perform the work?			
2. Does the DBE own the equipment being utilized to perform its work? If No, attach equipment list, ownership documents, and rental/lease agreements.			
3. Is the DBE self performing the subcontract defined task for a specific item of work (distinct element) on the contract?			

HAULING FIRMS

Yes No N/A

1. Does the DBE hauling firm own and/or lease their trucks? (review ownership/vehicle registration and/or lease documents to verify)			
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.)			
3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE?			

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS

Yes No N/A

1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading?			
2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds?			
3. If the DBE had any materials drop shipped to the project site, was the invoice addressed to the DBE?			
4. Did the DBE deliver materials to the site with their own and/or leased trucks?			

SUPERVISION

Yes No N/A

1. Is the DBE self performing work without assistance from the prime or another subcontractor?			
2. Is the DBE providing supervision of its employees and their work?			
3. Is the supervisor a full-time employee of the DBE?			

Completed by:
Date:



ATTACHMENT 4

Overall Goal Calculation

Uploaded Separately



ATTACHMENT 5

Form 1 & 2 for Demonstration of Good Faith Efforts



FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

- The bidder is committed to a minimum of ____% DBE utilization on this contract.
- The bidder (if unable to meet the DBE goal of ____%) is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's firm: _____

State Registration No. _____

By _____
Signature Title



FORM 2: LETTER OF INTENT

Name of bidder'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 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 _____ (Title)
Signature

If the bidder 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 6

Certification Application Forms

<https://www.tn.gov/tdot/civil-rights/small-business-development-program/small-business-development-program-staff/dbe-application.html>



ATTACHMENT 7

Regulations: 49 CFR Part 26

<https://www.ecfr.gov/>



ATTACHMENT 8

Fostering Small Business Participation (26.39)



Section 26.39 Fostering Small Business Participation

Purpose and Objective of this Element

This element, part 26.39, included as an amendment to our DBE Program Plan, is herein referenced as the Small Business Participation Plan (SBPP). This new part calls for the inclusion of an element to *“structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.”* **Tri-Cities Airport Authority** hereby sets forth the Airport’s plan to implement these requirements. TCAA’s SBPP is also regarded as a substantial effort toward fulfilling the overall intent of part 26.51, i.e. to meet the *“maximum feasible portion”* of its overall goal by using race-neutral means to obtain DBE participation. Therefore, implementation of TCAA’s SBPP will be based on the standard of *business size*, without regard to race or gender of the business owner.

This element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors.

Further, TCAA perceives the objectives of this section to be consistent with its DBE Program Policy Statement, which says in part:

- “- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.*
- To help remove barriers to the participation of DBEs in DOT assisted contracts...”*
- To assist the development of firms that can compete successfully in the market place outside the DBE Program*

TCAA’s Policy Statement and this small business element (SBPP) are consistent with TCAA’s long history of creating and encouraging business opportunities at all levels.

SBPP Strategy

TCAA intends to carry out the objectives of this part by employing the following strategies and supporting activities:

Establishment of a Race-Neutral “Subcontracting Goal”

TCAA proposes that, *where feasible*, on certain prime contracts that do *not* have a DBE contract goal (race-conscious), that Prime Contractors will be required to provide subcontracting opportunities to qualified Small Business Concerns, (SBC’s) as defined herein, *without* regards to race or gender of the business owner. Again, verified “business size” and subcontracting opportunities will be the basis of this Subcontracting Goal. The opportunities must be of a size that SBC’s, including some which may happen to also be DBE’s, can reasonably perform. TCAA



will assess the feasibility for race-neutral subcontracting goals on projects. TCAA will assist the potential primes by reviewing the project (s), in advance of the solicitation, and by suggesting potential subcontracting opportunities in the solicitation documents. This will help to establish a reasonable race-neutral, Subcontracting Goal.

Consideration of “Unbundling” of Large Contracts

TCAA, as owner of a Non-Hub Primary Facility has given consideration to “unbundling” as a small business strategy and believe that at this time, such a strategy will not be suitable for TCAA. Because of the limited number of contracts each year, the increased total number of bid solicitations with “unbundling” could significantly increase both administrative and project costs per bid. This will reduce the necessary “economy of scale” for TCAA.

Definitions for this Element

Small Business

For purposes of this program element, which is part of our approved DBE program, “small business” shall have the *same* definition as “small business concerns” contained in 49 CFR, 26.5, which states:

“Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts of 22.41 million specified in §26.65(b). “

For additional clarification, it is useful to include here some excerpts from the SBA regulations, 13 CFR, 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor....” and,

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.



Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

Disadvantaged Business Enterprise

Disadvantaged Business Enterprise or **DBE** means a for-profit small business concern— (defined by SBA rules, above), and that meet the standards of 49 CFR, Part 26, i.e.

- *At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;*
- *Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) the described in 49 CFR Part 26. (The current PNW cap is \$1.32 million)*
- *Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;*
- *Has been certified as a DBE by a certifying member of the Tennessee Unified Certification Program (TN UCP) in accordance with the full requirements of 49 CFR 26.*

It is understood that in the implementation of this element, all of the “Small Business Concerns” may not necessarily be DBE firms. However, small businesses which are also owned and controlled by individuals who *meet* the DBE standard will certainly be encouraged to seek DBE certification. Only DBE certified firms who participate as small business concerns pursuant to this element, will be counted towards DBE race-neutral participation on FAA-assisted contracts in this program.

Verification Standards and Procedures

For purposes of this small business element, TCAA will accept the following verification and/or certification:

- a. **Tennessee Unified Certification Program (TN UCP) DBE Certification** – DBE Certification by a certifying member of the TN UCP 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 a certifying member of the TN UCP. It should be noted that TCAA is a non-certifying member of the TN UCP and relies on certification decisions of the Tennessee Department of Transportation (TDOT). The TDOT certification staff applies the standards and procedures for DBE certification applicants contained in Subparts D, and E, of 49 CFR (26.61 – 26.91). TCAA will also rely on the small business verifications of the TN UCP



- b. **Small Business Administration 8(a) Business Development Certification** (as described in 13 CFR Parts 121 and 124) – Authority may also require submittal of three years of business tax returns.
- c. **A non-certified potential small business concern** must, as evidence of small business status, complete a simplified application and provide financial and other information as reasonably required by TCAA at time of response to a solicitation or a bid submittal.

Note - Use of Personal Net Worth: TCAA, in addition to the standards for small business concerns described above, plans to utilize the current Personal Net Worth standards of the DBE program (26.67), presently capped at \$1.32 million dollars.

Supportive Services

TCAA is a non-certifying member of the Tennessee UCP, i.e. does not conduct DBE certifications, but relies on certifications of the TDOT. TCAA also does not provide direct supportive services and/or business development programs to DBEs or small businesses. However, TCAA will coordinate and make referrals to other providers of these and similar services, such as the Johnson City Center and Kingsport Center Small Business Development Centers (SBDC). These services, as relevant, will also be referred to verified small business concerns. The SBDCs provides free, personalized, confidential one-on-one business counseling and strategy development services to help small & mid-size business:

- Access sources of capital and financing
- Evaluate and improve financial performance
- Obtain quality business and market information
- Improve leadership skills and employee performance
- Plan for a better future

Implementation Plan and Time-Table - Tri-Cities Airport Authority Small Business Participation Plan (SBPP)

TCAA proposes to have its SBPP fully implemented within nine months of the FAA final approval of the Plan. TCAA will utilize the time frame to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

- a. Review all upcoming projects to try and pre-determine which, if any, will be conducive for application of the selected SBPP strategy, described in Section B, above.
- b. Review necessary revisions and modifications to bid solicitation language etc., prior to implementation.



- c. Coordinate with the Tennessee UCP to initiate discussions as to whether any changes/modifications are implicated in the UCP stakeholder agreement, due to verification of small business concerns.
- d. Develop a small business verification application.
- e. Coordinate with other entities currently providing relevant supportive services and/or business development for referrals to their programs, appropriate for the small business concerns which may contact TCAA to increase their competitive opportunities at TCAA.
- f. TCAA, during the pre-implementation period, “may” also seek consultation with the representative small business community.

Principal Responsible Person

The principal responsible person for overseeing and implementing TCAA’s SBPP, will be the currently designated Disadvantaged Business Enterprise Liaison Officer.



ATTACHMENT 9

Bidder's List Data Collection



Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million