



CITY OF TOPEKA

PROGRAM REVIEW COMMITTEE REGULATION STATEMENT

(Affirmative action programs, Chapter 3.30.460 TMC)

(1) Objectives

Review and evaluate the City's minority business enterprise, women business enterprise, and disadvantaged business enterprise utilization herein referred to as "M/W/DBE".

(2) Applicability

City Contracts:

- A. Establish annual percentage goals for the utilization of minority business enterprise, women business enterprise, and disadvantaged business enterprise participation considering the following factors:
 - 1. The number and type of contracts awarded
 - 2. The number and type of minority, women, and socially and economically disadvantaged contractors available and operating within the Topeka area
 - 3. Past results of the City's minority business enterprise, women business enterprise, and disadvantaged business enterprise utilization
- B. Review and analyze on a quarterly basis, minority business enterprise, women business enterprise, and disadvantaged business enterprise requirements, including:
 - 1. Evaluating methods for achieving utilization goals
 - 2. Guidelines for ascertaining contractor compliance with the City's policies
- C. Report to the Governing Body on a quarterly basis, through the City Manager, the findings from the review and analysis of minority business enterprise, women business enterprise, and disadvantaged business enterprise participation and utilization.
 - 1. The Governing Body shall consider goals for the City's minority business enterprise, women business enterprise, and disadvantaged business enterprise utilization in conjunction with the annual setting of budget priorities. (Ord. 20206 § 12, 9-10-19; Ord. 19433 § 2, 6-15-10.)

(3) Definitions of Terms

The terms used in this policy have meanings defined in [49 CFR §26.5](#).

"City" The City of Topeka is herein referred to as "City".

"City Manager" The individual appointed official who directs and administers all City staff.

"Program Review Committee" The committee as outlined per Topeka Municipal Code 3.30.460 (b) (3) is a three member committee (or more) under the appointment of the City Manager, which is established for the purpose of reviewing and evaluating the City's minority business enterprise, women business enterprise, and disadvantaged business enterprise utilization.

"Program Review Committee Liaison" Individual responsible for maintaining reporting, compliance, and management of overall Program Review Committee program as described in this policy. Refer to *Section 8 Program Review Committee Liaison Officer (PRCLO)*.

"Vendor" A tax-registered company, verified by the City Accounts Payable Division and issued payments by the City.

(4) Record Keeping Requirements

The City will make every attempt to work with various agencies to identify M/W/DBE firms, and to assist firms with self-identifying under the appropriate M/W/DBE classification when registering in the City procurement system. The City will collect this information in the following ways:

1. Annually obtain directories, from the two agency resources as mentioned in Section 9 Directory and determine the relative availability of M/W/DBEs in the area.

The purpose of these requirements are to allow the use of a bidder's list approach to aid in calculating future overall goals. All reporting will include the bidder's name, address, and self-elected business diversity classification.

An internal annual review of payments made to M/W/DBE to ensure that the actual amounts paid to M/W/DBEs equal the original dollar amounts stated in the original contract.

The City will require all bidders to provide their name, address, and self-elected business diversity classification during the e-Procurement registration process. This will allow for the development of the following record collection:

1. The City will make available upon request, a bidders list consisting of information about all M/W/DBE and non-M/W/DBE firms that bid or quote on all e-Procurement issued solicitations.
2. The City will make available upon request, a bidders list of actual payments to M/W/DBE firms for work committed to them at the time of contract award.
3. The City will make available upon request, a bidders list of actual payments to M/W/DBE firms for work committed to them throughout the term of a contract.
4. The City will make available upon request, a bidders list of actual payments to M/W/DBE firms for work committed to them throughout the term of a project in which resulted from being awarded a bid or quote on an e-Procurement issued solicitations.

(5) Reporting to City Manager

The City will report M/W/DBE participation to the City Manager as follows:

1. The Department of Administrative and Financial Services will submit the "Vendor Diversity Report" in each quarterly financial report that is published detailing dollars paid as defined by categories of vendor diversity codes.
2. The Program Review Committee Liaison will:
 - A. Report M/W/DBE participation as outlined in section (2) Applicability.
 - B. Provide upon request through the City Manager, any reporting capabilities as outlined in section (4) Record Keeping Requirements.

(6) Required Contract Clauses

The City will ensure that the following clause is stated in every contract:

"The contractor agrees: (a) to comply with all federal, state, and local laws and ordinances prohibiting unlawful discrimination and to not unlawfully discriminate against any person because of age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer;" and (c) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor. The contractor understands and agrees that the failure to comply with the requirements of this paragraph may constitute a breach of contract, and the contract may be cancelled, terminated or suspended, in whole or in part by the City of Topeka."

(7) **Program Review Committee Program Updates**

The City will continue to carry out this program until otherwise instructed by the City Manager, or amended in the City of Topeka Municipal Code, Affirmative action programs, Chapter 3.30.460 by the Governing Body.

The Program Review Committee Liaison will provide to the City Manager and Program Review Committee members, updates representing significant changes in program activities or reporting results.

(8) **Program Review Committee Liaison Officer (PRCLO)**

The Program Review Committee has designated the following position as its M/W/DBE Liaison Officer:

Division of Contracts and Procurement Business Services Manager

City of Topeka

215 SE 7th Street, Room B60

Topeka, KS 66603

(785) 368-3749

procurement@topeka.org

In this capacity, the PRCLO is responsible for implementing all aspects of the M/W/DBE program and ensuring that the City complies with all provisions in Federal, State, and local anti-discrimination laws. The PRCLO has direct, independent access to the City Manager concerning M/W/DBE program matters. The Director of Contracts and Procurement will devote a portion of his or her time to the M/W/DBE program and will assist the PRCLO in administering the Program.

The PRCLO is responsible for developing, implementing, and monitoring the City's M/W/DBE program in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by the City of Topeka Municipal Code, Affirmative action programs, Chapter 3.30.460.
2. Gather and report statistical data and other information as requested by the City Manager.
3. Review contracts for compliance with this program.
4. Works with all Departments to outline potential vendor community outreach activities.
5. Ensure that bids and solicitation notices are available to M/W/DBEs.
6. Analyze the City's progress towards goal attainment and identifies ways to improve progress.
7. Advises the Program Review Committee and the City Manager on M/W/DBE matters and achievement.
8. Provide M/W/DBEs with information and assistance in the submissions of bids.
9. Attend national and state M/W/DBE training seminars.
10. Provide outreach to M/W/DBEs and community organizations to advise them of opportunities.
11. Review directories of certified M/W/DBEs compiled by local agencies.

(9) **Directory**

The City uses the M/W/DBE directories published by the following agencies to identify additional firms recognized as M/W/DBEs. The individual directories are available at the listed internet addresses or through the Equity and Opportunity Officer at The Greater Topeka Partnership (GTP).

Agency	Internet Address
The Greater Topeka Partnership (GTP) Equity & Opportunity Officer	https://www.topekapartnership.com/the-gtp/the-gtp-team/
Kansas Department of Commerce Office of Minority and Women Business Development Directory	https://kansascommerce.secure.force.com/mwbds/

(10) Fostering M/W/DBE Business Participation

The City will institute an annual goal for participating in local, diverse, and small business events. The City will implement this in the following ways:

1. The City will capture event information from the agencies listed in *Section 9 Directory* on a quarterly basis.
2. The City will, as able collaborate and partner with local, regional, and national agencies to empower the initiatives that are encouraging stronger partnerships with M/W/DBEs.
3. The City will offer technical assistance and training to M/W/DBEs that are in pursuit to do business with the City. The objectives of these programs are:
 - I. Support startup or expansion of new companies.
 - II. Assist M/W/DBEs with technical assistance and locating information related to City government.
 - III. Increase awareness of related work opportunities in the Topeka area.
 - IV. Strengthen and develop community programs to support M/W/DBE business needs.
 - V. Circulate upcoming contracting opportunities and training classes in utilizing the City's e-Procurement system for bidding.

(11) Overall Goals

In accordance with Affirmative Action Programs, Chapter 3.30.460 TMC (b) (3), the Program Review Committee will submit its annual M/W/DBE goals as indicated in *Section 2. Applicability* to the City Manager. These goals shall be established for each up-coming fiscal year. Results shall be reported to the City Manager, prior to December 15 of the current year ending; upon consideration of the factors mentioned in *Section 2. Applicability*.

The City will establish contract goals only on the Kansas Department of Transportation (KDOT) or any other federally funded or assisted contracts that have subcontracting responsibilities. Goals will be expressed as a percentage of the total amount of all KDOT or federally funded and assisted contracts. The City need not establish a contract goal on every such contract.

The City has established an overall annual goal of 35 percent of M/W/DBE participation in City issued bid solicitations released to the public. This goal is based upon evidence of the available M/W/DBEs relative to all businesses available to participate in bids. Per section 3.30.460(b)(3) Affirmative action programs of the Topeka Municipal Code, a Program Review Committee has been established for the purpose of reviewing and evaluating the City's minority, women, and disadvantaged business enterprise utilization. The Program Review Committee reports their review of participation and utilization of these business enterprises on a quarterly basis to the City Manager. This goal reflects the level of M/W/DBE participation anticipated, absent the effects of discrimination. To calculate the City M/W/DBE goal, the base figure calculation was measured by the volume of work M/W/DBEs performed in recent years thus utilizing the average of the two measures.

The City will help and support the efforts of the GTP to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the opportunities for M/W/DBEs, and City's efforts to establish a level playing field for the participation of M/W/DBEs. Before establishing the overall goal, the City of Topeka will consult with women, minority, M/W/DBE, non-M/W/DBE business communities, and organizations within the Topeka and Shawnee County area. The City will conduct four (4) annual public meetings to collaborate with vendors. Each year the City will seek joint sponsors for these meetings with the GTP.

(12) Calculation Method

To calculate the City M/W/DBE goals, the base figure calculation is averaged with the amount of work M/W/DBE businesses performed during the last two (2) years, thus utilizing the average of the two (2) measures below. The City has employed a two (2) step process to calculate its M/W/DBE program goals.

Step 1: Determine a base figure for the relative availability of M/W/DBEs in the area.

1. Calculate the self-identified available M/W/DBEs (located in *Section 9. Directories*), to the number of all available firms.
2. Compare City registration records to the GTP M/W/DBE list to ensure no duplication of listings occur.

The Step 2: Review the base figure determined in the Step 1 above to arrive at the overall goal that reflects, as accurately as possible, the M/W/DBE participation the City would expect in the absence of discrimination.

1. The City did not have an active Program Review Committee prior to 2019; therefore, the City did not have defined M/W/DBE goals or processes.
2. The following is an example used in the 2022 Budget Book that outlines these M/W/DBE goals. Reports to produce include:
 - (a) Lawson PO254 PO Inquiry Report: This report shows the total dollars paid to vendors by purchase order.
 - (b) Lawson Infor BI Diverse Report: This report shows the total dollars paid by purchase order to vendors by diversity code from the vendor's accounts payable profile.
 - (c) Landmark Rich Client Diversity Participation by Category Report: This report shows the total number of bid events that were awarded in the system and from that number, the total number of bid events that were awarded to diverse classified vendors (as a reminder, vendors in this system self-register and elect their diversity codes).
 - (d) Lawson Infor BI Rich Client Bid Award Report: This report provides an overall list of all bid events created and released to the public.

	Actual FY 2019	Actual FY 2020	Target FY 2021	Target FY 2022
Performance Measures				
Total dollars paid to all vendors by purchase order	174,052,693	171,528,909	171,000,000	171,000,000
Dollars paid to diverse vendors by purchase order	7,635,239	7,298,151	7,600,000	7,700,000
Diverse vendor spending by purchase order as a percent	4.387%	4.255%	4.444%	4.503%
Total number of bid events awarded to all vendors	182	148	150	150
Total number of bid events awarded to diverse vendors	71	51	53	55
Diverse vendor awards as a percent	39.011%	34.459%	35.333%	36.667%
Total number of bid events released to the public	197	189	190	192

*Diverse Vendor Classifications: AFRIC, ASIAN, DIS, FEM, HISP, MIN, VET

*Diverse Vendor Classifications Do Not Include: NONE, OTHER, SMALL

(13) Goal Accountability

If the fiscal yearend results are less than the established goals, the City will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; and
2. Establish specific steps and milestones to correct the deficiencies in order to obtain future goals.

This analysis and corrective action plan will be disseminated to the City Manager, and will be available for public review on the City's website once the City Manager approves of the corrective action steps. The PRCLO will be responsible for monitoring the action plan.

(14) KDOT and Federally Funded or Assisted "Good faith Efforts"

In those instances where a contract-specific M/W/DBE goal is included in a procurement solicitation, the City will not award the contract to a bidder who does not meet the contract goals with verified M/W/DBE participation or documentation that proves adequate "good faith efforts" were used to meet the M/W/DBE contract goals even though the goal was not obtained. It is the obligation of the bidder/respondent to demonstrate it has made sufficient "good faith efforts" prior to submission of its bid. Forms and information required for the submission of proposals in response to bidding must be provided by bidders/respondents as outlined in any KDOT program. KDOT and any federal grant forms certifying subcontracting was done by following the guidelines and M/W/DBE goals outlined in the bid documents are required as part of these bid submissions.

The PRCLO, the Procurement Buyer, the City of Topeka Department Representative, and the KDOT or federal agency partnering with the City for the intent of awarding a bid are all responsible for determining whether a bidder/respondent who has not met the contract goal has documented sufficient "good faith efforts" to be regarded as responsive.

(15) Certification

The City of Topeka does not require M/W/DBE certification by any agency in order for any organization to self-certify as a supplier or vendor when registering to do business with the City of Topeka. The City of Topeka is not a certifying agency. Organizations are welcome to provide certification documents from any of the following agencies to support their certification as eligible M/W/DBEs. For information about the certification process, or to apply for certification, firms should contact one of the following agencies.

The Greater Topeka Partnership (GTP) Equity & Opportunity	The Greater Topeka Partnership Equity and Opportunity 719 S Kansas Ave, Suite 100 Topeka, KS 66603 (785) 234-2644 https://www.topekapartnership.com/the-gtp/the-gtp-team/
Kansas Department of Commerce	Office of Minority and Women Business Development 1000 SW Jackson, Suite 100 Topeka, KS 66612 (573) 751-2859 https://www.kansascommerce.gov/program/business-incentives-and-services/mw-development/
Kansas Department of Transportation	KDOT Office of Contract Compliance Eisenhower State Office Building 700 SW Harrison Street, 3 rd Floor West Topeka, KS 66603 https://www.ksdot.org/divadmin/civilrights/
Missouri Department of Transportation	MoDOT Equal Opportunity and Diversity Division 830 MoDOT Drive PO Box 270 Jefferson City, MO 65102 https://www.modot.org/equal-opportunity-and-diversity-division

(16) Information, Confidentiality, Cooperation

The City of Topeka will safeguard from disclosure to third parties information that may reasonably be regarded as confidential information, consistent with federal, state, and local law.

The City of Topeka is a municipal government requires that all vendors comply with the provisions of KSA 44-1030. The Kansas Open Records Act (KORA), KSA 45-215 et seq., and TMC 2.10.030 through TMC 2.10.130 govern the City of Topeka's responses to requests for records. The City is not required to answer questions or create documents in order to fulfill a request. Records not yet in existence are not subject to KORA.

(17) Monitoring and Enforcement Mechanisms/Legal Remedies

The City of Topeka has available several remedies to enforce the M/W/DBE requirements contained in its Formal Construction contracts, including, but not limited to, the following:

1. Breach of, or rejection of, bids submitted with no certificate of compliance per the Contracts and Procurement Division Document 840 submission requirements, pursuant to TMC 3.30.460(a); and
2. Breach of contract action, pursuant to the terms and conditions of the contract

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Fraudulent application submission pursuant to 49 CFR parts 23 and 26
4. Prosecution pursuant to 18 USC 1001