

DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
SAMPLE DBE PROGRAM

DOT published Title 49 of the Code of Federal Regulations (49 CFR) Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, which was formerly codified under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Five (5) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010, January 28, 2011 and November 3, 2014, which made additional revisions to the regulation. The current version of the regulations is available online in the Electronic Code of Federal Regulations: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

This Sample DBE Program is provided for informational purposes, and recipients are not required to use it or its format. However, recipients may wish to use it as a guide in preparing their program documents. Recipients may customize the sample program to fit their circumstances, but care should be exercised to ensure any modifications still result in a program that is compliant with the requirements 49 CFR Part 26 (hereafter referred to as "Part 26"), as amended.

At a number of points the Sample DBE Program refers to provisions of Part 26, always referenced in the format "§26.[x]." Recipients may quote referenced portions of the rule in their program if they wish, but they are not required to do so. The Sample DBE Program also contains sample language for some documents that are part of or related to the program. Except where otherwise noted, this sample language is for illustrative purposes only. Recipients are not required to use the sample language unless explicitly stated either in Part 26 or this Sample DBE Program. In most cases, recipients may use their own language as long as it meets regulatory requirements. **In the sample program, instructions and notes are identified by bracketed italics (e.g., [example]). Recipients should not include the notes in their program documents.**

This document is available in Microsoft Word format on the FAA Office of Civil Rights website:

http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/dbe_program_admin/.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

[*Recipient*], owner of [*specify the name of the Airport(s)*], has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. [*Recipient*] has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, [*Recipient*] 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 [*Recipient*] to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also [*Recipient*] 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.

[*Name and/or title of appropriate person or office*] has been delegated as the DBE Liaison Officer. In that capacity, [*name and/or title of appropriate person or office*] 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 [*Recipient*] in its financial assistance agreements with the Department of Transportation.

[*Recipient*] has disseminated this policy statement to the [*identify the governing board or officials of the Recipient*] 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 [*Recipient*] DOT-assisted contracts. The distribution was accomplished by [*specify how distribution is accomplished*].

[signature of CEO here]
[Name of Recipient's CEO] _____ 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

[*Recipient*] is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

[*Recipient*] will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

[*Recipient*] 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, [*Recipient*] 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

[*Recipient*] will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to [*operating administration*] as follows:

[*Recipient*] will transmit to [*operating administration*] 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. [*Recipient*] will similarly report the required information about participating DBE firms. All reporting

will be done through the [operating administration] official reporting system, or another format acceptable to [operating administration] as instructed thereby.

Bidders List

[Recipient] will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on [Recipient] 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): *[describe how it will be collected, and attach a copy of any form used to gather bidders list information]*

[A sample form is attached to this sample program document. Note that recipients must obtain gross receipts information; this may be accomplished by asking each firm to indicate into what bracket it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1-2 million, \$2-5 million, etc.) rather than requesting an exact figure from the firm. More detail and additional potential collection methods can be found in §26.11.

The program should indicate the method(s) the recipient will use to obtain this information. The regulation does not mandate a particular method, but it does clarify that the information must be collected for all primes and all subcontractors who submit bids to those primes, whether or not they were successful in obtaining a subcontract or the prime contract. The bidders list should only include names of bidders/offerors who attempt to participate in the recipient's own DOT-funded projects.]

Records retention and reporting:

[If your agency is not a certifying member of the state UCP, omit references to certification in the paragraph below.]

[Recipient] will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, [Recipient] will keep a complete application package for each certified firm and 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 [Recipient] financial assistance agreement. Other certification or 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.

[If your agency is not a certifying member of the UCP, omit the following paragraph]

The [Recipient], as a member of the [State] 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.

Section 26.13 Federal Financial Assistance Agreement

[*Recipient*] has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement [*Recipient*] signs with a DOT operating administration (or a primary recipient) will include the following assurance:

[Note: The following language is to be used verbatim, as stated in 26.13(a)]

The [*Recipient*] 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*] 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 [*Recipient*] of its failure to carry out its approved program, the Department may impose sanctions 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.*).

Contract Assurance: [*Recipient*] 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):

[Note: The following language is to be used verbatim, as stated in 26.13(b)]

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

[*Recipient*] 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. [*Recipient*] is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and [*Recipient*] is in compliance with it and Part 26. [*Recipient*] will continue to carry out this program until all funds from DOT financial assistance have been expended. [*Recipient*] 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 [*Recipient*]:

[*Name*
Title
Address
Telephone Number
Fax Number (if any)
E-mail Address]

[Note: if revising any of the wording below, take care not to create the appearance of diminishing or reducing the authority of the DBELO. For example, avoid using phrases such as “assists with” or “together with (other department head)...”]

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the [Recipient] complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the [indicate chief executive officer of Recipient] concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment ___ 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 [indicate the number of staff or resources, this would include other offices for coordination, i.e. legal or consultant engineers] to assist in the administration of the program. The duties and responsibilities include the following:

[Note: The following are examples. Include only those responsibilities that the DBELO actually performs. Add additional responsibilities if appropriate.]

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 [Recipient's] progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process. [certifying agencies only]
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs. [certifying agencies only]

Section 26.27 DBE Financial Institutions

It is the policy of the [Recipient] 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.

[Include in this section efforts made to identify financial institutions and the results of those efforts. Don't rely exclusively on DBE directories for this search. Also indicate how often you will investigate availability.]

Section 26.29 Prompt Payment Mechanisms

[Recipient] 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 [Recipient] 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 [Recipient].

[Recipient] ensures prompt and full payment of retainage from the prime contractor to the subcontractor within *[number not to exceed 30]* days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, [Recipient] has selected the following method to comply with this requirement:

- *[Insert the **ONE** method selected from the options listed in §26.29(b) shown below]*

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline 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.

(3) You may 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 your payment to the prime contractor.

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

To implement this measure, [Recipient] includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

[Insert clause from AC-150/5370-10 (Section 90-06) pertaining to method selected. Revise instances of “30 days” to reflect state and local prompt payment/return of retainage requirements, if these are less than the 30-day maximum.]

Section 26.31 Directory

[Recipient] is a [certifying OR non-certifying] member of the [state] 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

[Select one of the following]

[Recipient] has not identified that over-concentration exists in the types of work that DBEs perform.

OR

[Recipient] has identified that over-concentration exists in the area of [identify area].

[Note: If a recipient has identified over-concentration, operating administration approval is required of both this determination and the measures the recipient plans to use to address the over-concentration (e.g., what is the over-concentration that has been identified, how the program element works, and how interested persons would obtain information about the program element).]

Section 26.35 Business Development Programs

[Select one of the following]

[Recipient] has a DBE Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The rationale for the BDP is [describe rationale for having the program element; the specific

provisions of the element (e.g., who is eligible to participate, how does the program element work, how does the recipient implement, and how would interested persons obtain information about the program element).]

OR

[*Recipient*] has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

[*Recipient*] 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 [*Recipient's*] DBE program.

[*Recipient*] 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

[*Recipient*] 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):

*[Detail the **SPECIFIC** methods that will be utilized. Possible examples include, but are not limited to:*

- *Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the xx-day clock for payment*
- *Use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system*
- *Other affirmative steps to monitor prompt payment and retainage requirements (describe specific steps)]*

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

- [Recipient] proactively reviews contract payments to subcontractors including DBEs [*indicate how often—DOT recommends not less than quarterly to ensure compliance*]. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to [Recipient] by the prime contractor.

Prompt Payment Dispute Resolution

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

[Detail steps here (e.g. meetings between prime and sub, with resident project representative and/or project manager presence as appropriate.) It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.]

[Recipient] has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage [*examples of mechanisms include the following*]:

(1) Alternative dispute resolution (ADR)

- [*Provide the contract clause(s) you will use to require this, and explain how the alternative dispute resolution mechanism will function. If you do not specify the nature of the ADR mechanism, explain how you will determine a proposed mechanism is sufficient (for example, perhaps consider a contract clause that requires the prime contractor to submit a detailed alternative dispute resolution plan for your approval prior to the issuance of any notice to proceed)*].

(2) 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.

- [*Provide the contract clause(s) that implements this provision. If selecting this option to be an effective enforcement measure, your organization must also include a contract clause requiring primes to pay subcontractors for completed work prior to requesting payment from the Recipient.*]

(3) Other mechanisms

- *[Detail the mechanisms that will be used and how they will be implemented and enforced. Provide the contract clause(s) that pertain to the mechanisms developed.]*

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. *[Escalation steps should follow prime, Recipient, and Operating Administration (OA) in that order, but specific procedures are to be outlined by the Recipient. **Procedures and wording below are basic descriptions, and should not be used verbatim.**]*

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by *[Recipient]* to resolve prompt payment disputes, affected subcontractor may contact the responsible *[operating administration]* contact.

[FAA Funding Recipients Only]

- 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

[Recipient] will provide appropriate means to enforce the requirements of §26.29. These means include:

*[Detail the **SPECIFIC** means that will be utilized. You **must** identify and actively enforce such means to be regarded by the operating administration as implementing your program in good faith. Possible examples per §26.13 include, but are not limited to:*

- *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*

- *Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).*

[These are examples, not recommendations or requirements. Include in your DBE program the samples of the contract language you will use for all means you develop to enforce the requirements of this section.]

[Recipient] will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

[Recipient] 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 [DBELO/compliance team/project managers/consultant/etc.]. Contracting records are reviewed by [DBELO/compliance team/project managers/consultant/etc.]. [Recipient] 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

[Recipient] 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 ___ to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for [Recipient] to be considered by DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

[Recipient] does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

[Recipient] 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), [Recipient] will submit its Overall Three-year DBE Goal to [operating administration] 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 [operating administration].

[Include link to appropriate operating administration website:

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/a-cr/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 [Recipient] 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 [Recipient] 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. [Recipient] will use [a Bidders List, a Disparity Study, the goal of another DOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45] as a method to determine the base figure. [Recipient] 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. [Recipient] 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 [Recipient] market.

In establishing the overall goal, [Recipient] 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 [Recipient] 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 the goal setting process, and it will occur before [Recipient] 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 [Recipient] engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

[Note: The persons or groups with whom this consultation occurred should be listed specifically in the goal methodology and calculation attachment.]

In addition to the consultation described above, [Recipient] will publish a notice announcing the proposed overall goal before submission to the [operating administration] on August 1st. The notice will be posted on [Recipient's] official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by [operating administration], the revised goal will be posted on the official internet web site.

[The following publication procedure is optional. If a recipient chooses to follow the procedure below, it must be in addition to the web site notification stated above and is not a substitute thereof.]

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 [Recipient]. This notice will provide that the [Recipient] and [operating administration] 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 names of any media used to provide this optional notice and the category of the media should be listed specifically in the goal calculation attachment.]

The Overall Three-Year DBE Goal submission to [operating administration] will include a summary of information and comments received, if any, during this public participation process and [Recipient] responses.

[Recipient] will begin using the overall goal on October 1 of the relevant period, unless other instructions from [operating administration] have been received.

Project Goals

If permitted or required by the [operating administration] 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

[Recipient] understands that prior [operating administration] concurrence with the overall goal is not required. However, if the [operating administration] review suggests that the overall goal has not been correctly calculated or that the method employed by [Recipient] for calculating goals is inadequate, [operating administration] may, after consulting with [Recipient], adjust the overall goal or require that the goal be adjusted by [Recipient]. 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.

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

Section 26.47 Failure to meet overall goals

[Recipient] 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 [Recipient] fails to administer its DBE program in good faith.

[*Recipient*] 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.

[*Recipient*] 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;

[*Select applicable #3, note that only CORE (OEP) Airports, top 50 transit agencies (as determined by FTA), and state highway agencies are required to submit the report*]

(3) [*Recipient*] will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the [*operating administration*] for approval.

OR

(3) [*Recipient*] 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 [*operating administration*] upon request.

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

[*Note: If you are not an FTA recipient, or if you submit a separate DBE program to the FTA, this section is not required for your FHWA/FAA program*]

[*Recipient*] 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) [*Recipient*] 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) [Recipient] 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) [Recipient] 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.

[If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements. See 26.49 (a) through (d)]

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

[Recipient] 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) Arranging 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.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;

- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

[Note: If the recipient intends to use any race-conscious means of obtaining DBE participation other than contract goals, a section should be inserted here to describe the means it will implement as well as the reason supporting the recommendation.]

The [Recipient] 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

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

[Example to paragraph (f) (1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-

neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.]

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of [*the total amount of a DOT-assisted contract OR the Federal share of a DOT-assisted contract*].

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.

[*DBELO or designee*] 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 OR Responsible*]. [**Note: Recipients can choose either approach but must be consistent with the relevant statement provided below**]

[*Recipient*] 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:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;

- (ii) 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;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) 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; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) [*Select either responsiveness OR responsibility option*]

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

OR,

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within ___ days [*consider that administrative reconsideration must be offered before making an award decision*] of being informed by [*Recipient*] that it is not [*responsive OR responsible*] 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: [*provide name, address, phone number, e-mail address*]. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. [*Ensure also that the reconsideration official is not someone who reports to the DBELO who made the original determination. You must ensure that the reconsideration official is well-acquainted with the requirements outlined in Appendix A of 49 CFR Part 26.*]

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.

[Note: If there are more detailed reconsideration procedures, the recipient can include them here or in an attachment referenced here.]

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 *[Recipient]*. 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 *[Recipient]* 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) [Recipient] determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides [Recipient] 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 [Recipient] 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 [Recipient] 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 [Recipient], 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 [Recipient] 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/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of [Recipient] 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.

[Recipient] 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 [Recipient] 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. [Recipient] 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 [Recipient] 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.

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

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).

[FAA Funding Recipients Only]

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

[Select one of the following]

[Recipient] 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. [Recipient] makes all certification decisions based on the facts as a whole.

OR

[Recipient] is a non-certifying member of the [State] Unified Certification Program (UCP). [State] 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 [State] UCP members make all certification decisions based on the facts as a whole.

[Note: include the following information regardless of whether your agency is a certifying member]

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

[Provide the following information about the certification office(s):

Name

Title

Address,

Telephone Number

Fax Number

E-mail Address]

The Uniform Certification Application form and documentation requirements are found in Attachment ___ to this program. [The Uniform Certification Form contained in the Final Rule, 49 CFR Part 26, must be used in this attachment; see §26.83(c)(2).]

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

[Recipient] is the member of a Unified Certification Program (UCP) administered by [Name]. The UCP will meet all of the requirements of this section. [Attach a copy of the signed agreement page of the membership of the UCP between the Recipient and the UCP]

[IF YOU ARE NOT A CERTIFYING AGENCY, OMIT SECTIONS 26.83 THROUGH 26.89].

Section 26.83 Procedures for Certification Decisions

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. [Recipient] will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of [Recipient] that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

"No Change" Affidavits and Notices of Change

The UCP requires all DBEs owners to provide a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with the DBE firm's original application for certification.

The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following: *[This is sample language consistent with the regulatory provision. You may substitute other language consistent with the rule.]*

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which [name of DBE firm] has provided written notice to the [Recipient] pursuant to §26.83(i). [Name of DBE firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The UCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The UCP will notify all currently certified DBE firms of these obligations [program should state how and when]. This notification will inform DBEs that to submit the "no change"

affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth, business size), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to a member of this State's UCP ("State B") for DBE certification, the UCP will follow the procedures defined in §26.85 [*specify §26.85(b) or (c) as appropriate*].

Section 26.86 Denials of Initial Requests for Certification

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until [*select number of months up to 12*] have passed from such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Removal of a DBE's Eligibility

In the event [*Recipient*] proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. Attachment ___ to this program sets forth these procedures in detail. [**Note: Recipients should append such a procedural attachment or include the state's UCP agreement**] To ensure separation of functions in a proposal to remove a firm's eligibility, the [*Recipient*] has determined that [*name of official or office*] will serve as the decision-maker in the required proceedings. [*Recipient*] has established an administrative "firewall" to ensure that [*same official or office named in previous sentence*] will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification.

[*Recipient*] will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), [Recipient] will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension **as long as the DBE is performing a commercially useful function under the existing contract.**

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the [Recipient] information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of [Recipient] to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of [Recipient] in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of [Recipient], including information and setting

forth a full and specific statement as to why the decision is erroneous, what significant fact(s) [*Recipient*] failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

[Note: If a recipient has a system for administrative appeals of certification decisions, it should mention this system here and provide details of the procedure in an Attachment. A program of this nature must inform the public that it is not a procedure a firm is required to undergo prior to making a certification appeal to DOT under §26.89]

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to [*Recipient*]

[*Recipient*] understands that if it fails to comply with any requirement of this part, [*Recipient*] 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

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties. [*Program should summarize applicable state and local law, such as state freedom of information laws and how they apply.*]

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

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).

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

ATTACHMENTS

[List and append]

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

DRAFT

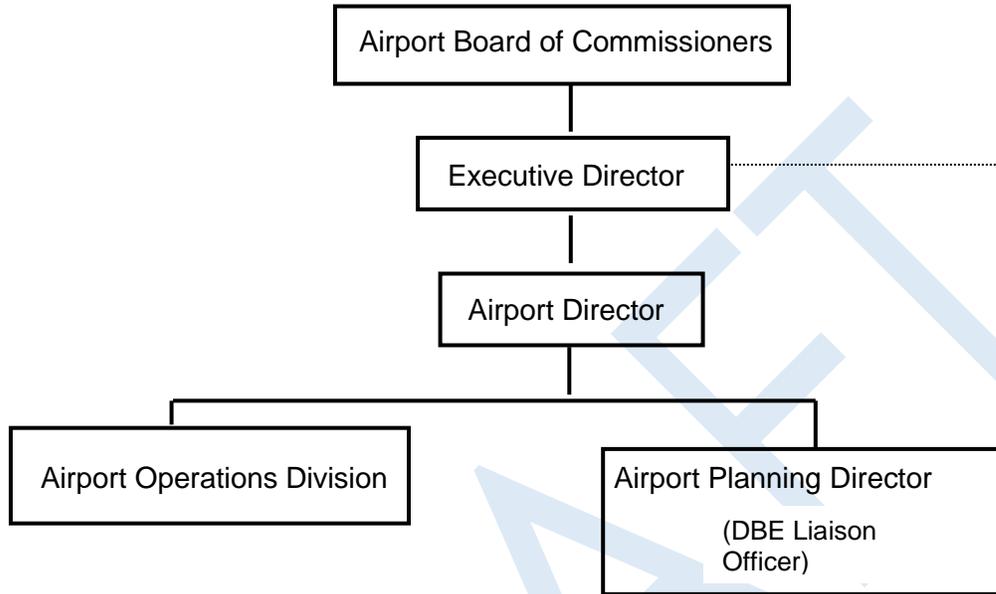
ATTACHMENT 1
Regulations: 49 CFR Part 26, or link to website

DRAFT

ATTACHMENT 2

Organizational Chart

[The chart below is a sample only, and is not to be construed as a requirement or recommendation for any particular organizational structure]



[Draw a line showing that the DBELO has direct access to the CEO.]

ATTACHMENT 3
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

[Reminder: the information below must be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires recipients to collect information from all bidders and subcontractors, including unsuccessful ones.]

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

ATTACHMENT 4

[Name of State] DBE Directory or web link to DBE directory)

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ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: [also specify name(s) of airport(s) owned by recipient]

Goal Period: (Indicate appropriate goal period, reference schedule, e.g. FY-2020-2021-2022 – October 1, 2019 through September 30, 2022)

DOT-assisted contract amount:	FY-20XX	\$ _____
	FY-20XX	\$ _____
	FY-20XX	\$ _____
	Total	\$ _____

Overall Three-Year Goal: _____%, to be accomplished through ___% RC and ___% RN
(Note: the goal may be reflected as (1) an average of the three years; (2) three-year Median; or (3) weighted percentage)

Total dollar amount to be expended on DBEs: _____ [multiply goal % x DOT-assisted amount]

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

[List all contracts for which you anticipate receiving funding; only include the DOT-funded portion of the contract.]

Contracts Fiscal Year #1

1. e.g. Apron Rehabilitation - \$30,000,000
2. e.g. Electrical Upgrade – \$4,700,000
- 3.

Contracts Fiscal Year #2

- 1.
- 2.
- 3.

Contracts Fiscal Year #3

- 1.
- 2.
- 3.

Market Area: [List counties/parishes for local market area. The market area must be identified as the area in which the substantial majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located **and** the area in which the Airport spends the substantial majority of its contracting dollars; this must be clearly specified. The market area is usually the counties/parishes surrounding the Airport but can also extend to additional areas where contractors and/or subcontractors can be found to do the types of contracts being awarded at the Airport.]

Step 1. Actual relative availability of DBEs

The base figure for the relative availability was calculated as follows:

[Part 26.45 allows for the goal to be set using 1 of 5 different methods. The DBE Program Regulation can be found at <http://www.dot.gov/osdbu/disadvantaged-business-enterprise> or http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl.

The example provided below is frequently used in cases where the recipient's bidders list does not contain sufficient information to reflect an accurate picture of availability that can serve as the base, and no relevant disparity studies are available.

Also, see Tips for Setting Goals:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

Method: Use DBE Directories *[include link to recipient's state UCP directory]*

and Census Bureau Data from <https://data.census.gov/cedsci/>

Unweighted Availability of DBE Firms:

[Use this approach if weighting is infeasible; for example, in cases where scope quantities are not able to be estimated with a reasonable degree of accuracy]

[For each Contract and each fiscal year, please provide the following information]

NAICS	Type of Work	Total DBEs	Total All Firms
Total			

The data source or demonstrable evidence used to derive the numerator was: *[Identify data source]*

The data source or demonstrable evidence used to derive the denominator was: *[Identify data source]*

Dividing the total number of DBEs by the total number of All Firms gives a base DBE availability figure for each contract. The availability figures for all contracts were then combined and averaged to provide the basis for the three-year overall goal.

The base goal projections are as follows:

- Fiscal Year #1 – 5.5%
- Fiscal Year #2 – b%
- Fiscal Year #3 – c%

Average of weighted availability: $(5.5\% + b\% + c\%)/3 = x\%$

Base of DBE Goal: x%

Weighted Availability of DBE firms:

[Weighting is not mandatory, but is encouraged for a more accurate base figure]

Fiscal Year #1

For FY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
[Contract #1 - i.e. Apron Rehab]	Asphalt, Concrete, Dust Control, Striping	Highway & Street Construction	237310	\$17,100,000	57	5	8.8%	\$1,504,800
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$5,500,000	11	0	0%	0
	Electrical	Electrical Contractors	238210	\$2,400,000	602	25	4.2%	\$100,800
	Fuel Piping	Oil and gas Pipeline and Related Structures	237120	\$4,000,000	307	9	2.9%	\$116,000
	Utility Piping	Water and sewer line and related structures	237110	\$1,000,000	94	2	2.1%	\$21,000
Total Contract #1				\$30,000,000			5.8%	\$1,742,600 (5.8% of 30,000,000)
[Contract #2 i.e. Electrical]	Electrical	Electrical Contractors	238210	\$1,200,000	602	15	2.5%	\$30,000
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$3,500,000	307	13	4.2%	\$147,000
Total Contract #2				\$4,700,000				\$177,000 (3.8% of 4,700,000)
Total FY-[20XX]				\$34,700,000				\$1,919,600 (5.5%)

Fiscal Year #2

For FY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Total Contract #								
Total Contract #								
Total FY-[20XX]								

Fiscal Year #3

For FY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Total Contract #								
Total Contract #								
Total FY-[20XX]								

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability:
- Total for All Trades:

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

Base of DBE Goal: x%

Step 2: Adjustments to Step 1 base figure

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

[If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made. There are many types of evidence that must be considered when adjusting the base figure. These may include but are not limited to: the current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years and evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure. If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program. If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to: statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program; data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program. If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.]

Past History Participation [this is a commonly used adjustment factor, but is not mandatory or exclusive]

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

[It is advisable to use a minimum of three to five years of data. If all the participation was attained via race conscious measures, there is no need to show the split but you must specify this in your narrative.]

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 14					5.2%	2.5%	7.7%	
FY 15					2.7%	1.1%	3.8%	
FY 16					4.1%	0.0%	4.1%	
FY 14					2.3%	0.1%	2.4%	
FY 15					7.0%	1.4%	8.4%	

Arranging this historical data from low to high, (2.4%, 3.8%, 4.1%, 7.7%, 8.4%) the median is 4.1%.

Step 1 Base averaged with historical median: $(x + 4.1\%)/2 = y\%$

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

OR,

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, [Recipient] is adopting the Step 1 base figure as the overall goal for this three-year goal period.

OR,

No historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; however, [Recipient] believes that slightly higher DBE participation can be obtained during the 3-year period because a significant number of additional firms that perform _____ work are expected to be certified in the local market area. Therefore, the Airport Authority is increasing its Step 1 base figure by ____% for a total overall goal of _____% for FY20aa-20cc.

[Also include if applicable:]

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

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

[Recipient] will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation. [Indicate all the applicable RN measures that the recipient will use to obtain DBE participation]

[Examples]

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
10. [Include other race neutral measures as appropriate]

[Recipient] estimates that in meeting the established overall goal of [y%], it will obtain ___% from RN participation and ___% through RC measures.

[Show how you calculated each portion. Add a narrative of the basis of the estimated breakout of Race and Gender Neutral (RN) and Race and Gender Conscious (RC) DBE participation. For example:]

This breakout is based on: [You must include supporting information for your recommendation; the following are examples you may consult when explaining your RC/RN breakout, if applicable]

- a) In FY-16, the [Recipient] accomplishments exceeded the goal by 3.0%, which may be construed as evidence of race-neutral participation. Therefore, [3.0% of the 4.8% goal is expected through race-neutral means and the remaining 1.8% is to be obtained by race-conscious measures.

OR

- b) Based on [Recipient] expects to award at least one contract to a DBE prime contractor through competitive bid procedures. This contract is expected to represent at least 2.2% of the [FAA/FTA/FHWA]-funded work during this goal-setting period. Therefore, 2.2% of the 4.8% goal is expected from race-neutral means, and the remaining 2.6% is expected to be race-conscious participation.

OR

- c) [Recipient] holds quarterly meetings open to all small businesses that are realistically expected to result in at least 1.0% additional DBE participation in 2018; therefore, 1.0% of the 4.8% goal is anticipated to be met via race-neutral means and the remaining 3.8% through race-conscious participation.

OR

- d) The Recipient does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 4.8% is to be obtained through race-conscious participation.

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

PUBLIC PARTICIPATION

Consultation:

[In establishing the proposed goal, you must consult with minority, women's and general contractor groups, community organizations who can share information on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and the recipient's efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct interactive exchange with as many stakeholders as possible.]

In establishing the overall goal, [Recipient] provided for consultation and publication. This process included 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 [Recipient's] efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was [*describe nature of consultation, e.g., face-to-face meeting, teleconference, video conference*], which was held at [*location, time, and date*].

The following comments were received during the course of the consultation:
[*If no comments were received, so state*]

A notice of the proposed goal was published on the [Recipient] official before the methodology was submitted to [*operating administration*].

[The following statement reflects an optional additional step, but is no longer required]
Following the consultation, a notice was published in the [name of publication] regarding the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the [Recipient] offices for 30 days following the date of the notice, and informing the public that the [Recipient] will accept comments on the goals for 30 days from the date of the notice.
[End of optional portion]

If the proposed goal changes following review by [operating administration], the revised goal will be posted on [Recipient] official website.

Notwithstanding paragraph (f)(4) of §26.45, [Recipient] proposed goals will not be implemented until this requirement has been met.

Sample Public Notice Language:

PUBLIC NOTICE

[Recipient] hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of ___% for [operating administration]-funded contracts/agreements. The proposed goal pertains to federal fiscal years [20XX] through [20YY]. A [meeting/teleconference/etc.] will be held on [date, time, location/contact instructions] for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process.

[Optional wording for use when publishing goal information in a periodical]
The proposed goal and its attendant methodology are available for inspection between [8:00 a.m.] and [5:00 p.m.] Monday through Friday at [location's name and address] for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

[DBELO name, complete address, and e-mail address]

AND

[Operating Administration]
Office of Civil Rights
[DBE Compliance Specialist Contact Information]

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

[The following “Form 1” and “Form 2” are provided for illustrative purposes ONLY, and are not promulgated or endorsed by the USDOT.]

[Any forms recipients develop and use for purposes of assessing bidders’/offerors’ good faith efforts 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:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted [*or “will submit,” if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror’s firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

**Percentage is to be used only in negotiated procurements, including design-build contracts*

***For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The [Recipient] has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as follows [*insert description of administrative enforcement provisions you can and will use to enforce contractor compliance*];
2. Breach of contract action, pursuant to [*insert State Code Section No.*];
3. [*List the other laws, statutes, regulations, etc. that are available to you to enforce the DBE requirements.*]

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

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

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ATTACHMENT 8
DBE Certification Application Form
(New form October 2, 2014)

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ATTACHMENT 9
State's UCP Agreement

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ATTACHMENT 10

Small Business Element

[Recipients are required to create and implement a race-neutral small business element as part of their DBE programs, in compliance with §26.39. The following components and notes are potential strategies, but are not explicit recommendations. You must define the methods you will use to comply with the requirements of §26.39.]

1. Objective/Strategies

[As part of this program element you may include, but are not limited to, the following strategies:]

(1) Prime contracts under [a stated amount (e.g., \$1 million)] will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) 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.

(4) 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.

(5) 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.

2. Definition

[Review the guidelines below, and §26.39, and develop your own definitions, making note of the following:

- DBE firms should be identified in the Small Business element of the recipient’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.*
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*

- *Personal Net Worth standards (optional) – should be consistent with 49 CFR Part 26 thresholds.*
- *Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.]*

3. Verification

[Recipients must diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms. Verification does not necessarily involve creating a new certification category, though that is one option. Any verification procedure must allow for participation of all small businesses (relying exclusively on local/state M/WBE certification, SBA 8(a) certification, or other programs that include race/gender/geographical considerations as a condition of the certification is not an acceptable means of verifying eligibility, and is not compliant with the race-neutral requirements of §26.39).]

4. Monitoring/Record Keeping

- *[Explain how will the information will be organized (for counting purposes)*
- *SB element should be reasonably monitored]*

5. Assurance

[Recipients should include the following assurances in their small business programs:]

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).*