

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

The Department of Transportation (DOT) prepared this Sample DBE Program to help recipients comply with 49 CFR Part 26, the DOT DBE rule, updated by Federal Aviation Administration (FAA).

DOT published 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, formally administered 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. Four (4) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010 and January 28, 2011 which made additional revisions to the regulation. The e-version of the regulations has combined all of these documents into one for easy reading <http://ecfr.gpoaccess.gov/>

We are providing this Sample DBE Program for informational purposes. It is not a U.S. DOT officially approved document 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. The three DOT DBE operating administrations – the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA) – may provide additional guidance for program matters that are specific to their programs. This Sample DBE Program should, however, lead to greater consistency among recipients' submissions.

At a number of points, the Sample DBE Program refers to provisions of Part 26. 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 provides language for some documents that are part of the program (e.g. policy statements, contract clauses). Except where otherwise noted, recipients are not required to use this language, and may use their own language as long as it meets regulatory requirements.

In the sample program, we have inserted instructions and notes in italics. Recipients should not put this *italicized* material into their program documents.

You may obtain an electronic version of this document, from FAA Office of Civil Rights website: http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/training_conf/.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The *[Recipient]* has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The *[Recipient]* has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the *[Recipient]* has signed an assurance that it will comply with 49 CFR 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 our policy:

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

[Name or title of appropriate person or office] has been delegated as the DBE Liaison Officer. In that capacity, *[Name 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. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. *[Specify how this distribution is accomplished]*

[Signature of Recipient's Chief Executive Officer]

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The *[Recipient]* will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The *[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, the *[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: 26.11

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor’s Form or other similar format.

[Recipients may transmit the information electronically via DOORS at <http://osdbu.dot.gov/DOORS/Application/logon.aspx>]

Bidders List: 26.11(c)

The *[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 our DOT-assisted contracts for use in helping to set our

overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

(The recipient may obtain gross receipts information 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.)

We will collect this information in the following ways: *[Attach a copy of the tool used to gather bidders list information]*

[Note-Program should indicate the methods the recipient will use to obtain this information. The regulation does not mandate a particular method. This requirement applies to prime contractors and subcontractors, DBEs and non-DBEs, and winners and losers of all firms that bid on projects at the airport. The bidders list should only include names of bidders/offerors at the recipient's airport. Options include, but are not limited to, a contract clause requiring this information; a recipient-directed survey to obtain additional information not obtained at time of bid; a notice in all solicitations, or other widely disseminated request to firms quoting on subcontracts to report information directly to the recipient, etc.]

Section 26.13 Federal Financial Assistance Agreement

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

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

The *[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's]* DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the *[Recipient]* of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

[Note: This language is to be used verbatim, as it is stated in 26.13(a).]

Contract Assurance: 26.13b

The *[Recipient]* will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a

material breach of this contract, which may result in the termination of this contract or such other remedy as the *[Recipient]* deems appropriate.

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The *[Recipient]* will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The *[Recipient]* is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

[Provide the following information:

Name

Title

Address,

Telephone Number

Fax Number

E-mail Address]

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 organization chart displaying the DBELO's position in the organization is found 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:

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 in *[name of State]*.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the *[Recipient's]* updated directory on certified DBEs.

[Note: Only list the responsibilities that the DBELO actually performs. List responsibilities other personnel responsible for DBE Program implementation].

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. Also indicate how often you will investigate the availability]

Section 26.29 Prompt Payment Mechanisms

The *[Recipient]* has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use one of the following methods to comply with this requirement: *[Select One]*

- (1) Decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- (2) 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) 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.

[Recipient] will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the *[Recipient]*. When *[Recipient]* has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

List means that will be utilized [addressing appropriate penalties for failure to comply, the terms and conditions of which you set; Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval]

The *[Recipient]* will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than *[specify number]* days from the receipt of each payment the prime contractor receives from *[Recipient]*. The prime contractor agrees further to return retainage payments to each subcontractor within *[specify same number as above]* days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the *[Recipient]*. This clause applies to both DBE and non-DBE subcontractors.

[Note – This is sample language, and recipients can use existing prompt payment clause or draft their own, as long as they meet the substantive requirements of 26.29. This portion of the program may also state what sanctions/consequences the recipient attaches to noncompliance with the prompt payment clause and the procedures through which they are enforced. In addition, this portion of the program may also include other prompt payment – related provisions, such as an alternative dispute resolution mechanism that the recipient chooses to use.]

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
- (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.
- (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

Section 26.31 Directory

The *[Recipient]* maintains a directory identifying all firms eligible to participate as DBEs OR The *[Recipient]* uses the State of _____ DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

We or the State of _____ revises the Directory *[interval; must be at least annually.]* We make the Directory available as follows: *[list address, phone number, website, or other means by which interested persons can obtain access to the Directory]*. The Directory may be found at *(website link or attachment)*.

[Note: All recipients are required to participate in a combined statewide directory.]

Section 26.33 Over-concentration

[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 *[state area]*.

[Note: If a recipient has identified over-concentration, then please describe the rational for having the program element, the specific provisions of the element (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

[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 rational for the BDP is *[describe rational for having the program element, the specific provisions of the element (e.g., who is eligible to participate, how does the program element work, and how interested persons would obtain information about the program element.)*

Or

[Recipient] has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The *[Recipient]* will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector

General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment ___ lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. *[The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract.) This will be accomplished by [set forth the specific means the recipient will use to ensure compliance with Part 26 requirements by all participants and those of your DBE program.]*
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Section 26.39 Fostering small business participation.

The *[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 *[Recipient's]* small business program element is incorporated as Attachment ___ to this DBE Program. We will actively implement the program elements to foster small business participation, doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Small Hub Primary	All Regions	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Hub Primary	All Regions	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)

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

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, [Recipient] will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the [Recipients] efforts to establish a level playing field for the participation of DBEs.

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

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at [your principal office] for 30 days following the date of the notice, and informing the public that the [Recipient] and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

[The names of the media used and the category of the media should be listed specifically in the goal calculation attachment.]

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. *(A 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 should 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 your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.)*

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.

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

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

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

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment ___ to this program. *[Note: If the recipient intends to use any race-conscious means of obtaining DBE participation other than contract goals it should be described here.]*

Section 26.51(d-g) Contract Goals

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..

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

(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).

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

We will express our contract goals as a percentage of **[the total amount of a DOT-assisted contract]** OR **[the Federal share of a DOT-assisted contract]**.

[Note: Recipients can choose either approach; program should mention which choice the recipient made].

Section 26.53 Good Faith Efforts Procedures

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

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

[Name and title] 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].*

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

Information to be submitted (26.53(b))

[Recipient] treats bidder/offers' compliance with good faith efforts' requirements as a matter of **[responsiveness – all bidders submit DBE information at the time of bid] or [responsibility – only the apparent successful bidder will submit the DBE information]**.

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

OR

Responsibility- Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within ___ business days of being notified that they are the successful bidders, but before the contract is executed:

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

Administrative reconsideration (26.53(d))

Within ___ business days *[The number of days, consider no more than 7 days here due to the fact that administrative reconsideration must be offered before awarding the contract.]* of being informed by *[Recipient]* that it is not *[responsive or responsible]* because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: *[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.

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

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

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

[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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

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

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

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

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

[Note: Include the administrative remedies you will use for noncompliance (see 26.53(f)(3)). The following two sentences are examples of such remedies.]

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

Sample Bid Specification:

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

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

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found in Attachment ___ can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.]

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS**Section 26.61 – 26.73 Certification Process**

[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. We will make our certification decisions based on the facts as a whole.

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

[Provide name, address, phone number, and e-mail address of contact person]

Our certification application forms and documentation requirements are found in Attachment ___ to this program. *[The Uniform Certification Form contained in the Final Rule, 49 CFR Part 26, dated 6/16/03, should be used in this attachment.]*

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

Re-certifications 26.83(a) & (c)

We will ensure the UCP reviews the eligibility of DBEs that we certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will be: *[Include milestones; e.g., our {number} most active firms by {date}, our {number} next most active firms by {date}, etc.]*

For firms that we ensure UCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility *[state interval at which you intend such reviews. Part 26 says you may not conduct such reviews more often than every three years, but you are not required to conduct them at any specific interval.]* These reviews will include the following components: *[List elements of review; e.g., will an on-site review or a filling out a new application be mandated, or will recipient make these determinations on a case-by-case basis?]*

“No Change” Affidavits and Notices of Change (26.83(j))

The UCP requires all DBEs owners to inform us, in 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 *[Recipient’s]* application for certification.

The UCP also requires all DBE owners we have certified 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 you have provided written notice to the [Recipient] under 26.83(j). [Name of 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 \$20.41 million.

The UCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

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. Likewise, 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), 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 another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until [select number of months up to 12] have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures 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.] To ensure separation of functions in a de-certification, the UCP have determined that [name of official or office] will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative "firewall" to ensure that [same official or office named in previous sentence] will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

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 our denial of its application was erroneous).

[Note: If a recipient has a system for administrative appeals of certification decision, it should mention it here and provide details of the procedure in an Attachment. The program should inform the public that resorting to this system is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89].

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the *[Recipient]* or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

ATTACHMENTS

[List and append; we recommend that a copy of Part 26 be attached to the program so that public users to whom we send copies can have it handy]

- 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
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Form 1 & 2 for
- 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

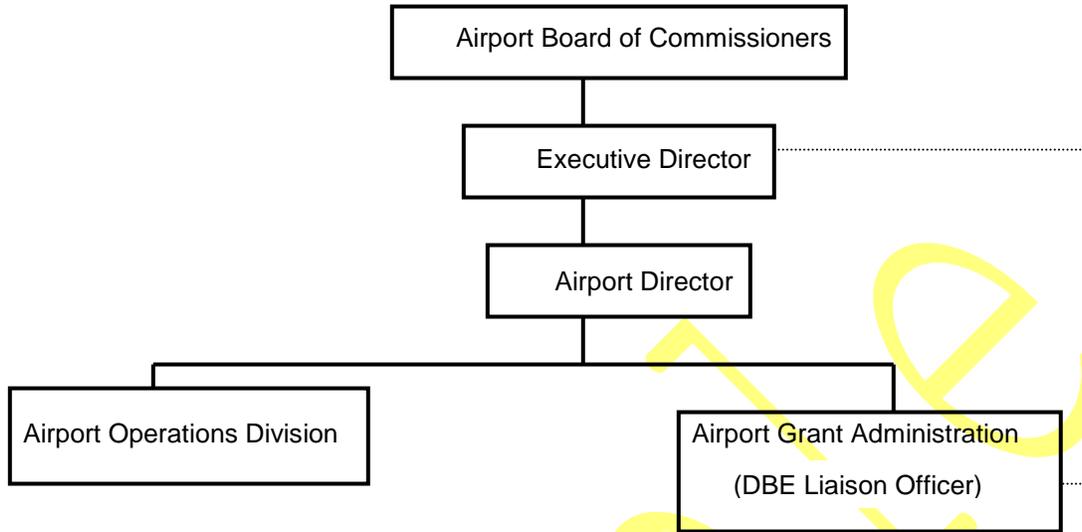
Sample

ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

Sample

ATTACHMENT 2
Organizational Chart



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

ATTACHMENT 3
Bidder's List Collection Form

Sample

ATTACHMENT 4

[State] DBE Directory
(or web link to DBE directory)

Sample

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

[Part 26.45 allows for the goal to be set 1 of 5 different methods. The example provided below is the most often used and recommended. The DBE Program Regulation can be found at <http://osdbu.dot.gov/DBEProgram/index.cfm>] Also, see Tips for Setting-Goals: <http://osdbu.dot.gov/DBEProgram/GuidanceforDBEProgramAdministrators/index.cfm>

Method: Use DBE Directories <http://osdbu.dot.gov/DBEProgram/StateDOTDBESites.cfm>

and Census Bureau Data <http://www.census.gov/econ/cbp/index.html>

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

NAICS	Type of Work	Total DBE's	Total All Firms
Total			

Divide the total number of DBE's by the total number of All Firms = base figure for each project. [Weighting is not mandatory, but is encouraged for a more accurate base figure.]

To determine the overall base figure for more than one project, add all the project percentages together.

Step 2. Analysis: Adjustments to Step 1 base figure.

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

An examination of the anticipated projects for each fiscal year, the availability of the DBE firms by trade classification and the volume of work performed by DBE firms over previous years.

Fiscal Year #1

For FY-20XX, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Project #1 - i.e. Apron Rehab	Asphalt, Concrete, Dust Control, Painting	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	7	1.2%	\$28,800
	Fuel Piping	Oil and gas Pipeline and Related Structures	237120	4,000,000	307	3	1.0%	\$40,000
	Underground Piping	Water and sewer line and related structures	237110	1,000,000	94	2	2.1%	\$21,000
Total Project				30,000,000	1071	17	5.32%	\$1,594,600
Project #2 i.e. Electrical	Electrical	Electrical Contractors	238210	1,200,000	602	7	1.2%	\$14,400
	Demolition, Excavation, Earthwork	Site Preparation	238910	3,500,000	307	3	1.0%	\$35,000
	Total Project				4,700,000	3051	44	1.05%
Total FY-20XX				34,700,000			4.74%	\$1,644,000

Fiscal Year #2

For FY-20XX, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Project								
Total Project								
Total FY-20XX								

Fiscal Year #3

For FY-20XX, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Project								
Total Project								
Total FY-20XX								

Past History Participation

Other data used to determine the adjustment to the base figure was the median of historical DBE accomplishments (we recommend you use a minimum of three to five years of data) as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 07					5%	2%	7%	
FY 08					2%	1%	3%	
FY 09					4%	0%	4%	
FY 10					2%	0%	2%	
FY 11					7%	1%	8%	

Arranging this historical data from low to high, (8%, 7%,4%, 3%, 2%) the median is 4%.

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 4.37 $(4.74 + 4)/2$
- Fiscal Year #2
- Fiscal Year #3

Our proposed overall three year goal will be reflected as (option 1- an average of the three years, option 2 – an cumulative of the three years)

To arrive at an overall goal, we added our Step 1 base figure with our Step 2 adjustment figure and then averaged the total arriving at an overall goal of _____. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during this three-year period.

OR,

There is no historical DBE data to reference to make an adjustment to the Step 1 base figure therefore, the Airport Authority is adopting its Step 1 base figure as its overall goal for this three-year goal period.

OR,

There is no historical DBE data to reference to make an adjustment to the Step 1 base figure, however, the Airport Authority feels it can achieve a slighter higher DBE goal during the 3-year period because additional DBE firms that perform _____ work are 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 FY-2013, 2014 and 2015.

Also include if applicable:

Further, there are no applicable disparity studies for the local market area or recent legal case information available from the State of Illinois Department of Commerce E.O. office to show any evidence of barriers to entry or competitiveness of DBEs in Cook or Kelly counties.

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

26.51(b) (1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. *[Use all the applicable RN measures that the recipient will use to increase 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 DBE's and other small businesses;*
6. *Providing services to help DBE's 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 DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and*
10. *[You may have other race neutral measures]*

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

Add a summary 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, these are examples you may consider using, if applicable)

- *In FY-12, the Airport Authority's accomplishments exceeded their goal by 3%, which is evidence of race-neutral participation, therefore, 3% of our 9.07% goal is being applied to race-neutral and the remaining 6.07% is applied to race-conscious participation.*
- *The Airport Authority expects to have 1 DBE prime contractor in 2014. This DBE is expected to accomplish at least 2% of the project work, therefore, we are applying 2% of our 9.07 goal to race-neutral and 7.07 to race-conscious participation.*
- *The Airport Authority holds quarterly meetings open to all small businesses that will result in at least 1% additional DBE participation in 2013, therefore, we are applying 1% of our 9.07 goal to race-neutral and the remaining 8.07 to race-conscious.*
- *The Airport Authority 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, we are applying the entire goal of 9.07 to race-conscious participation.*

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

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

[In establishing the proposed goal, 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 DBE's and the recipients efforts to establish a level playing field for the participation of DBE's.

[Note: Please see the following guidance regarding consultation:

WHAT STEPS ARE RECIPIENTS EXPECTED TO TAKE TO SATISFY THE CONSULTATION COMPONENT OF THE PUBLIC PARTICIPATION REQUIRED FOR GOAL SETTING? (Posted - 6/18/08)

- *The goal setting process used by recipients to establish their annual overall goal submitted to the operating administrations for approval must include "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 DBEs and non-DBEs. This consultation process is also intended to gather information concerning the effects of discrimination on opportunities for DBEs, if present, - and establishing a level playing field for the participation of DBEs.*
- *By definition, the process of consultation involves a scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made. Publication of the proposed goal to the general public is not synonymous with, or a substitute for, consultation with interested or affected groups.*

- *Recipients should identify groups within their contracting market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. Those groups should be contacted and invited to participate in a face-to-face exchange (which may occur at a public meeting) aimed at obtaining the kind of information set out in the regulation regarding establishing the overall DBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible. An advisory committee may be one method of consultation (but not the exclusive method, since this could lead to a recipient talking only to the same people all the time). A description of the consultation process and its purpose should be provided to all invitees.*
- *Consultation is expected to occur before the proposed goal is established and prior to publication of the proposed overall goal for inspection and comment by the general public.*
- *The consultation process must be documented in the recipient's annual goal submission.*

Suggested language to use:

The Airport Authority submits its overall DBE three-year goal to DOT on August 1 as required by the set schedule.

Before establishing the overall goal, the [Airport Authority] will consult with [Cook and Kelly County's Chamber of Commerce, Cook and Kelly County's Public Works Department, State XXX Contractors Association, IDOT, State of XXX Minority Business Development Office, Women Business Development Council, Airport Minority Business Council], without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the [Airport Authority's] efforts to establish a level playing field for the participation of DBEs

Following the consultation, we will publish a notice in the [Name of Newspaper] of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the airport administration building for 30 days following the date of the notice, and informing the public that the [Airport Authority] and DOT will accept comments on the goals for 45 days from the date of the notice

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses, if any.

The following comments were received:

OR

No comments have been received.

Sample Public Notice Language:

PUBLIC NOTICE

The [Recipient] hereby announces its fiscal year 20__ goal of ___% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is 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 45 days from the date of this publication and can be sent to the following:

[DBELO, name, complete address]

or

*Federal Aviation Administration
Office of Civil Rights Staff*

[Enter your regional DBE Compliance Specialist Contact Information]

Contract Goals

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

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

We will express our contract goals as a percentage of the *[total amount of a DOT-assisted contract]* or *[the Federal share of a DOT-assisted contract]*. *[Note: Recipients can choose either approach]*

Sample

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

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

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

Sample

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

.....
.....
.....
.....

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

Affirmation

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

By _____
(Signature)

Date: _____

(Title)

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

[Submit this page for each DBE subcontractor.]

ATTACHMENT 7**DBE 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;
2. Breach of contract action, pursuant to [insert State Code Section No.];
3. *[List the other laws, statutes, regulations, etc. that are available 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.

Sample

ATTACHMENT 8
DBE Certification Application Form

Sample

ATTACHMENT 9
State's UCP Agreement

Sample

ATTACHMENT 10
Small Business Element Program

Sample