

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

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. 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 e-version of the regulations has combined all of these documents into one for easy reading: Electronic Code of Federal Regulations <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

We are providing this Sample DBE Program for informational purposes, and recipients are not required to use it or its format. This Sample Program is NOT official U.S. Department of Transportation (DOT) guidance. This Sample Program is a revised version of the original version prepared by the DOT. It has been modified by FAA staff and has not yet been reviewed by the General Counsel of the Department of Transportation for consistency with the language and intent of 49 CFR Part 26. 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.

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 include *italicized* sections in 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/dbe_program_adm/.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The *[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. 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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

[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. The distribution was accomplished by *[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 firm information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2015 reports due December 1, 2015.

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.

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

[See attached sample form, 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. You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in a statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

Note - the 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 contracts at the airport. The bidders list should only include names of bidders/offerors at the recipient's airport. Options include 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.]

[IF YOU ARE NOT A CERTIFYING AGENCY, OMIT SECTIONS 26.11 (d) AND (e) BELOW].

What records do recipients keep and report: 26.11 (d) & (e)

As a certifying agency, [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. We understand that these records must be retained in accordance with applicable record retention requirements of our financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable

record retention requirements for our financial assistance agreement, whichever is longer.

The [Recipient] as a member of the [State] UCP established pursuant to § 26.81 of this part will report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, 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

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

Assurance: 26.13(a) - Each financial assistance agreement the [Recipient] signs with a DOT operating administration (or a primary recipient) will 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 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.*).

[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, 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.

[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]* 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. We are 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. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for 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)

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:

[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.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

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: *[Regulation requires that you select **ONLY One** of the following:]*

- (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 the 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. 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.]

The [Recipient] has also established, as part of our DBE program, the following mechanisms to ensure prompt payment: *[Note this is section is optional, only include if you will implement and only select what you will implement].*

- (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.

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.

Section 26.31 Directory

[Select one:]

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, 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 revise OR The state UCP 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 rationale 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 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 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 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 if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the [Recipient] will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

[Remove the information that does not apply to your location]

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2016 (2017/2018/2019)	August 1, 2019 (2020/2021/2022)
Small Hub Primary	All Regions	August 1, 2014 (2015/2016/2017)	August 1, 2017 (2018/2019/2020)
Non-Hub Primary	All Regions	August 1, 2015 (2016/2017/2018)	August 1, 2018 (2019/2010/2021)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1, 2016 (2017/2018/2019)	August 1, 2019 (2020/2021/2022)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1, 2014 (2015/2016/2017)	August 1, 2017 (2018/2019/2020)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1, 2015 (2016/2017/2018)	August 1, 2018 (2019/2020/2021)

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 DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the

years within the three-year reporting period, 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.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". We will use *(enter the items you will use, you may select DBE Directories and Census Bureau Data, a Bidders List, a Disparity Study, the goal of another DOT recipient or other alternative method, see notes below)* as a method to determine our 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 Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose 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 our market. We understand 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the [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 [Recipients] efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the [Recipient's] goal setting process, and it will occur before we are required to submit our goal methodology to the

operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

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

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

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator we will express our overall goals 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 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.

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.

Section 26.45(f) - Prior Operating Administration Concurrent

The *[Recipient]* understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

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;

[Select applicable #3, note that only CORE (OEP) Airports 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 (c) (1) and (2) of this section to the FAA 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 FAA upon request.

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

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

(a) The [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 of this part.
- (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 your 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.]

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 but should match statement selected on 26.53(b) below*].

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))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (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 (b)(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 (see Appendix A of this part). 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) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section: *[Select either responsiveness or responsible option]*

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

OR,

No later than 7 days after bid opening as a matter of **responsibility**. The 7 days shall be reduced to 5 days beginning January 1, 2017.

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 (b)(2) of this section before the final selection for the contract is made by the recipient.

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 so. 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 procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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 require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but 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 with another DBE firm.

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.]

The [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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material

breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) 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; (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.

If the 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, we will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

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 the following information:*

Name

Title

Address,

Telephone Number

Fax Number

E-mail Address]

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 10/02/2014, 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

We will ensure that only firms certified as eligible DBEs under this section participate as DBEs in our program. We will take the required steps outlined in 26.83(c) in determining whether a DBE firm meets the standards of subpart D of this part.

The firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility every ____ [state interval at which you intent such reviews. Part 26 says you may 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 the 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?]*

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

We will not require DBEs to reapply for certification or undergo a recertification process. However, we may conduct a certification review of a certified DBE firm, 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 our attention that leads us to question the firm's eligibility, we may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

"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 \$23.98 million.

The UCP requires DBEs to submit with this affidavit documentation of 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. 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. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of our decision to the Department pursuant to § 26.89 does not extend this period.

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 26.88 Summary Suspension of Certification.

The [Recipient] shall follow the procedures consistent with 26.88 of this Part regarding suspending a DBEs certification.

We shall immediately suspend a DBE's certification 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.

We will immediately suspend a DBE's certification 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), the [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 this part 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, we will either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If we commence a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under paragraph 26.88 (a) or (b) is not appealable to the U.S. DOT.

The failure the [Recipient] to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. DOT under § 26.89 of this part, as a constructive decertification.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision 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 90 days of the date of the [Recipient's] final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. 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.

Such 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 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 and intimidation or retaliation

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 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.

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).

The *[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. If we violate this prohibition, we are in noncompliance with this part.

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 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

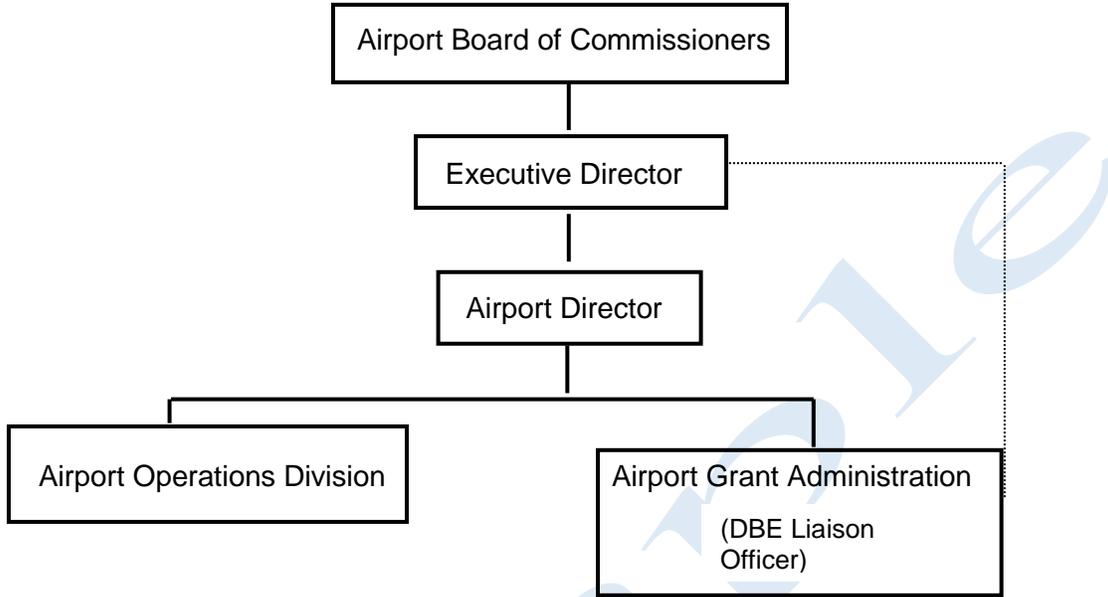
Sample

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 BIDDERS LIST COLLECTION FORM)

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

ATTACHMENT 4

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

Sample

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: Recipient owner of [specify the name of the Airport(s)]

Goal Period: *(Indicate appropriate goal period, reference schedule, i.e. FY-2017-2018-2019 – October 1, 2016 through September 30, 2019)*

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 DBE's: _____ [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. i.e. *Apron Rehabilitation - \$30,000,000*
2. i.e. *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. 26.45(c) Actual relative availability of DBE's

Determine the base figure for the 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 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://www.dot.gov/osdbu/disadvantaged-business-enterprise> or http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl.

Also, see *Tips for Setting-Goals:*

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

Method: Use DBE Directories <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/state-dot-and-dbe-program-websites>

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

[For each Contract 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 contract. (*Weighting is not mandatory, but is encouraged for a more accurate base figure*).

Base figure = ____ of all firms ready, willing and able.

The data source or demonstrable evidence used to derive the numerator was: [Enter Information].

The data source or demonstrable evidence used to derive the denominator was: [Enter information].

Step 2. 26.45(d): 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 contracts 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.

[There are many types of evidence that must be considered when adjusting the base figure. These include: 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].

Fiscal Year #1

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

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Contract #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	25	4.15%	\$28,800
	Fuel Piping	Oil and gas Pipeline and Related Structures	237120	4,000,000	307	9	2.93%	\$40,000
	Underground Piping	Water and sewer line and related structures	237110	1,000,000	94	2	2.1%	\$21,000
Total Contract #1				30,000,000	1071	41	3.83% (41/1071)	\$1,149,000 (3.83% of 30,000,000)
Contract #2 i.e. Electrical	Electrical	Electrical Contractors	238210	1,200,000	602	15	2.49%	\$14,400
	Demolition, Excavation, Earthwork	Site Preparation	238910	3,500,000	307	13	4.23%	\$35,000
Total Contract #2				4,700,000	909	28	3.08% (28/909)	\$144,760 (3.08% of 4,700,000)
Total FY-20XX				34,700,000	1980	69	3.48% rounded to 3.50% (69/1980)	\$1,214,500 (3.5% of 34,700,000)

Fiscal Year #2
 For FY-20XX, we anticipate the award of the following:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Contract #								
Total Contract #								
Total FY-20XX								

Fiscal Year #3
 For FY-20XX, we anticipate the award of the following:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Contract #								
Total Contract #								
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, if all the participation was attained via race conscious measures, there's no need to show the split but you must specify this in your narrative) as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 11					5%	2%	7%	
FY 12					2%	1%	3%	
FY 13					4%	0%	4%	
FY 14					2%	0%	2%	
FY 15					7%	1%	8%	

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

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 3.5 **(3.5 + 4)/2 = 3.75**
- 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 – three year Median, or Option 3 - weighted percentage*)

Examples:

- Year 1 Goal = 9.0%
- Year 2 Goal = 8.0%
- Year 3 Goal = 6.0%

- Average of the three years $9+8+6=23/3 = 7.7\%$
- Median of the three years of participation = 8.0%
- Weighted $\$965,832 / \$12,234,598 = 7.8\%$

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 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-2017, 2018 and 2019.

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 _____ Department of _____ office to show any evidence of barriers to entry or competitiveness of DBEs in _____ 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. *(Include other race neutral measures as appropriate)*

The recipient estimates that in meeting its overall goal __%, 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, these are examples you may consider using, if applicable)

- *In FY-17, the Recipient's accomplishments exceeded the 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 Recipients expects to have 1 DBE prime contractor obtain through competitive bid procedures. 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 Recipient holds quarterly meetings open to all small businesses that will result in at least 1% additional DBE participation in 2018; therefore, we are applying 1% of our 9.07 goal to race-neutral and the remaining 8.07% to race-conscious.*

- *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, 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]

In establishing the overall goal, the [Recipient] provided for consultation and publication. This 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 [Recipients] efforts to establish a level playing field for the participation of DBEs. The consultation included 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 [Recipient's] goal setting process, and it occurred before we were required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

Suggested language to use:

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

Before establishing the overall goal, the [Recipient] consulted 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 [Recipient] efforts to establish a level playing field for the participation of DBEs

Following the consultation, we published 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 [Recipient] and DOT will accept comments on the goals for 30 days from the date of the notice

The following comments were received: [discuss comments].

OR

No comments have been received.

Sample Public Notice Language:

PUBLIC NOTICE

The [Recipient] hereby announces its fiscal years 20__ through __ goal of __% for Disadvantaged Business Enterprise (DBE) airport construction Contracts. 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 30 days from the date of this publication and can be sent to the following:

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

AND

*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):

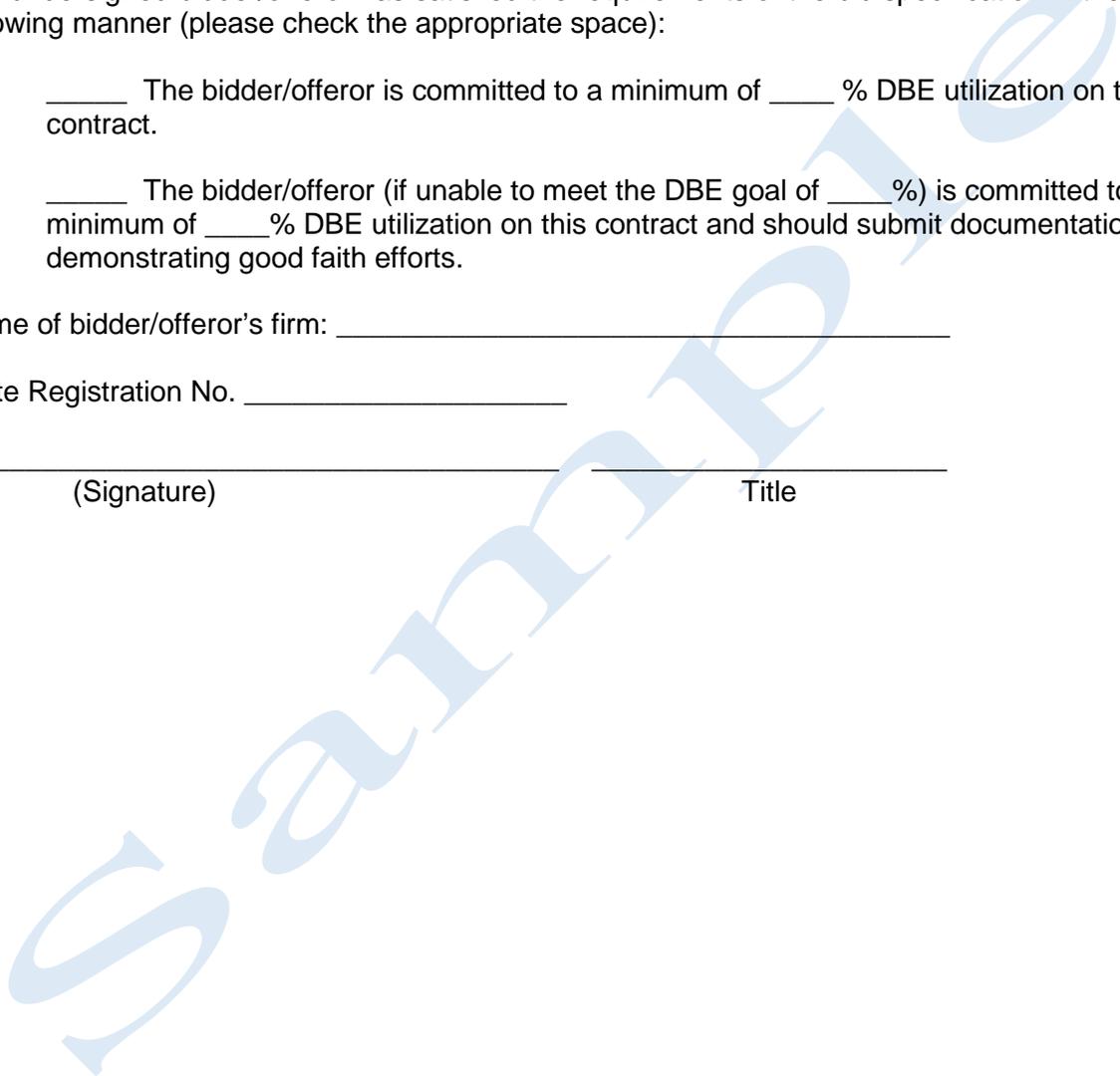
_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ 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



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 _____

Date:

(Signature)

(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
(New form October 2, 2014)

Sample

ATTACHMENT 9
State's UCP Agreement

Sample

ATTACHMENT 10
Small Business Element

It is recommended that you include the following components and notes:

1. Objective/Strategies

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

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(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

- *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.*

3. Verification

- *Should diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.*

4. Monitoring/Record Keeping

- *How will the information will be organized (for counting purposes)*
- *SB element should be reasonably monitored*

5. Implementation Timeline

- *Identify implementation schedule/timeline, within 6 or 9 months of FAA’s approval.*

Small Business Element (continued)

6. Assurance

- *Include the following assurances:*
 1. *assurance that the program is authorized under state law;*
 2. *assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;*
 3. *assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;*
 4. *assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and*
 5. *assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
 6. *assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*

Sample