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

The Department of Transportation (DOT) has prepared this sample program to help recipients comply with 49 CFR Part 26, the DOT DBE rule. We published Part 26 in the Federal Register on February 2, 1999, and it became effective March 4 (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. The e-version of the regulations has combined both of these documents into one for easy reading.

This sample program supersedes guidance issued by the operation administrations under former Part 23. It does not address the separate DBE program for airport concessionaires, which continues to be administered in accordance with 49 CFR Part 23.

We are providing this sample DBE program for informational purposes, and recipients are not required to use it or its format. However, recipients may wish to use it as a guide in preparing their program documents. Recipients may customize the sample program to fit their circumstances. The three DOT operating administrations with DBE program responsibilities – the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA) – may provide additional guidance for program matters that are specific to their programs. This sample program should, however, lead to greater consistency among recipients' submissions.

At a number of points, the sample 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 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 put instructions and notes in italics. Recipients would not put this *italicized* material into their program documents.

You may obtain an electronic version of this document and/or DBE goal update information by calling the External Program Compliance Specialist in your area.

SAMPLE DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the [*Recipient*] to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

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

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

[*Recipient's Name]* has disseminated this policy statement to the [*identify the governing board or officials of the recipient*] and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. [*Specify how this distribution is accomplished*]

_____ _____

[*Signature of Recipients 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 *(Use the appropriate applicability)*

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

The [*Recipient*] is the recipient of Federal –aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The [*Recipient*] is the recipient of Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

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)

We will report DBE participation to DOT as follows:

[*FAA Recipients*] - We will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for use by FAA recipients.

[*FTA Recipients*] – We will report DBE participation on a semi-annual basis, using Uniform Report of DBE Awards or Commitments and Payment Form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

[*FHWA Recipients*] – We will report DBE participation on a semi-annual basis, using Uniform Report of DBE Awards or Commitments and Payment Form.

Bidders List: 26.11(c)

The [*Recipient*] will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. *(The recipient may obtain gross receipts information by asking each firm to indicate into what bracket it fits (e.g., less than $500,000; $500,000 – $1 million; $1-2 million, $2-5 million, etc.) rather than requesting an exact figure from the firm.)*

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

[*Note-Program should indicate the methods the recipient will use to obtain this information. The regulation does not mandate a particular method. This requirement applies to prime contractors and subcontractors, DBEs and non-DBEs, and winners and losers of all firms that bid on projects at the airport. The bidders list should only include names of bidders/offerors at the recipient's airport.*

Options include, but are not limited to, a contract clause requiring this information; a recipient-directed survey to obtain additional information not obtained at time of bid; a notice in all solicitations, or other widely disseminated request to firms quoting on subcontracts to report information directly to the recipient, etc.]

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

> [*Recipient*] shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The [*Recipient's*] DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [*Recipient*] of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq*.).

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

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

Contract Assurance: 26.13b

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

> The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the [*Recipient*] has received a grant of [*For FAA Recipients*: $250,000 or more for airport planning or development,] [*For FTA recipients*: $250,000 or more in FTA planning capital, and or operating assistance in a Federal fiscal year,] [*For FHWA recipients*: authorized by the statute for which this part applies,] we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding $250,000 in FAA funds in that Federal fiscal year.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

[Provide the name, address, telephone number, and e-mail address]

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the [*Recipient*] complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the *[indicate chief executive officer of recipient*] concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment __to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of [*indicate the number of staff or resources, this would include other offices for coordination, i.e. legal or consultant engineers*] to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes [*Recipient's*] progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.

8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in [*name of State*].
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the [*Recipient*'s] updated directory on certified DBEs.

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

Section 26.27 DBE Financial Institutions

It is the policy of the [*Recipient*] to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

[Include in this section efforts made to identify financial institutions and the results of those efforts.]

Section 26.29 Prompt Payment Mechanisms

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

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

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

Section 26.31 Directory

The [*Recipient*] maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory [*state 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 in Attachment ___ to this program document.

[*Note: All recipients are required to participate in a combined statewide directory when the Uniform Certification Program becomes operational. At that time, this portion of the program will state how interested persons can obtain access to this combined directory*.]

Section 26.33 Over-concentration

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

Or

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

[*Note: If a recipient has identified over-concentration, then please describe the rational for having the program element, the specific provisions of the element (e.g., what is the over-concentration that has been identified, how the program element works, and how interested persons would obtain information about the program element.*]

Section 26.35 Business Development Programs

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

Or

[*Recipient*] has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. We will consider 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 procurement activities.

3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism 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. 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.*]

4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.

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

[Recipient's Name] will annually establish overall goals if we anticipate that we will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the [*recipient's name*] does not anticipate awarding more than $250,000 in FAA funds in prime contracts within the Federal fiscal year, we will not develop an overall goal; however the existing DBE program will remain in effect and the [*recipient's name*] will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

[*Recipient's Name*] will annually establish overall goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

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

In accordance with Section 26.45(f) the [*Recipient*] will submit its overall goal to DOT on August 1 of each year. [*If you are a FAA or FTA recipient, or you are submitting a contract goal, the date of submission will be determined by the operating administration*.] In establishing the overall goal each year, [*Recipient*] will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the [*Recipients*] efforts to establish a level playing field for the participation of DBEs.

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

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

[*The names of the media used and the category of the media should be listed specifically in the goal calculation attachment*.]
Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

[*Recipient*] will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, [*Recipient*] may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

[*Note: This element applies only to FTA recipients' programs. If an FAA or FHWA recipient uses this approach to purchases of equipment, it would add a similar element to its program*.]

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment ___ to this program. This section of the program will be updated annually when the goal calculation is updated.

[*Note: If the recipient intends to use any race-conscious means of obtaining DBE participation other than contract goals it should be describe here*.]

Section 26.51(d-g) Contract Goals

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

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 [*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

<u>Demonstration of good faith efforts (26.53(a) & (c))</u>

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

[*Name and title*] is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as [*responsive or responsible*] [*Note: Recipients can choose either approach*].

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

Information to be submitted (26.53(b))

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

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

or

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

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

Administrative reconsideration (26.53(d))

Within __ business days [*The number of days, consider no more than 7 days here due to the fact that administrative reconsideration must be offered before awarding the contract.*] of being informed by [*Recipient*] that it is not [*responsive or responsible*] because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: [*provide name, address, phone number, e-mail address*.] The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

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

[*Recipient*] will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

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

Sample Bid Specification:

> The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [*Name of 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 [*as determined in the goal calculation attachment* __] percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.
>
> The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

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

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

[*Recipient*] will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:
[*Provide name, address, phone number, and e-mail address of contact person*]

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

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

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

Or

[*Recipient*] is not a member of a UCP at this time. We intend to have an agreement signed by [*state date*]. The __UCP was submitted to DOT in March 2002 for review and approval. Once that process is finalized, the [*Recipient*] will actively participate in the program.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

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

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

"No Change" Affidavits and Notices of Change (26.83(j))

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

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

> I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which you have provided written notice to the [*Recipient*] under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed $20.41 million.

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

The UCP will notify all currently certified DBE firms of these obligations [*program should state how and when*]. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth, (26.67(b))

All disadvantaged owners of applicant firms and currently certified DBE firms whose eligibility under Part 26 is reviewed are required to submit a statement of personal net worth. Attachment ___ sets forth our personal net worth form (*you are required to use SBA Form 413*) and the documentation respondents must submit with it.

Section 26.86 Denials of Initial Requests for Certification

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

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment___ to this program sets forth these procedures in detail. [*Note – Recipients should append such a procedural attachment or include the state's UCP.*] To ensure separation of functions in a de-certification, the UCP have determined that [*name of official or office*] will serve as the decision-maker in de-certification proceedings. The UCP have established an administrative "firewall" to ensure that [*same official or office named in previous sentence*] will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

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

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

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

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

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

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

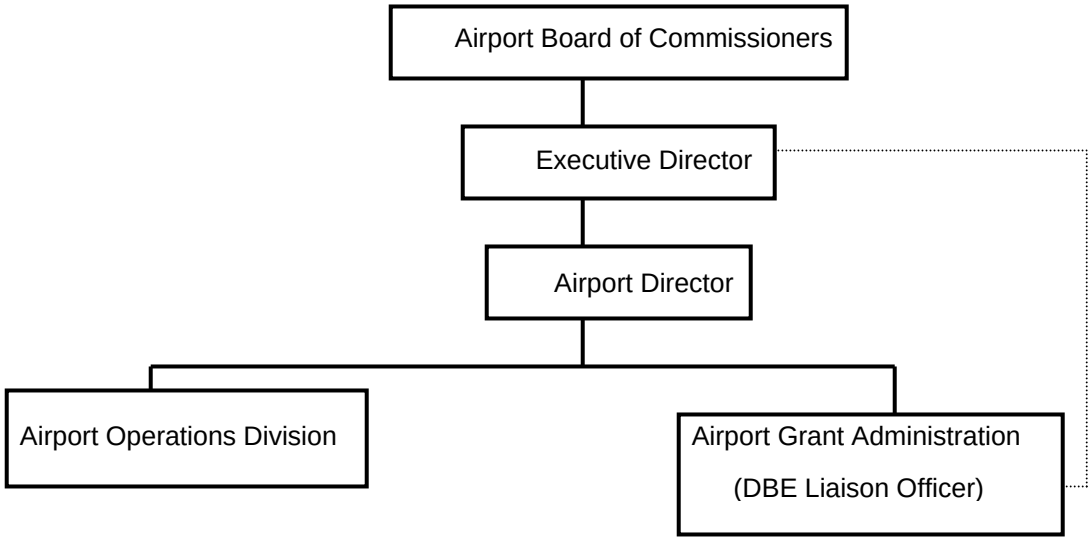
ATTACHMENTS

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

Attachment 1	Regulations: 49 CFR Part 26 [*include the e-version of the regulations, dated 12/2/03, found at http://osdbu.dot.gov/business/dbe/dbe_program.cfm*]
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory
Attachment 5	Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race-Conscious Participation, Public Participation, and Contract Goal)
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts or Good Faith Effort Plan
Attachment 7	Monitoring and Enforcement Mechanisms *(If not included in program document)*
Attachment 8	Certification Application Form [*from can be found at http://osdbu.dot.gov/business/dbe/dbe_program.cfm*]
Attachment 9	Procedures for Removal of DBE's Eligibility or copy of the State's UCP
Attachment 10	Signed UCP Agreement Form *(signature page only- recipient signing with UCP)*
Attachment 11	Reporting Forms [*from the Final Rule from Federal Register, Volume 68, No. 115, dated 6/16/03*]

Attachment 2

Organizational Chart



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

Attachment 2

DBE Directory

ABC Mechanical Services, Inc 123 Airport Drive Anywhere, Anystate, 12345 (123) 555-1111	Sheet Metal	Date of Certification
ABC Electrical 567 Plug Drive Circuit City, Anystate, 12345 (123) 555-2222	Electrical	Date of Certification

Attachment 3

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.

Attachment 4

Section 26.45: Overall Goal Calculation

(The ***italicized*** text that is in the parenthesis is instructions to the recipient to tailor information to their specific goal update.)

Name of Recipient:

Goal Period: FY-200***X*** – October 1, 200***X*** through September 30, 200***X***

DOT-assisted contract amount: **DBE Goal**: *(percentage)*
Total dollar amount to be expended on DBE's:

Describe the Number and Type of Projects for this FY:
a.
b.
Market Area: [*List counties/parishes for local market area*]

Determination of Market Area: [*State the applicable reasons that the market area was determined to be so*]
a. Substantial majority (at least __% of the contractors and subcontractors come from this area), and
b. Substantial majority (at least __% of the contracting dollars will be spent in this area.)

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

[*Part 26.45 allows for the goal to be set 1 of 5 different methods. The example provided below is the most often used method but is not mandatory to use*.]

Method: Use DBE Directories and Census Bureau Data
[***For each project***, *please provide the following information*]

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

Divide the total number of DBE's by the total number of All Firms = base figure for each project.
[*Weighting is not mandatory, but is encouraged for a more accurate base figure. See Tips for Setting-Goals on the DOT Website - http://osdbuweb.dot.gov/business/dbe/dbe_program.cfm CLICK on* ***"Guidance for DB E Program Administrators"*** *for more instructions on weighting.*]

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

Step 2. Analysis: Adjustment to Step 1 base figure to make it more precise.

Three factors to consider in the adjustment of Step 1 base figure:

a. First, the recipient researched its market area for any disparity studies that may have been conducted in the last 7 years and found none [*or whatever found*]**.** We contacted _____, _____ and _____.

b. Second, the recipient addressed other factors by researching and contacting the following offices:

(*Examples only – you may have other points of contacts****)***

1. Organizations serving or representing DBE's, minority-owned or women-owned businesses ***(state results of research)***
2. State or local offices of procurement ***(state results of research)***
3. Federal, state or local offices responsible for enforcing Civil Rights laws ***(state results of research)***
4. State or local offices responsible for minority or women's affairs ***(state results of research)***

c. Third, the recipient examined the historic overall DBE goals accomplishments at the airport in recent years, i.e., 3-4 years, specifically, the annual Uniform Report of DBE Awards or Commitments and Payments supplemented by contractual closeout information, and summarized below:

Recipients Historic DBE Accomplishments for DOT-Assisted Contracts
(3-4 years analysis of similar or the same type of work)

Fiscal Year	Goal	Accomplishments	Type of Work

The median percentage of accomplishments for all similar projects over recent years is __%. When we compare this median with the proposed base figure for FY-200***X***, we determine that our adjusted overall goal is __%.

__% base figure + __% (historical median) divided by 2 = __adjusted overall goal

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.
26.51(b)(1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. [*Use all the applicable RN measures that the recipient will use to increase DBE participation****:***]

[***Examples***]

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;
6. Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
10. [*You may have other race neutral measures*.]

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

[*Add a summary of the basis of the estimated breakout of RN and RC DBE 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.* ***Summarize efforts and the comments received.***]

Published Notice: Section 26.45 (g)(2). [*After you finish the consultation the recipient announces to the proposed goal to the public. This notice should be done in the general circulation media and available minority-focused media and trade association publications that the proposed overall goal and its rationale is available for inspection.* ***Summarize the efforts and comments received. Include a copy of the actual media notices.***]

Sample Public Notice Language:

PUBLIC NOTICE

The [*recipient's name*] Airport hereby announces its fiscal year 200X goal of ___% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at [*location's name and address*] for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

[***DBELO, name, complete address***]

or

Federal Aviation Administration
Civil Rights Staff, ASW-9
2601 Meacham Boulevard
Fort Worth, TX 76137-0009

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).

The recipient will express its contract goals as a percentage of *(total amount of DBE-assisted contract)* **or** *(the Federal share of a DOT-assisted contract)***.**

Attachment 5

Forms 1 & 2 for Demonstration of Good Faith Efforts

[*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.

By _____
(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.]