

ESSEX COUNTY IMPROVEMENT AUTHORITY

ESSEX COUNTY AIRPORT

FAIRFIELD, NJ



**DISADVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM
49 CFR PART 26**

Updated November 2024

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement


Essex County Improvement Authority (ECIA), owner of Essex County Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. ECIA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, ECIA has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as “Part 26”).

It is the policy of the ECIA to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also ECIA policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Joe Cali, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, Joe Cali 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 ECIA in its financial assistance agreements with the Department of Transportation.

ECIA has disseminated this policy statement to the Director of Operations and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on ECIA DOT-assisted contracts by posting on the airports website at www.ecianj.com.



Lucy Sapinski,
Director of Operations

11-15-24
Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

ECIA will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

ECIA 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, ECIA 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 Data Collection and Reporting Requirements

Reporting to DOT

ECIA will provide data about its DBE Program to the Department as directed by DOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

ECIA will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. ECIA will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

Bidders List

ECIA will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

ECIA will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

ECIA will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

ECIA will enter this data into the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), ECIA will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

ECIA will maintain records documenting a firm's compliance with the requirements of this part. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

ECIA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

The ECIA 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 ECIA 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 ECIA 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 ECIA of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: ECIA will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

ECIA 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.

ECIA is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and ECIA is in compliance with it and Part 26. ECIA will continue to carry

out this program until all funds from DOT financial assistance have been expended. ECIA does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration 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)

The following individual has been designated as the DBE Liaison Officer for ECIA:

Mr. Joe Cali
Essex County Improvement Authority
27 Wright Way
Fairfield NJ 07004
(973) 575-0952
jcali@ecia.essexcountynj.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the ECIA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Operations concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 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 5 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 ECIA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Director of Operations on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of ECIA 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. The availability of such institutions will be investigated on an annual basis.

As part of this DBE Program, ECIA has investigated services offered by banks owned and controlled by socially and economically disadvantaged individuals in the local area by contacting the U.S. Treasury Department and reviewing its October 8, 2024, listing of Minority Bank Deposit Program. Based on this search, there are no banks defined by the Treasury located in the airport's New Jersey market area.

As of, August 27, 2024, depository institutions that participate in the Federal Deposit Insurance Corporation's (FDIC) Minority Depository Institutions Program have been added to the Treasury's Minority Bank Deposit Program. By researching the Federal Reserve System and reviewing its listing of minority-owned depository institutions, DBE banks located in the market area can be identified. Based on this search, there are no minority-owned depository institutions located in the airport's New Jersey market area.

The bank participants in the Minority Bank Deposit Program and Minority Depository Institutions Program do change periodically and updates can be found at the following website locations, respectively:

<https://www.fiscal.treasury.gov/mbdp/participants.html>
<https://www.fdic.gov/regulations/resources/minority/mdi.html>

Section 26.29 Prompt Payment Mechanisms

ECIA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with

all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the ECIA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from the ECIA.

ECIA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, ECIA *has* selected the following method to comply with this requirement:

ECIA will 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 10 days after ECIA payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, ECIA includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

ECIA clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, ECIA undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- The Monthly Payment Report found in Attachment 11 is required to be submitted on a monthly basis throughout the entirety of the project. This report monitors the payments by providing a running tally of actual DBE attainments and compares this to the commitments.
- Each subcontractor, DBE and non-DBE firms, are required to complete the Subcontractor's Prompt Payment Certification, found in Attachment 12. A completed copy of this form shall be submitted to the Sponsor's representative, the Prime Contractor and the Contractor you are working for at least 7 days prior

to an application for payment. This form is to be submitted with each payment application. Any delay in submitting the required certification will cause a delay in payments being processed. The intent of this form is verification of timely payment to the Subcontractors

- The Disadvantaged Business Enterprise (DBE) Participation Summary Form, found in Attachment 13, must be completed and signed by the DBE firm upon completion of the project. A final payment will not be processed without the required form. The intent of this form is to confirm total payments made to DBE firms.

ECIA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the ECIA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of ECIA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- ECIA proactively reviews contract payments to subcontractors including DBEs on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to ECIA by the prime contractor.

Prompt Payment Dispute Resolution

The ECIA will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

Upon either parties' written request to the DBELO for mediation, the parties shall participate voluntary mediation by selecting a mediator within 10 days of request. Within 30 days of the request, the mediation shall be completed, with or without legal counsel, pursuant to NJ law.

ECIA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR)

If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the subcontractor should contact the DBELO to initiate a complaint.

If the subcontractor is not satisfied with the results from filing a prompt payment complaint with the Airport's DBELO, the subcontractor may contact Lucy Sapinski at lsapinski@ecia.essexcountynj.org.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

If the affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.

If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by ECIA to resolve prompt payment disputes, affected subcontractor may contact the responsible the FAA contact.

Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

ECIA provides appropriate means to enforce the requirements of § 26.29. These means include:

Further payments for any work performed may be withheld until corrective action is taken.

Cancelling, terminating or suspending a contract in whole or in part.

ECIA *will* actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

ECIA is a non-certifying member of the New Jersey Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

ECIA has not established a Business Development Program, or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

ECIA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

ECIA actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by utilizing an excel spreadsheet and monthly payment reports collected from all primes. This mechanism to maintain a running tally of overall goal attainment will be used to inform ECIA's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

ECIA actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by utilizing

an excel spreadsheet and monthly payment reports collected from all primes. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

ECIA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by DBELO or designee. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by the DBELO or designee. ECIA will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. ECIA will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

ECIA has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. ECIA acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

ECIA does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

ECIA will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), ECIA will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by the FAA

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If ECIA does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and ECIA will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. ECIA will use a Bidders List, a Disparity Study, the goal of another DOT Recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. ECIA understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. ECIA will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the ECIA market.

In establishing the overall goal, ECIA will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by ECIA to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before ECIA is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which ECIA engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

The Overall Three-Year DBE Goal submission to the FAA will include any information and comments received, who provided the comment, and how ECIA *considered* and responded to any comments and information received before finalizing the goal.

ECIA will begin using the overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

ECIA understands that prior the FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by ECIA for calculating goals is inadequate, the FAA may, after consulting with ECIA, adjust the overall goal or require that the goal

be adjusted by ECIA. 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 5 to this program.

Section 26.47 Failure to meet overall goals

ECIA cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless ECIA *fails* to administer its DBE program in good faith.

ECIA understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

ECIA understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) ECIA 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 the FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

ECIA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Refer DBE's to [Surety bonds \(sba.gov\)](https://www.sba.gov) for 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) Refer DBE's to [Small Business Transportation Resource Centers | US Department of Transportation](#) for 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) Refer DBEs, and other small businesses to [US DOT Office of Small and Disadvantaged Business Utilization | US Department of Transportation](#), improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (6) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (7) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (8) Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
- (9) Discuss the DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

ECIA will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

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

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

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO or designee is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

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

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. 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;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. 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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).

- f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

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

Provided that, in a negotiated procurement, such as a procurement for professional services, 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 ECIA. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor ECIA will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, ECIA will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which ECIA solicits proposals to design and build a project with minimal project details at time of letting, ECIA may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, ECIA will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. ECIA and the design-builder may agree to make written revisions of the OEPP throughout the life of

the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

ECIA will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, ECIA will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by ECIA that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Lucy Sapinski, Director of Operations, (973) 575-0952 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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

ECIA 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 ECIA deems appropriate if the prime contractor fails to comply with the requirements of this section.

ECIA will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

ECIA will require that a prime contractor not terminate a DBE, or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g))

without our prior written consent, unless ECIA causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to, when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

ECIA will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains ECIA's written consent as provided in § 26.53(f); and
- (2) Unless ECIA's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

ECIA may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (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 1200 or applicable state law;
- (6) ECIA has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to ECIA 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; and

- (10) Other documented good cause that ECIA determines compels the termination of the DBE subcontractor;

Before transmitting to ECIA the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to ECIA sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising ECIA and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why ECIA should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), ECIA may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs, or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If ECIA requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. The ECIA shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in § 26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in § 26.87(j).

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not

exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

ECIA is a non-certifying member of the New Jersey Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. New Jersey UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying New Jersey UCP members make all certification decisions based on the facts as a whole.

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

New Jersey Division of Civil Rights and Affirmative Action
Disadvantaged and Small Business Programs Unit
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600
Phone: (609) 530-3882

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full New Jersey UCP agreement. The full UCP agreement can be found in Attachment 9.

Section 26.81 Unified Certification Programs

ECIA is a member of a Unified Certification Program (UCP) administered by New Jersey Department of Transportation. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to ECIA

ECIA understands that if it fails to comply with any requirement of this part, ECIA may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

ECIA understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

Compliance reviews. The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack

of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program, release of which is not prohibited by Federal law.

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

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for

appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

ECIA, 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. ECIA understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program
- Attachment 11 Monthly Payment Report
- Attachment 12 Subcontractor's Prompt Payment Certification
- Attachment 13 DBE Final Participation Form

ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2
ORGANIZATIONAL CHART



ATTACHMENT 3

Revision Date: 2024-05-30

Bidder's List Collection Form

The sponsor is required by CFR Title 49, Subtitle A, Part 26, subpart A, § 26.11(c) to collect bidders list information from all bidders at the time of bid submittal. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not).

As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a proposal for this project. The sponsor will consider incomplete information to be an irregular proposal.

Airport Name: _____ **Bid Date:** _____

Project Name: _____

Bidders and potential subcontractors / suppliers Information:

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

If additional space is needed, copy this form and submit with your original proposal
This form must list all firms that supplied a quote (successful or not) and submitted with the proposal.

ATTACHMENT 4

Link to New Jersey's DBE Directory

<https://njucp.dbesystem.com/>

ATTACHMENT 5

Name of Recipient: Essex County Improvement Authority
Essex County Airport

Goal Period: FY-2023-2024-2025 – October 1, 2022 through September 30, 2025

DOT-assisted contract amount:	FY-2023	\$2,295,000
	FY-2024	\$ 0
	FY-2025	<u>\$ 450,000</u>
	Total	\$2,745,000

Overall Three-Year Goal: 1.6%, to be accomplished through 1.6% RC and 0.0% RN

Total dollar amount to be expended on DBEs: \$42,018

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

Contracts Fiscal Year #1

1. Rehabilitate C Apron \$1,125,000
2. Rehabilitate Taxiways H & 11 \$1,170,000

Contracts Fiscal Year #2

1. No anticipated projects

Contracts Fiscal Year #3

1. Rehab Runway 10-28 (Design) \$ 450,000

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 for Essex Airport is Bergen, Gloucester, Middlesex, Monmouth, Morris counties in NJ and Luzern and Philadelphia Counties in PA.*

Step 1. Actual relative availability of DBEs

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

Method: Use DBE Directories [New Jersey UCP \(dbesystem.com\)](http://New Jersey UCP (dbesystem.com)), [PAUCP - DBE Certification Management System \(dbesystem.com\)](http://PAUCP - DBE Certification Management System (dbesystem.com)) and Census Bureau Data from <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

Fiscal Year #1

For FY-2023, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract 1: Rehabilitate C Apron	Paving, Milling, Surface Prep, Markings, Mobilization, Traffic Control	Highway, Street & Bridge Construction	237310	\$371,250	142	1	0.7%	\$2,614
	Civil Engineering Construction	Civil Engineering	237990	\$33,750	42	12	28.6%	\$9,643
	Excavation, Site Prep., Demolition, Equipment	Site Preparation	238910	\$101,250	371	20	5.4%	\$5,458
	Material Suppliers	Brick, Stone Materials	423320	\$225,000	64	0	0.0%	\$0
	Fuel Suppliers	Petroleum Merchants	424720	\$56,250	28	0	0.0%	\$0
	Trucking Services	General Freight, Local	484110	\$112,500	730	8	1.1%	\$1,233
	Engineering Inspection	Engineering	541330	\$123,750	852	9	1.1%	\$1,307
	Survey	Survey & Mapping	541370	\$5,625	91	0	0.0%	\$0
	Geotechnical Testing	Testing Services	541380	\$16,875	150	0	0.0%	\$0
	Administrative & General Construction Mgmt.	Admin & General Construction Mgmt.	541611	\$56,250	1375	9	0.7%	\$368
	Erosion control/hydroseeding/silt fence,	Landscaping Services	561730	\$22,500	2096	1	0.0%	\$11
Total Contract				\$1,125,000			1.8%	\$20,635
Contract 2: Rehabilitate Taxilanes H & 11	Paving, Surface Prep, Markings, Traffic Control, Mobilization	Highway, Street & Bridge Construction	237310	\$415,350	142	1	0.7%	\$2,925
	Civil Engineering Construction	Civil Engineering	237990	\$29,250	42	12	28.6%	\$8,357
	Excavation, Site Prep., Equipment	Site Preparation	238910	\$76,050	371	20	5.4%	\$4,100
	Material Suppliers	Brick, Stone Materials	423320	\$263,250	64	0	0.0%	\$0
	Fuel Suppliers	Petroleum Merchants	424720	\$58,500	28	0	0.0%	\$0

Trucking Services	General Freight, Local	484110	\$87,750	730	8	1.1%	\$962
Engineering, Inspection	Engineering	541330	\$128,700	852	9	1.1%	\$1,360
Survey	Survey & Mapping	541370	\$5,850	91	0	0.0%	\$0
Geotechnical Testing	Testing Services	541380	\$17,550	150	0	0.0%	\$0
Administrative & General Construction Mgmt.	Admin & General Construction Mgmt.	541611	\$58,500	1375	9	0.7%	\$383
Erosion control	Landscaping Services	561730	\$29,250	2096	1	0.0%	\$14
Total Contract			\$1,170,000			1.5%	\$18,100
Total FY-2023			\$2,295,000			1.7%	\$38,734

Fiscal Year #2

For FY-2024, no anticipated projects:

Fiscal Year #3

For FY-2025, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract 1: Rehabilitate Runway 10-28 (D)	Engineering	Engineering Services	541330	\$371,250	852	9	1.1%	\$4,084
	Survey	Survey & Mapping	541370	\$33,750	91	0	0.0%	\$0
	Geotechnical Testing	Testing Services	541380	\$22,500	150	0	0.0%	\$0
	Compliance w/Pollution, Erosion	Landscaping Services	561730	\$22,500	2096	1	0.0%	\$0
Total Contract				\$450,000			0.91%	\$4,084
Total FY-2025				\$450,000			0.91%	\$4,084

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$42,976
- Total for All Trades: \$2,745,000

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

Base of DBE Goal: 1.6%

Step 2: Adjustments to Step 1 base figure

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

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

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

ECIA will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. 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);
3. Refer DBE's to local support services to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
5. Consider unbundling large contracts to make them more accessible to small businesses when possible;
6. Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
7. Discuss the DBE goal and DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

ECIA estimates that in meeting the established overall goal of 1.6%, it will obtain 0% from RN participation and 1.6% through RC measures.

This breakout is based on:

The Recipient does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a

conscious effort to obtain DBE participation. Therefore, the entire goal of 4.8% is to be obtained through race-conscious participation.

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

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, ECIA provided for consultation and publication. This process included inviting NJDOT Division of Civil Rights Affirmative Action Disadvantage & Small Business Program Unit, NJ Small Business Development Center, Associated Construction Contractors of NJ, AMAC and prime contractors as well as an open initiation posted on the airports website. These organizations could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ECIA's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was a *video conference*, which was held on July 25, 2022 at 11:00 a.m.

The following comments were received during the course of the consultation:
No comments were received

A notice of the proposed goal was published on the ECIA official before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on ECIA official website.

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

PUBLIC NOTICE

ECIA hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 1.6% for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2023 through 2025. A video conference will be held on Monday, July 25, 2022 at 11:00

Revision Date: 2024-08-28

a.m. for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. If you would like to participate please contact lhoward@cscos.com for log in credentials.

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

Mr. Joe Cali
Essex County Improvement Authority
27 Wright Way
Fairfield NJ 07004
jcali@ecia.essexcountynj.org

AND

Diane L. Gillam
DBE/ACDBE Compliance Specialist, Eastern Region
Office of Civil Rights – ACR-4
Federal Aviation Administration
305-716-1232
Diane.l.gillam@faa.gov

ATTACHMENT 6

CONTRACTOR'S DBE PLAN

(Submit this form and attach one DBE Letter of Intent Form for each DBE Subcontractor, Supplier or manufacturer.)

Airport Name: _____

Project Name: _____

Name of Bidder's Firm _____

Street Address _____

City: _____ State: _____ Zip: _____

Printed Name of Signer: _____

Email Address: _____

Total Bid Amount: _____ DBE CONTRACT GOAL: _____

DBE UTILIZATION SUMMARY

DBE Contract Amount		DBE Value	DBE %
DBE Prime Contractor		x 1.00 =	
DBE Subcontractors		x 1.00 =	
* DBE Suppliers:			
Dealer		x 0.60 =	
Distributor		x 0.40 =	
DBE Manufacturers		x 1.00 =	
**Total Proposed DBE Participation			

* DBE Suppliers must complete the USDOT Dealer / Distributor classification form. This form must be included with the submission of the DBE plan.

**If the total proposed DBE participation is less than the established DBE goal, Bidder must provide adequate written documentation of good faith efforts as required by 49 CFR Part 26, Appendix A.

Affirmation:

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior approval from the Airport.

By:

Signature of Bidder's Representative

Title

DBE LETTER OF INTENT FORM

(Submit one form for each DBE subcontractor, supplier or manufacturer.)

Project Name/Location: _____

FAA AIP Project No: _____

Name of Bidder's Firm: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____ Telephone: _____

Certifying Agency: _____ Expiration Date: _____

(DBE firm shall submit evidence, such as a photocopy, of their certification status)

Classification: Prime Contractor Subcontractor Joint Venture
 Supplier / Dealer Supplier / Distributor Manufacturer

Disadvantaged Group (check one):

Black American <input type="checkbox"/>	Hispanic American <input type="checkbox"/>	Native American <input type="checkbox"/>	Subcont. Asian Am 60000 <input type="checkbox"/>
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>
Asian Pacific American <input type="checkbox"/>	Non-Minority <input type="checkbox"/>	Other (not of any group listed here) <input type="checkbox"/>	
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	

SUMMARY OF WORK ITEMS

Work Item(s)	Description of Work Item	Estimated Quantity	Total Value

The bidder 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 of DBE firm's representative) (Title)

By: _____
(Signature of Bidders representative) (Title)

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

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?

YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

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

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organization Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity for honesty;
3. Violation of the Federal, State of New Jersey, or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874, 40 U.S.C. § 276b, c);
4. Violation of any of the laws governing the conduct of elections of the Federal government, State of New Jersey, or any state or of its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor; 7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
7. Violations of any other laws which may bear upon a lack of responsibility or moral integrity;
8. Willful failure to perform in accordance with contract specifications or within contractual time limits;
9. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;
10. Violation of contractual or statutory provisions regulating contingent fees;
11. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Department to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts; and

12. Debarment or disqualification by any other agency of government. (b) In the public interest, the Department may debar a vendor for violation of any of the following prohibitions on vendor activities or for breach of any of the following obligations:
 1. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
 2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
 3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.
 4. Any relationship subject to the provisions of (b)3 above shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
 5. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
 6. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.
 7. The provisions cited in (b)1 through 6 above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines promulgated by the Executive Commission on Ethical Standards.

The Airport has a number of Contract remedies available to enforce DBE requirements.

- Contract Assurance 26.13b – discrimination by a contractor is considered a material breach of contract and may result in termination of the contract; withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.
- Breach of Contract – Any violation or breach of terms of the contract may result in the suspension or termination of a contract, the withholding of payments until such time the contractor corrects the breach of contract.
- Sanctions for Noncompliance - In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancelling, terminating, or suspending a contract, in whole or in part.

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.
4. Breach of contract action, pursuant to the terms of the contract.

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

New Jersey's UCP Agreement can be found here:

NEW JERSEY
MEMORANDUM OF UNDERSTANDING

for a

**DISADVANTAGED BUSINESS
UNIFIED CERTIFICATION PROGRAM**

U.S. DEPARTMENT OF TRANSPORTATION PARTNERS



**PORT AUTHORITY OF NEW YORK/NEW JERSEY
NEW JERSEY TRANSIT CORPORATION
NEW JERSEY DEPARTMENT OF TRANSPORTATION**

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STATE OF NEW JERSEY
MEMORANDUM OF UNDERSTANDING

UNIFIED CERTIFICATION PROGRAM

This Memorandum of Understanding (MOU) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of New Jersey in accordance with Title 49 Part 26 of the Code of Federal Regulations (49 CFR Part 26). The NJUCP Certifying Partners are the New Jersey Department of Transportation (NJDOT); the Port Authority of New York/New Jersey (PANY/NJ), and New Jersey Transit Corporation (NJT).

Background

The NJUCP Certifying Partners held numerous meetings to discuss the requirements for developing a UCP. The initial UCP meeting was hosted by the NJDOT on April 7, 2000. Each agency discussed its current procedures, minimum requirements, limitations and the proposed process for program approval. Several critical areas of discussion included 1) the need for continuous staff training and development, 2) the need for an effective and efficient internet-based DBE directory and 3) the need for an effective public outreach and public relations effort.

The Certifying Partners' initial task was to determine how uniform certification would take place. It was decided that a reciprocity arrangement would be the most effective way to accomplish the UCP. The Certifying Partners agreed that the UCP would be the vehicle for achieving reciprocity and that uniform certification would be an ongoing process developed through standard operating procedures and training. Each Certifying Partner is committed to ensuring sufficient resources and expertise in carrying out the requirements of the regulation. The Certifying NJUCP Partners believed that this proposal would allow each partner maintain its respective staff and resources while satisfying the requirements of 49 CFR Part 26.

Once the framework of the NJUCP was established, Non-Certifying Partners were identified and invited to participate in planning meetings as well as helping develop various aspects of the NJUCP either through feedback or committee participation. Non-certifying Partners include: Federal Transit Administration (FTA) grantees, Federal Aviation Administration (FAA) grantees, Metropolitan Planning Organizations (MPOs), and all other sub-recipients of United States Department of Transportation (USDOT) funds. Committees were formed to address the following aspects of the formation and implementation of the NJUCP: Budget Development, Standard Operating Procedures (SOP), Uniform Documents, DBE Directory, Public Outreach and Staff Training.

Introduction

Each Certifying Partner in New Jersey is required to administer a DBE Certification Program in accordance with 49 CFR Part 26. Section 26.81 of this regulation require each state to develop a UCP by March 4, 2002. In accordance with Section 26.81 (a)(1), by letter dated March 11, 2002, the New Jersey Department of Transportation, on behalf of the NJUCP, requested an extension of time for submission of its MOU and UCP Program. Since that time, the NJUCP Certifying Partners have continued their discussions and work on the formation of the NJUCP. Since the Port Authority of NY/NJ is signatory to both New York and New Jersey's MOU Agreement, it was discussed and agreed upon by the NJUCP Certifying Partners that the most prudent course of action would be to align both states' processes to facilitate the Port Authority's UCP responsibilities under each state's MOU Agreement and to foster the development of regional reciprocity. Each NJUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49CFR Part 26.

Organization

The NJUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOU Agreement. Upon the approval of this Agreement, a designee of NJDOT shall serve as the Interim Chairperson of the NJUCP until full implementation of the Program. Annually thereafter, a Chairperson shall be selected from one of the Certifying NJUCP Partners by rotation alphabetically by agency. Nothing in this Agreement should be construed to contravene the sovereignty of each participant.

A Certifying NJUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying NJUCP Partner upon a one-year notice to all NJUCP Partners, unless the Certifying NJUCP Partners agree in writing to a different notice period by unanimous vote. The remaining Certifying NJUCP Partners shall then either renegotiate this Agreement or agree in writing to continue operating under the terms of this Agreement.

Purpose

The objectives of the New Jersey UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Part 26.
- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.
- To implement USDOT directives and guidance on DBE certification matters.
- To make all certification and decertification decisions on behalf of all NJUCP Partners with respect to participation in the USDOT DBE Program. Certification decisions by the

NJUCP shall be binding on all NJUCP Partners. Certification decisions must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

- To provide a single DBE certification that will be honored by all NJUCP Partners.
- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAIC codes. The NJUCP shall make the directory available to the public electronically on the Internet as well as in print. The NJUCP shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.

Definitions

Compliance Committee

A group that reviews a complaint raised by any NJUCP Certifying Partner alleging that another NJUCP Certifying Partner is not in compliance with the requirements of 49 CFR Part 26, Subpart E. The group will consist of the remaining NJUCP Certifying Partner, who will act as the Chairperson of the Compliance Committee, as well as four NJUCP Non-Certifying Partners.

NJUCP Certifying Partner

A State of New Jersey recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A certifying partner can issue or revoke DBE certification.

NJUCP Partner

All New Jersey State recipients participating in this Memorandum of Understanding, both Certifying and Non-certifying Partners.

Non-Certifying UCP Partner

A State of New Jersey recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Non-Certifying Partner can neither issue nor revoke DBE certification.

Recipient

Any public or private entity which receives direct USDOT financial assistance.

Sub-recipient

Any public or private entity receiving USDOT financial assistance through another recipient.

Grantee

Any public or private entity that has received USDOT assistance.

NJUCP PROGRAM DESCRIPTION

Partners' Roles, Responsibilities & Obligations

All Certifying NJUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying NJUCP Partners agree to utilize the USDOT Uniform Certification Application.

- All decisions related to eligibility and certification must agree with 49 CFR Part 26.
- The NJUCP Certifying Partners and Non-Certifying Partners must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined processes and procedures related to the administration of its DBE Program and certification decisions.
- Each NJUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures,

DBE Directory Management

Upon approval or denial of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number;
- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);
- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;
- Date Business was Established;

- Professional & Other Licenses (type and number);
- Name of NJUCP Certifying Partner;
- Site visit date and name of individual conducting review;
- Certification and Expiration Dates;
- Reason & Date of Denial, when applicable.

The NJUCP Certifying Partners agree that a UCP Database Manager will be designated. The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying NJUCP Partners;
- Maintain and keep the electronic DBE database current;
- Make the electronic DBE database available to all NJUCP Partners and other interested parties;
- Provide printed copies only of the list of firms that are DBE certified upon request and at a charge to be established; (Third parties should only be provided with a list of DBE certified firms. They should not be provided with information that a firm has been denied certification.)
- Maintain the NJUCP Website.

DBE Directory & Internet Access

The DBE Directory will be located on the NJUCP website. In accordance with 49 CFR Part 26.31, the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;
- Contact person
- Types of work performed by the firm with appropriate six (6) digit NAICS code and description.

The NJUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Certification and Expiration Dates
- Incentive Program Eligibility

Users will be able to sort by county or type of work, either for a single county or work type and/or multiple counties and work types. There will be links to and from the NJUCP Certifying Partners' respective websites.

NJUCP PROGRAM COSTS AND FUNDING

The cost of creating and establishing the NJUCP website and the electronic DBE Directory will be shared equally among all NJUCP Certifying Partners. Periodically, on-going maintenance costs will be examined and other UCP Partners may also be assessed costs equitably.

Training and Resources

The NJUCP Certifying Partners will conduct ongoing in-service training. The NJUCP Certifying Partners will agree to rotate the duties of planning and conducting training sessions.

CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the NJUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. Standard Operating Procedures (SOP) have been developed and will be utilized by all Certifying NJUCP Partners. They may be modified as needed and agreed upon by the Certifying NJ Partners.

- The NJUCP will not accept an application from a firm having its principal place of business outside of New Jersey if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
- The NJUCP will accept an application from the SBA, but will not automatically recognize the DBE certification of a firm certified by the Small Business Administration (SBA).

- The NJUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate “one-stop shopping” for applicants.

Geographic & Industry Considerations

The Certifying NJUCP Partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry. The NJUCP Certifying Partners reserve the right to forward applications to the most appropriate Certifying Partner relative to the firm’s geographical area and/or primary work type or industry.

Quality Assurance (New Certifications)

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying NJUCP Partners. Uniform documents have been developed for use by the Certifying NJUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

Annual Review Process

DBEs will update their certifications annually using the NJUCP “No Change” Affidavit as required in the SOP. Failure to submit the required documentation may result in certification removal as outlined in 49 CFR Part 26.87 and the SOP. The annual review will be conducted by the responsible certifying NJUCP Partner.

Third-Party Challenges

Provisions exist in the Standard Operating Procedure for the Certifying NJUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm.

Appeals Process and Procedures

An appeals procedure has been established as part of the NJ SOP for appeals of denial of original certification, denial of certification renewal and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

Denials of Original Certifications: All appeals shall be made directly to USDOT.

Decertifications: All appeals shall be forwarded to the Decertification Hearing Committee pursuant to the SOP.

AGENCY COMPLIANCE

If any NJUCP Certifying Partner has reason to believe that another NJUCP Certifying Partner is not in compliance with the requirements of 49 CFR Part 26, Subpart E, they may make a written complaint to the Executive Committee. The complaint will then be referred to a "Compliance Committee" consisting of the remaining NJUCP Certifying Partner, who will act as the Chairperson of the Compliance Committee, as well as NJUCP non-certifying Partners. The Compliance Committee shall be established pursuant to the SOP.

IMPLEMENTATION SCHEDULE

The Certifying NJUCP Partners will inform the public about the NJUCP by holding public meetings throughout the State immediately upon approval by the USDOT of this MOU Agreement. Notification of the public meetings as well as the NJUCP will occur in a variety of ways, including but not limited to the following: press releases, a notice on the Certifying NJUCP Partners' website, and direct mailings to individual DBE firms, professional associations and community based organizations.

This MOU was submitted to the non-Certifying NJUCP Partners, USDOT modal agencies and the Certifying NJUCP Partners' respective counsels for their review and comment. Changes and revisions were made based on the comments received. The MOU was then re-submitted to all NJUCP Partners for signature.

The following actions will be taken and completed by the Certifying Partners or designees no later than 18 months from the date of USDOT approval of this MOU Agreement:

Staff Training

- Develop and finalize training modules for SOP Manual, eligibility criteria, forms and procedures, on-site review, personal net worth analysis, internet-based system (DBE on-line directory).
- Recruit instructors and determine locations for training workshops.
- Schedule Joint Training Sessions.
- Conduct Initial Training.

Unified DBE Directory

- Develop and complete parameters for Unified DBE Directory.
- Compare UCP Certifying Partners databases.

- Purge duplicate DBE firms.
- Develop common database.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on NJDOT Website).

Transition of Currently Certified DBEs

Each NJUCP Certifying Partner shall electronically submit its current DBE Directory to the DBE Database Manager for inclusion in NJUCP DBE Directory. Each NJUCP Certifying Partner shall attest to the fact that each DBE firm submitted has been certified under the provisions of 49 CFR Part 26. The NJUCP Certifying Partners shall meet (may be done electronically) to review the currently certified DBE firms and determine the appropriate NJUCP Certifying Partner for future review of each DBE firm. Upon determination of the appropriate NJUCP Certifying Partner, the Partner with custody of the certification file in question shall forward it by Certified Mail, Return Receipt Requested to the designated Certifying Partner who shall then assume custody and responsibility for the file. Firms that were denied certification by one Certifying NJUCP Partner but are certified by another Certifying Partner will undergo further review as follows:

- For each affected firm, the Certifying NJUCP Partners will compare records and submit a summary and recommendation to the other Partners, who will either uphold or overturn the recommendation.
- If the Certifying NJUCP Partners are unable to agree upon a recommendation, the Non Certifying Partners, through the NJUCP Decertification Hearing Committee, will review the records for the affected firm and render a determination.
- The Certifying NJUCP Partners reserve the right to request additional information from the firm in question in order to render a recommendation or determination.
- If a decision is made to de-certify a firm, the de-certification steps outlined in 49 CFR, Part 26.87 and the NJ SOP will be followed.
- The same process will be followed for firms that were decertified by one NJUCP Certifying Partner but continue to be certified with another Certifying Partner. Firms that lost their status with one Certifying NJUCP Partner due to withdrawal of DBE status or application, or failure to respond to requests for information, but continue to be certified with another Certifying Partner, will maintain their certified status with the Certifying Partner until a determination is made.

CHANGES TO THE MOU

Changes to this MOU Agreement shall require the approval of the NJUCP Certifying Partners.

REGIONAL UCP

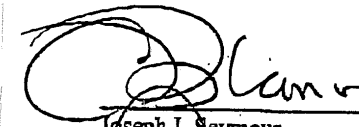
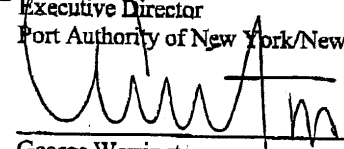
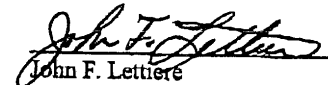
The acceptance of this MOU Agreement by the Port Authority of New York/ New Jersey does not create regional reciprocity between the States of New York and New Jersey. Only those firms originally certified as DBEs by the Port Authority of New York/New Jersey will be included in the NJUCP DBE Directory.

SUMMARY

As a result of the requirements set forth in 49 CFR Part 26, we the undersigned, agree to participate in the STATE OF NEW JERSEY'S Unified Certification Program in accordance with the provisions of this MOU and agree to abide by its contents.

EXECUTED AND DELIVERED by and between the NJUCP Partners as of the effective date of this MOU.

NJUCP CERTIFYING PARTNERS

 _____ Joseph J. Seymour Executive Director Port Authority of New York/New Jersey	<u>March 19, 2004</u> Date
 _____ George Warrington Executive Director New Jersey Transit Corporation	<u>3/17/04</u> Date
 _____ John F. Lettiere Commissioner New Jersey Department of Transportation	<u>March 15, 2004</u> Date

ATTACHMENT 10

49 CFR Part 26.39: FOSTERING SMALL BUSINESS PARTICIPATION

A. Objective (49 CFR Part 26.39)

In accordance with 49 CFR Part 26.39, the Airport has created an 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. For clarification purposes, 49 CFR Part 26.5 states, “*Small business concern*” means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).”

In compliance with 49 CFR Part 26.39, Fostering Small Business Participation, the Airport will meet its objectives using a combination of the following methods and strategies:

1. Where feasible, on FAA-assisted contracts, the Airport will establish a race-neutral small business set-aside on prime contracts less than \$250,000. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location.
2. On Prime contracts not having DBE contract goals, we will require prime contractors to provide subcontracting opportunities that small businesses, including DBEs, can reasonably perform, rather than self-performing all of the work.
3. The New Jersey Department of Transportation’s Disadvantaged and Small Business Program Units maintain Small Business Enterprise and Emerging Small Business Enterprise Programs. The Airport and Consulting Engineer will encourage prime contractors to utilize the New Jersey Selective Assistance Vendor Information (NJSAVI) to find registered SBE firms. This is a database that identifies businesses that are registered as a SBE and/or certified as an M/WBE with the State of New Jersey. Information regarding this program can be found on <http://www.state.nj.us/transportation/business/civilrights/dbe.shtm>.

The Airport will require that Prime Contractor(s) complete the attached form Entitled *Small Business Participation Plan*.

B. Definitions

1. Small Business:

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

2. Disadvantaged Business Enterprise:

A for-profit small business (as defined by the Small Business Administration) —

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE in the State of New York in accordance with 49 CFR 26.

For the purposes of the small business element of the Airport's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be strongly encouraged to seek DBE certification. In addition, minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation. Only DBE certified firms will be counted towards DBE race- neutral participation on FAA-assisted contracts.

c. Certification and Verification Procedures

The Airport will accept the following certifications for participation in the small business element of the Airport's DBE Program with applicable stipulations:

1. NJ DOT DBE Certification – DBE Certification by the NJ DOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by NJ DOT.
2. NJDOT has established an Emerging Small Business Enterprise (ESBE) certification in order to facilitate competition by small businesses in accordance with 49 CFR Part 26.39. To be eligible for ESBE certification, the firm must be a small business, according to SBA size standards, and be 51% owned, and controlled by one or more economically disadvantaged individuals whose personal net worth does not exceed \$1.32 million. Race, gender, and ethnicity are not considered.
3. SBA (as described in 13 CFR Part 121) – will require the number of employees over the past 12 months and average annual receipts over the past three years using NAICS codes to determine if the business meets the size standards.
4. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of average annual receipts over the past three years.

d. Assurances

The Airport makes the following assurances:

1. The DBE Program, including the small business element is not prohibited by law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small business regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
6. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

SMALL BUSINESS PARTICIPATION PLAN	
Sponsor's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	

In accordance with 49 CFR Part 26, §26.39, the following detailed list shall be completed by the Contractor for construction work items and professional services work items to be performed by all subcontractors and suppliers which will be involved in the work that qualify as a Small Business, whether registered as such, or not. The firms listed do not have to be certified DBE firms. This form shall be filled out and submitted to the Sponsor prior to the start of construction.

Small Business Firms to be Utilized (Name, Address, Phone)		Work to be Performed	Total Estimated Cost of Work
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**Small Business Participation Plan
(cont'd)**

Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, State, Zip			
Telephone			
Is the Firm DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(The Contractor may duplicate this form as necessary if additional space is required.)

The undersigned hereby assures that the information included herein is true and correct to the best of his/her knowledge, and that it is your intent to utilize these small business firm(s) listed for the work items noted.

By: _____
 (Contractor's Signature)

 (Contractor's Printed Name)

_____ (Title)

_____ (Date)

ATTACHMENT 11

MONTHLY PAYMENT REPORT

Name of Contractor's Firm:

Project Name/Location:

FAA AIP Project No.:

Subcontractor or DBE Supplier Name* and Description of Svcs	DBE Y/N	Supplier Y/N	Subcontractor Contract Amount	Pay App #	Payment Period Date (From-To)	Amount Invoiced This Period	Total Amount Invoiced	Current Retainage Amount	Total Retainage	Payment	Payment Date	Total Paid to Date	Total Due Sub/DBE Supplier

*ALL Subcontractors Must Be Listed – ONLY DBE Suppliers Must Be Listed

[Signature Line]

[Print Name Line]

[Date Line]

Signature of Contractor's Representative

Print Contractor's Representative

Date

To be submitted to the Airport DBELO or designee by the 10th of each month.

ATTACHMENT 12

SUBCONTRACTOR'S PROMPT PAYMENT CERTIFICATION

NOTE: Each Contractor shall provide a copy of this form to each of their Subcontractors (DBE and non-DBE) that are working on or has worked on this project. This certification applies to all tier Subcontractors. A completed copy of this form shall be submitted the Prime Contractor you are working for at least 7 days prior to an application for payment. Any Subcontractor failing to submit a copy of this form shall be cause for the Sponsor's representative to delay the payment application.

Should a Subcontractor indicate that they have not received payment for work they performed in which their Contractor has received payment, the Sponsor shall withhold the delinquent amount indicated unless the Contractor received written approval from the Sponsor of the Contractor's written request justifying withholding payment from the Subcontractor.

Project Title: _____

Airport Name: _____

AIP No.: _____

Company Name: _____

Company Address: _____

Contact Phone No.: _____

Contractor's Name you subcontract to: _____

1. What dates have you performed work on this project? _____

2. Has the work performed been completed and accepted by the Engineer? Yes No Not sure

3. Please provide the following information on invoices you have sent the Prime Contractor:

Date of Invoice	Invoice Number	Invoice Amount	Has the invoice been paid?	Date payment received

5. Have you completed all work that you are required to perform on this contact? Yes No

6. Total Amount owing on for work performed on this project \$ _____

Written Name of Subcontractor's Rep. _____

Signature: _____ Date: _____

ATTACHMENT 13

**DISADVANTAGE BUSINESS ENTERPRISE
FINAL PARTICIPATION SUMMARY**
(Submit one form for each DBE firm)

Project Name: _____ AIP No. _____

Contractor: _____

Address: _____

City _____ State _____ Zip: _____

Contact Name: _____

Email: _____ Phone: _____

DBE Firm: _____

Address: _____

City _____ State _____ Zip: _____

Contact Person: _____

Email: _____ Phone: _____

Each DBE Firm shall submit evidence of their certification status.

Classification:

Prime Contractor	Subcontractor	Supplier - Dealer	Broker
Manufacturer	Joint Venture	Supplier - Distributor	Other

Disadvantaged Group (check one):

Black American	Hispanic American	Native American
Asian Pacific American	Subcont. Asian American	Non-Minority Female
Other (Please specify) _____		

Summary of work performed:

Description of work	NAICS Code	Total Amount Paid

Contractors Affirmation:
 The Contractor utilized the above-named DBE Firm for the work items described above.
 Initial Contract Amount: _____ Difference: _____
 Explanation of difference: (Additional documentation may be requested)

Contractors Signature _____ Title _____ Date _____

DBE Firm's Affirmation:
 The above named DBE Firm affirms that it has performed the work it was contracted to perform, as listed above and was paid in full as stated above.

DBE Firm's Signature _____ Title _____ Date _____