

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Nashua Airport Authority (Authority), owner of the Nashua 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. The Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Authority 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 Authority to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also Authority 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.

Mr. Chris Lynch, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, Mr. Lynch 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 Authority in its financial assistance agreements with the Department of Transportation.

The Authority has disseminated this policy statement to the City of Nashua and this statement will be posted to the Airport’s internet website. This statement has been distributed to DBE and non-DBE business communities that may perform work on Authority DOT-assisted contracts. The distribution was accomplished by publishing to the Airport’s website.

Mr. Farrell Woods, Chairman
Nashua Airport Authority

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

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

The Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The Authority will provide data about its DBE Program to the Department as directed by DOT operating administrations. DBE participation will be reported to the FAA as follows:

The Authority 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 Appendix B to Part 26. The Authority will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List

The Authority will create and maintain a bidders list. The purpose of the list is to provide accurate data about DBE and non-DBE contractors and subcontractors who seek to work on DOT-assisted contracts administered by the Authority, for use in helping to set overall goals. The bidders list will include the name, address, DBE or non-DBE status, age of firm, and annual gross receipts. DBEs will be required to submit a copy of their DBE certification as part of their bids.

The Authority will collect this information using the data collection forms included in Attachment 3. The forms and contract clauses requiring this information will be included in the bid documents and collected from contractors at the time of bidding.

Records retention and reporting:

The Authority will retain records documenting compliance with the requirements of 49 CFR Part 26 for a minimum of three (3) years. 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 Federal Financial Assistance Agreement

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

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

The Authority 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 Authority 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 Authority 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 Authority 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: Authority 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

The Authority 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. The Authority is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Authority is in compliance with it and Part 26. The Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. The Authority does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Mr. Chris Lynch, Airport Manager
Nashua Airport
93 Perimeter Road
Nashua, NH 03063
Phone: (603) 882-0661
chrislynch@nashuairport.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Authority 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 one 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 the Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the Authority 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. A review of the FAA DBE Directory and New Hampshire Department of Transportation (NHDOT) DBE Directory revealed that there are zero (0) financial institutions registered as DBEs in the state of New Hampshire (NAICS Codes 522110: Commercial Banking, 522291: Consumer Lending, 522310: Mortgage and Nonmortgage Loan Brokers). Outreach to NHDOT was conducted as part of the development of this plan to inquire about the availability of DBE financial institutions. NHDOT confirmed that they are unaware of any financial institutions currently registered as DBEs in New Hampshire. The Authority will reach out to the NHDOT during the development of each 3-year DBE goal to determine if any firms have been certified and will make reasonable efforts to encourage contractors to utilize those firms.

Section 26.29 Prompt Payment Mechanisms

The Authority requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Authority established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Authority.

The Authority ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Authority has selected the following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

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

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

- a) From the total of the amount determined to be payable on a partial payment, five (5) percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:
 - (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR (resident project representative) that supports the value of retainage held by the Owner for partially accepted work.
 - (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

- b) The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c) When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The New Hampshire Department of Transportation (NHDOT) is the sole DBE certifying agency for the State of New Hampshire. The Authority uses the New Hampshire Department of Transportation (NHDOT) DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The NHDOT revises the directory monthly. The NHDOT makes the Directory available through their website:

<https://www.nh.gov/dot/org/administration/ofc/dbe.htm>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The Authority has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The Authority implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the Authority's DBE program.

The Authority actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

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

The Authority will provide appropriate means to enforce the requirements of this section. These means include:

With each Periodic Cost Estimate (PCE), the Prime Contractor shall provide proof of payment of all Subcontractors and Suppliers whose work was included in the previous PCE. Proof of payment shall consist of a copy of a cancelled check or a certificate of payment signed by the Subcontractor or Supplier. The Authority may provide the Contractor with one or more forms to be filled out and returned to monitor and track payments. To track work by Subcontractors and Suppliers, the Prime Contractor shall submit copies of Gale Form 7 (contained in Attachment 3) for every approved Subcontractor and Supplier with each PCE, even if the Subcontractor or Supplier did not do any work on the project or supply any materials to the project during the period covered by the PCE.

If the Contractor is in violation of this prompt payment requirement, the Authority may withhold the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received. If the Contractor is in violation of this prompt payment requirement four (4) or more times, the Authority may terminate the Contract for cause and / or may require the Contractor to pay some or all of their Subcontractors or Suppliers and provide proof of payment before the Subcontractor's or Supplier's work can be included a PCE.

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

Prompt Payment Dispute Resolution

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

The RPR will maintain field notes of ongoing work and determine in the field if the unit of work has been satisfactorily completed. Any disputes regarding satisfactory completion of work may be brought to the attention of the designated RPR, and if necessary, to the DBELO. If necessary, the DBELO will hold a meeting either in person or via video call to discuss the details of the work in question and make a determination.

The Authority has established, as part of its DBE program, the following contract clause to ensure prompt payment:

The Owner may withhold the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received. If the Contractor is in violation of this prompt payment requirement four (4) or more times, the Owner may terminate the Contract for cause

and / or may require the Contractor to pay some or all of their Subcontractors or Suppliers and provide proof of payment before the Subcontractor's or Supplier's work can be included on a PCE.

Prompt Payment Complaints

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

- The subcontractor should first submit their complaint in writing to the prime contractor.
- If filing a prompt payment complaint with the prime contractor does not result in timely and meaningful action, the subcontractor should forward their complaint to the DBELO. The DBELO will take necessary measures to resolve the complaint and notify the FAA accordingly through the Civil Rights Connect portal.
- 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

The Authority will provide appropriate means to enforce the requirements of §26.29 (Prompt Payment) by including contract provisions that require the contractor to provide proof of payment to subcontractors/suppliers with submission of each PCE, as well as provisions allowing for termination of the contract for cause if the contractor is in violation.

Monitoring Contracts and Work Sites

The Authority reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the consultant. Contracting records are reviewed by the consultant.

Section 26.39 Fostering small business participation

The Authority 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 9 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for the Authority to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Authority does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Authority 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), The Authority 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 and posted to the website of the FAA.

https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart%20New_Final.pdf

| Airport Type | Region | Due | Period Covered | Next Goal Due |
|--|---|------|----------------|--------------------------|
| Non-Primary including GAs, Relievers, and State DOTs | New England, Northwest Mountain, and Southern | 2023 | 2024/2025/2026 | 2026 (2027/2028/2029) |

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Authority 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 the Authority will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. Step 1. The first step is to determine the relative availability of DBEs in the market area. The Authority will compare NHDOT DBE Directory against Census Bureau Data to determine the base figure. The Authority 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. The Authority 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 Authority market.

In establishing the overall goal, the Authority 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 the Authority to establish a level playing field for the participation of DBEs. The consultation will include outreach via email or telephone to schedule direct, interactive exchange (i.e. teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal-setting process. Consultation will also include a virtual meeting to discuss the Airport’s DBE goal and rationale, which will be open to the public, with a notice of such meeting posted on the Airport’s website. Consultation will occur before the Authority 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 the Authority engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

LIST OF GROUPS CONTACTED:

- Greater New England Minority Supplier Development Council
- Women’s Business Enterprise National Council
- Center for Women & Enterprise
- Nashua Chamber of Commerce
- New Hampshire Procurement Technical Assistance Center

In addition to the consultation described above, the Authority will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be posted on the Airport’s official internet web site. If the proposed goal changes following review by FAA the revised goal will be posted on the official internet web site at the link provided below:

<http://www.nashuaairport.com/construction---planning.html>

The Authority will begin using its overall goal on October 1 of the reporting period, unless other instructions from DOT are received.

Project Goals

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

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The Authority understands that prior 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 the Authority for calculating goals is inadequate, FAA may, after consulting with the Authority, adjust the overall goal or require that the goal be adjusted by the Authority. 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

The Authority 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 The Authority fails to administer its DBE program in good faith.

The Authority 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.

The Authority 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) The Authority will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term

- business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (6) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 - (7) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - (8) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

The Authority 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 total amount 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 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.

The Authority 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/offeree:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeree will be required to present the information stipulated in paragraph (2) of this section:

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

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

Administrative reconsideration

Within 5 business days of being informed by the Authority that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeree may request administrative reconsideration. Bidder/offerees should make this request in writing to the following reconsideration official:

Farrell Woods, Chairman
Nashua Airport Authority
93 Perimeter Road
Nashua, NH 03063
603-882-0061
Farrell.Woods@comcast.net

The reconsideration official will not have played any role in the original determination that the bidder/offeree did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeree 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/offeree 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/offeree 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)

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

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Authority. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Authority agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Authority as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the Authority requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The Authority shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

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).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Disadvantaged Business Enterprise (DBE) Program is primarily funded by the United States Department of Transportation (USDOT) and administered by the NHDOT. NHDOT is the sole DBE certifying agency for the State of New Hampshire. For information about the certification process in New Hampshire or to apply for certification, firms should contact:

NHDOT Office of Federal Compliance
Attn: DBE Certifications
PO Box 483
Concord, NH 03302-0483
dbecertifications@dot.nh.gov

The Uniform Certification Application form and documentation requirements can be found at:
https://www.nh.gov/dot/org/administration/ofc/dbe_overview.htm

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The NHDOT is the sole DBE certifying agency for the State of New Hampshire.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Authority

The Authority understands that if it fails to comply with any requirement of this part, the Authority 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 FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

The Freedom of Information Act (FOIA) is a federal law that establishes the public's right to obtain information from federal government agencies. Information regarding this legislation can be accessed through the following website: <https://www.foia.gov/>

The New Hampshire Access to Governmental Records and Meetings law concerns access to public records. Information regarding this legislation can be found in the New Hampshire Revised Statutes, Title VI, Chapter 91-A, and can be accessed through the following website:
<https://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-VI-91-A.htm>

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).

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

ATTACHMENTS

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

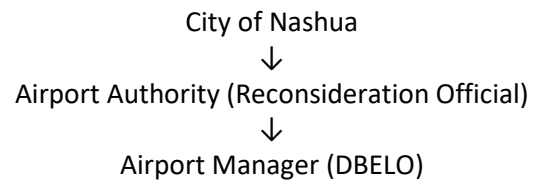
ATTACHMENT 1

Regulations: 49 CFR Part 26

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

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

Bidder's List Collection Forms and Good Faith Efforts Forms

**FEDERAL AVIATION ADMINISTRATION
PROPOSED DISADVANTAGED BUSINESS ENTERPRISE (DBE)
/SMALL BUSINESS (SB) UTILIZATION**

The undersigned Bidder/Offeror has made a good faith effort to make subcontracting and supplier opportunities available to all firms including, but not limited to, DBEs as defined in 49 CFR 26. As a result of these efforts:

The Bidder/Offeror is committed to a minimum of _____% **DBE** utilization on this Contract.

The DBE participation goal for this contract is ____%. If the Bidder/Offeror is unable to commit to achieving this goal, documentation of good faith efforts must be provided within 48 hours of the bid opening.

Name of Bidder/Offeror's firm: _____

AIP Number: _____

By: _____
Signature Title Date

DBE or Small Business Subcontractor / Supplier

Name of Firm: _____

Proposed Work: _____

Dollar Amount of Work: _____

Gale Form 6 attached (Required for each DBE/Small Business with submission of bid)

DBE or Small Business Subcontractor / Supplier

Name of Firm: _____

Proposed Work: _____

Dollar Amount of Work: _____

Gale Form 6 attached (Required for each DBE/Small Business with submission of bid)

(Attach additional sheets as needed for additional firms)

**PRIME CONTRACTOR
DBE REPORTING INFORMATION FORM**

(To be filled out by the bidder and submitted with their bid package)

Project Name: _____
 Airport: _____
 AIP Number: _____

Prime Contractor Information

Company Name: _____
 Contact Person: _____
 Address 1: _____
 Address 2: _____
 Address 3: _____
 City/Town: _____
 State: _____
 Zip Code: _____
 Phone: _____
 Fax: _____
 Email: _____
 NAICS Code: _____

| | | | |
|-----------------------|---|---|-------------|
| DBE Status: | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Certified DBE | (Check one) |
| Small Business Status | <input type="checkbox"/> Non-Small Business | <input type="checkbox"/> Certified Small Business | (Check one) |

 Signature Title Date

The following section is to be filled out ONLY if Prime Contractor is a DBE.

| | | |
|---|--|--|
| States with DBE Certification*: (Leave Blank if not a DBE) | | Age of Firm: _____ Years |
| Annual Gross Receipts: | <input type="checkbox"/> <\$500,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> >\$5,000,000 | <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 |
| Disadvantaged Group Information (DBE/Part 26 Uniform Reporting Requirement) | | |
| Ethnicity (Check One): | <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American | <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority |
| Gender (Check One) | <input type="checkbox"/> Male <input type="checkbox"/> Female | Certification: <input type="checkbox"/> Attached** |

*Businesses identified as DBEs on this form must be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the state's DBE Business Directory.

****A copy of the firm's DBE certification is required as part of the bid package submission.**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)/
SMALL BUSINESS (SB) LETTER OF INTENT
(FOR FEDERALLY-SPONSORED PROJECTS)**

AIRPORT: _____ AIP/ASMP NO.: _____

PROJECT TITLE: _____

Name of Prime Contractor

Name of DBE/SB Contractor

Address

| City | State | Zip Code | Phone |
|------|-------|----------|-------|
|------|-------|----------|-------|

1. The Undersigned DBE firm intends to perform work in connection with the above referenced project as:

An Individual A Partnership A Corporation

A joint venture with: _____

Other: _____

2. The undersigned affirms that they are a duly authorized official representing the proposed DBE and affirms that its certification has not expired nor been revoked. (Attach a copy of the certification letter)

Check all that apply:

DBE Small Business

Certification Agency: _____ Certification Number: _____

| | | | |
|---|--|----------------|-------------------------------------|
| States with DBE Certification*: (Leave Blank if not a DBE) | | Age of Firm: | _____ Years |
| Annual Gross Receipts: | <input type="checkbox"/> <\$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$2,000,000 <input type="checkbox"/> \$2,000,000 - \$5,000,000 <input type="checkbox"/> >\$5,000,000 | | |
| DBE Disadvantaged Group Information (DBE/Part 26 Uniform Reporting Requirement) | | | |
| Ethnicity (Check One): | <input type="checkbox"/> Black American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority | | |
| Gender (Check One) | <input type="checkbox"/> Male <input type="checkbox"/> Female | Certification: | <input type="checkbox"/> Attached** |

*Businesses identified on this form **must** be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the state's DBE Business Directory.

****A copy of the firm's DBE certification is required as part of the bid package submission.**

3. If awarded the contract, the undersigned intends to enter into a subcontract to perform the work described on the following sheet for the prices indicated.

SCHEDULE OF PARTICIPATION

| Contract Item No. | Description of Work to be Performed by DBE/ Small Business (SB) Contractor | Estimated Quantity | Unit Price | Item Amount |
|-------------------|--|--------------------|------------|-------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Total amount credited to DBE/SB contractor (add item amounts): TOTAL \$ _____

Proposed total contract price: \$ _____

The total price to DBE/SB contractor for work performed under this contract is _____% of the proposed total contract price.

The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project pursuant to all conditions noted in attached documents, swearing and affirming under the pains and penalties of perjury, that the foregoing information and appropriate attachments are true and accurate to the best of their knowledge.

Name of DBE/SB Contractor: _____

Authorized Signature: _____ Date: _____

Name and Title: _____

Name of Prime Contractor: _____

Authorized Signature: _____ Date: _____

Name and Title: _____

**SUBCONTRACTOR / SUPPLIER
DISADVANTAGED BUSINESS ENTERPRISE (DBE*)
EXPENDITURE REPORT**

(To be filled out by the Prime Contractor and the Subcontractor / Supplier and submitted with each Periodic Cost Estimate)

Project Name: _____

Airport: _____

AIP Number: _____

Prime Contractor

Company Name: _____

Subcontractor / Supplier Contractor

Company Name: _____

| | | | |
|-------------|----------------------------------|--|-------------|
| DBE Status: | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Certified DBE | (Check one) |
|-------------|----------------------------------|--|-------------|

| Contract Item No. | Description of Work to be Performed by Subcontractor / Supplier | Estimated Quantity | Unit Price | Item Subtotal |
|--|---|--------------------|------------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total Amount requested by Subcontractor / Supplier this Invoice: | | | | |
| Total amount previously requested by Subcontractor / Supplier: | | | | |
| Total amount requested by Subcontractor / Supplier to date: | | | | |

(Attached additional sheets if needed)

*Businesses identified as DBEs on this form must be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the state's DBE Business Directory.

**SUBCONTRACTOR / SUPPLIER
DISADVANTAGED BUSINESS ENTERPRISE (DBE*)
EXPENDITURE REPORT**

The undersigned certifies that the Subcontractor / Supplier has successfully completed the above referenced work associated with this project and further assures that the Subcontractor / Supplier will be paid in full for the amount indicated on page 1 for said services in accordance with the Contract Documents.

NAME OF SUBCONTRACTOR / SUPPLIER: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

NAME OF PRIME CONTRACTOR: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

Note: If the Prime Contractor is a DBE, the Prime Contractor should fill out and submit a copy of this form listing themselves as the Prime Contractor and the Subcontractor / Supplier.

*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in the state's DBE directory.

PRIME CONTRACTOR DBE* ANNUAL REPORT FORM

(To be filled out by the Prime Contractor and submitted no later than November 1st of each calendar year or prior to the approval of final Periodic Cost Estimate.)

The reporting period is from October 1st of the previous year through September 30th of the current year.

Project Name: _____

Airport: _____

AIP Number: _____

Date: _____

Prime Contractor

Company Name: _____

Payments Made this Period (Ongoing Contracts)

| PAYMENTS MADE ON ONGOING CONTRACTS | Total Number of Contracts** | Total Dollars Paid | Total Number of Contracts with DBEs | Total Payments to DBE Firms | Total Number of DBE Firms Paid |
|---|-----------------------------|--------------------|-------------------------------------|-----------------------------|--------------------------------|
| | | | | | |

Payments Made this Period (Completed Contracts)

| PAYMENTS ON CONTRACTS COMPLETED THIS PERIOD | Number of Contracts* Completed | Total Dollar Value of Prime Contracts Completed | Total DBE Participation (Dollars) |
|--|--------------------------------|---|-----------------------------------|
| | | | |

**For the purposes of this Form, a Contract refers to any agreement for services / supplies with a Subconsultant / Supplier, regardless of DBE status.

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

*Businesses identified as DBEs on this form must be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the state's DBE Business Directory.

BIDDERS LIST COLLECTION FORM

The information below must be submitted for every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires collection of information from all bidders and subcontractors, including unsuccessful ones.

| Firm Name | Address/ Phone # | DBE or Non- DBE Status* | Age of Firm | Annual Gross Receipts |
|-----------|---------------------|----------------------------|--|---|
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |

*Businesses identified as DBEs on this form **must** be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the state's DBE Business Directory.

ATTACHMENT 4

NHDOT Directory of Certified Businesses

<https://www.nh.gov/dot/org/administration/ofc/documents/dbe-directory.pdf>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: Nashua Airport Authority owner of Nashua Airport.

Goal Period: FY-2024-2025-2026 (October 1, 2023 through September 30, 2026)

| | |
|---------------------------------------|----------------------|
| DOT-assisted contract amount: FY-2024 | \$ 480,000.00 |
| FY-2025 | \$ 390,000.00 |
| <u>FY-2026</u> | <u>\$ 300,000.00</u> |
| Total | \$1,170,000.00 |

Overall Three-Year Goal: 2.21%, to be accomplished through 2.21% Race Neutral and 0% Race Conscious

Total dollar amount to be expended on DBEs: \$25,839.52

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

FFY-2024 Projects

- 1) AWOS Relocation – \$200,000
- 2) Acquire Land in RPZ – \$20,000.00 (Consulting Fee – Does not include land costs)
- 3) Centerline Crack Sealing and RSA Repairs – \$260,000.00

FFY-2025 Projects

- 4) Reconstruct Apron - Phase I Design – \$350,000.00
- 5) Purchase Aircraft Deicing Equipment – \$20,000.00 (Consulting Fee – Does not include equipment costs)
- 6) Purchase SRE (Broom, Blower & Chassis) – \$20,000.00 (Consulting Fee – Does not include equipment costs)

FFY-2026 Projects

- 7) Replace or Remove Hazard Beacons – \$300,000.00

Market Area: The Authority defines its market area as the County of Hillsborough, New Hampshire, as well as neighboring counties in New Hampshire and Massachusetts

Step 1. 26.45(c) Actual relative availability of DBEs

Pursuant to 49CFR 26.45, the Authority has used the following methodology to determine the baseline figure for its 2021-2023 DBE goal. The Authority has used the most recent (2020) US Census data and the NHDOT Directory of Certified Businesses to determine the number of ready, willing, and able DBEs in the market area.

For each area of work, the total number of DBEs within the market area (with adjustments for specific work categories) found in the NHDOT DBE Directory is divided by the total number of all firms found

through analysis of the (2020) US Census data for the market area to arrive at the percentage of DBE firms that are ready, willing, and able to perform contract work.

In order to determine the expected DBE participation in dollars, the estimated contracting dollars for each area of work is multiplied by the percentage of firms that are ready, willing, and able to perform contract work. To establish the DBE project goal, the overall projected DBE participation (in dollars) is divided by the estimated total project costs. This is the base goal for each project.

To determine the overall base figure for more than one project, the sum of all the dollars expected to be spent on DBE participation is divided by the estimated total of all project costs. This number is the overall base goal for the Airport. A breakdown of all mathematical calculations is provided in the table at the end of this section.

Step 2. 26.45(d): Adjustments to Step 1 base figure.

No adjustment was made to the Step 1 base figure; therefore, the Authority is adopting the Step 1 base figure as its overall goal for this three-year goal period.

26.51(b) (1-9): Breakout of Estimated “Race and Gender Neutral” (Race Neutral) and “Race and Gender Conscious” (Race Conscious) Participation.

The Authority will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation., including but not limited to the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
- Relaying information regarding contracting procedures and specific contract opportunities;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Ensuring distribution of DBE directory, through electronic means, to the widest feasible universe of potential prime contractors;

The Authority will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation.

The Authority estimates that in meeting its overall goal of 2.21%. It will obtain 2.21% from Race Neutral participation and 0% through Race Conscious measures.

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

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

In establishing the overall goal, the Authority provided for consultation and publication. This included consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Authority's efforts to establish a level playing field for the participation of DBEs. The consultation included outreach emails seeking to schedule, direct, interactive exchange via teleconference with as many interested stakeholders as possible focused on obtaining information relevant to the Authority's goal setting process, and it occurred before it was required to submit its goal methodology to the operating administration for review pursuant to paragraph (f) of this section. Notwithstanding paragraph (f)(4) of this section, the Authority will not implement its proposed goal until it has complied with this requirement.

Before finalizing the overall goal, the Authority reached out to the Greater New England Minority Supplier Development Council, Women's Business Enterprise National Council, Center for Women & Enterprise, Nashua Chamber of Commerce, and New Hampshire Procurement Technical Assistance Center without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Authority's efforts to establish a level playing field for the participation of DBEs.

The Authority will publish a notice announcing the proposed overall goal before submission to the operating administration. The notice will be posted on the City's official internet website. The Authority will inform the public that the proposed overall goal and its rationale are available electronically for inspection, and that the Authority and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. No comments were received as a result of the public comment period.

A copy of the Airport's DBE Plan, including the goal and rationale, has been posted to the Airport's official internet website. If the proposed goal changes following review by the FAA, the revised goal will be posted on the website. The notice and DBE plan can be viewed using the following link:

<http://www.nashuaairport.com/construction---planning.html>

CONTRACT GOALS

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

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

The Authority will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

ATTACHMENT 6

DBE Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the General Provisions of the contract.
2. Breach of contract action, pursuant to applicable New Hampshire Laws.

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

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

ATTACHMENT 7

A copy of the USDOT DBE Uniform Certification Application can be downloaded from the following website:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>

ATTACHMENT 8

State's UCP Agreement



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

March 21, 2003

David Chandler
Chief of Labor Compliance
New Hampshire Department of Transportation
John O. Morton Building
1 Hazen Drive
Concord, New Hampshire 03302-0483

Dear Mr. Chandler:

The Department of Transportation (DOT) has reviewed the Unified Certification Program (UCP) you submitted to us on behalf of the New Hampshire Department of Transportation and other recipients of DOT financial assistance in New Hampshire. Your January 24, 2003 supplemental response, which is made part of the UCP, successfully accommodated the comments that DOT staff had provided to you on an earlier draft.

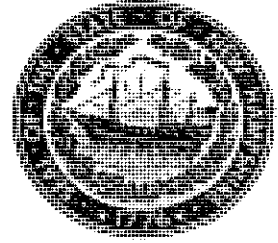
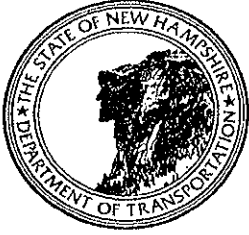
Consequently, I am pleased to approve the New Hampshire UCP as provided by the Department's disadvantaged business enterprise regulations (49 CFR § 26.81(a)(4)). Please remember that any inconsistency or ambiguity in the UCP agreement shall be resolved by giving precedence to the following in this order: 49 CFR 23/26, USDOT Directives, DBE Program as approved by DOT and applicable New Hampshire regulations.

We look forward to working with you as you implement the UCP.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kirk K. Van Tine".

Kirk K. Van Tine
General Counsel



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM Unified Certification Program Agreement

Reference: Subpart E of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

Background: With the publication of DBE Program in the Federal Register on February 8th, 1999, The U.S Department of Transportation (USDOT) established new standards for the implementation of the Disadvantaged Enterprise Program. These new procedures required that each State Highway Agency establish a Unified Certification Program (UCP) by March 4th, 2002.

The establishment of a UCP will recognize current procedures as the "approved" standard for DBE certification. As with past certification procedures, the UCP will not place undue burden on the NHDOT or its operating administrations.

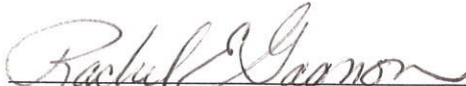

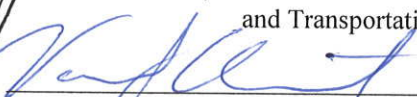
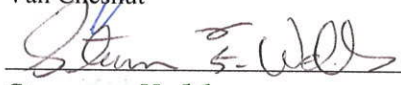
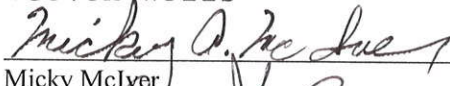
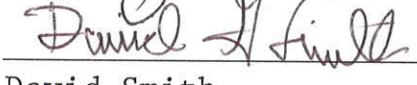
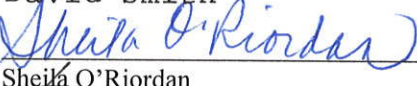

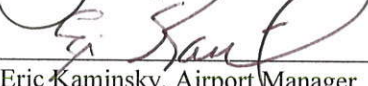





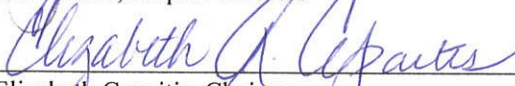
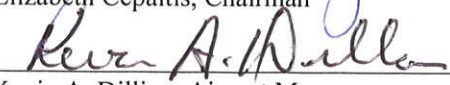
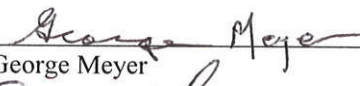

Intent: The intent of the UCP is to establish standard procedures and make certification decisions on behalf of all USDOT recipients in the state with respect to the DBE program.

Terms: This agreement acknowledges the NHDOT's DBE Liaison Officer as the certifying official for all DBE program applicants. In this capacity, the DBE Liaison Officer will make all certification decisions on behalf of the NHDOT and its recipients and cooperate fully with oversight, review, and monitoring activities of the same. Additionally, the NHDOT's DBE Liaison Officer will ensure that all program recipients' EEO obligations are met.

In recognition of the Unified Certification Program, we, the signatories herein, dually agree to the terms set forth by this agreement and the mutual objectives listed below:

1. All USDOT recipients will participate in the UCP.
2. The NHDOT DBE Liaison Officer shall manage the UCP and make all DBE certification decisions on behalf of the NHDOT and its recipients.
3. All certifications shall be considered contract pre-certifications.
4. The UCP is not required to process an application for certification from a firm having its principal place of business outside the state, if the firm is not certified by the UCP in the state which it maintains as the principal place of business.
5. The NHDOT DBE Liaison Officer will maintain a unified DBE Directory for all firms certified under the auspices of the UCP, to be posted and available to the public electronically on the NHDOT website and in print.

SIGNATORIES

| | | |
|--|---|---|
| <p> Rachel E. Gagnon, DBE Liaison Officer</p> | <p>3/4/02 Date</p> | <p>NH Department of Transportation Labor Compliance Office (FHWA)</p> |
| <p> James F. Marshall, Director of Public Works and Transportation</p> | <p>2/28/02 Date</p> | <p>NH Department of Transportation Bureau of Rail & Transit (Transit)</p> |
| <p> Van Chesnut</p> | <p>3/5/02 Date</p> | <p>Advanced Transit, Inc. (Transit)</p> |
| <p> Steven Wells</p> | <p>2/22/02 Date</p> | <p>COAST (Transit)</p> |
| <p> Micky McIver</p> | <p>2-19-02 Date</p> | <p>Community Action Program Belknap-Merrimack Counties (Transit)</p> |
| <p> David Smith</p> | <p>2/22/02 Date</p> | <p>Manchester Transit Authority (Transit)</p> |
| <p> Sheila O'Riordan</p> | <p>2/27/02 Date</p> | <p>City of Nashua (Transit)</p> |
| <p> Jack W. Ferns, Director of Aeronautics</p> | <p>2/28/02 Date</p> | <p>NH Department of Transportation Bureau of Aeronautics (Aviation)</p> |
| <p> Eric Kaminsky, Airport Manager</p> | <p>2/10/02 Date</p> | <p>Berlin Municipal Airport (Aviation)</p> |
| <p> Jayne O'Connor, Chairman MWRA Commission</p> | <p>2/12/02 Date</p> | <p>Mount Washington Regional Airport (Aviation)</p> |
| <p> Timothy J. Edwards, Airport Manager</p> | <p> Date</p> | <p>Lebanon Regional Airport (Aviation)</p> |
| <p> Peter Chase, Fire Chief</p> | <p>FOR PETER CHASE 2-27-02 Date</p> | <p>Claremont Regional Airport (Aviation)</p> |
| <p> Duncan Ballentyne, City Manager</p> | <p>3-4-02 Date</p> | <p>Concord Regional Airport (Aviation)</p> |
| <p> Ed Mattern, Airport Director</p> | <p>2-27-02 Date</p> | <p>Dillant-Hopkins Airport (Keene) (Aviation)</p> |
| <p> Elizabeth Cepaitis, Chairman</p> | <p> Date</p> | <p>Boirefield Airport (Nashua) (Aviation)</p> |
| <p> Kevin A. Dillion, Airport Manager</p> | <p>2/21/2002 Date</p> | <p>Manchester Airport (Aviation)</p> |
| <p> George Meyer</p> | <p>2/28/02 Date</p> | <p>Pease Development Authority (Aviation)</p> |
| <p> Mark Fraser, Chairman</p> | <p>2/26/02 Date</p> | <p>Laconia Regional Airport (Aviation)</p> |

ATTACHMENT 9

Small Business Element

1. Objective/Strategies: In compliance with this policy, the Commission's DBE Program in regard to §26.39 Fostering *Small Business Participation* may include, but is not limited to, the following strategies:
 - On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
 - In multi-year design-build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
 - To meet a portion of the projected overall goal through race-neutral measures, offering a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
2. Definition of Small Business
 - Size standards should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
3. Verification
 - In order to actively implement the Commission's program elements to foster small business participation and to comply with the requirement of good faith implementation of its DBE program, the Commission will require that the Prime Contractor(s) for Construction Work Items and for Professional Services Work Items submit information related to small business participation with their bids. This information will be collected via the DBE/Small Business Participation forms included in Attachment 3 of this Program.
4. Monitoring/Record Keeping
 - Small business participation will be provided by contractors with the submission of bid package, and records of submissions will be maintained in the project files for a minimum of three (3) years.
5. Assurance
 - The program is authorized under state law.
 - Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
 - No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
 - Steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
 - The program is open to small businesses regardless of their location.