

## **POLICY STATEMENT**

### **Section 26.1, 26.23 Objectives/Policy Statement**

The Town of Montague Airport Commission (the Commission), owner of the Turners Falls Municipal 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 Commission has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Commission 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 Commission to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also Commission 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. Bryan Camden, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, Mr. Camden 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 Town in its financial assistance agreements with the Department of Transportation.

The Commission has disseminated this policy statement to the Town Select Board and all of the components of our organization via posting on the Town’s website. This statement has been distributed to DBE and non-DBE business communities that may perform work on Commission DOT-assisted contracts. The distribution was accomplished by posting of a public notice and publication to the Town’s website.

---

Mr. Bryan Camden, Airport Manager  
Turners Falls Municipal Airport

---

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

### **Section 26.5 Definitions**

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

### **Section 26.7 Non-discrimination Requirements**

The Commission 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 Commission 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

The Commission 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:

The Commission 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. The Commission 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

The Commission 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.

The Commission 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 Commission 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.

The Commission will enter this data in 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), The Commission will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The Commission will maintain records documenting a firm's compliance with the requirements of this part. These records will be retained in accordance with all applicable record retention requirements of the Commission financial assistance agreement. Other 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**

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

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

The Commission 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 Commission 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 Commission 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 Commission 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:** The Commission 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.

DRAFT

## **ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The Commission 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 Commission is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Commission is in compliance with it and Part 26. The Commission will continue to carry out this program until all funds from DOT financial assistance have been expended. The Commission 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 the Commission:

Mr. Bryan Camden, Airport Manager  
Turners Falls Municipal Airport  
1 Avenue A  
Turners Falls, MA 01376  
Phone: (413) 863-0044  
Email: [airport@montague-ma.gov](mailto:airport@montague-ma.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Commission complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Airport Commission Chair 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, as well as support from its consulting engineer 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 Commission'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. 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 the Commission 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. Availability of such institutions will be investigated during the development of every 3-year DBE goal to determine if any firms have been certified and will make reasonable efforts to encourage contractors to utilize those firms.

A review of the FAA DBE Directory and Massachusetts Supplier Diversity Office DBE Directory revealed that there are zero (0) financial institutions registered as DBEs in the state of Massachusetts (NAICS Codes 522110: Commercial Banking, 522291: Consumer Lending, 522310: Mortgage and Nonmortgage Loan Brokers). Outreach to the MA SDO was conducted as part of the development of this plan to inquire about the availability of DBE financial institutions. The SDO confirmed that the information in the DBE Directory is up to date and accurate and is the best source of information concerning DBE financial institutions.

### **Section 26.29 Prompt Payment Mechanisms**

The Commission 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 Commission 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 Commission.

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

The Commission 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 30 days after Commission payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, the Commission 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:

- a.** From the total of the amount determined to be payable on a partial payment, 10 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 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.

#### Prompt Payment Monitoring for DBEs and Non-DBEs

The Commission 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, The Commission 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):

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 Commission 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.

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

#### Prompt Payment Dispute Resolution

The Commission 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.

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

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed, as follows:

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 Commission 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 Commission 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 Commission 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.

#### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. This procedure assumes that the Commission has made payment to the prime contractor for the work in question.

- 1) The affected subcontractor should first attempt resolution over payment discrepancies with the prime contractor directly.
- If the affected subcontractor is unable to resolve payment discrepancies with the prime contractor in a reasonable timeframe, the subcontractor should contact the DBELO to initiate a complaint. This complaint should be made to the DBELO, in writing to the DBELO's email address at [airport@montague-ma.gov](mailto:airport@montague-ma.gov). The complaint should reference the work in question and include details regarding the subcontractor's attempts to resolve the issue or obtain payment from the prime contractor. The DBELO should document all correspondence with the Prime in attempts to resolve the payment dispute. The complaint should also be documented using FAA's Civil Rights Connect Prompt Payment Complaint portal. The report must include the following:
  - 1) Complaint information (date received, how the complaint was submitted, date of resolution)
  - 2) Complainant information (name, company name, address, email address, phone number)
  - 3) FAA funded project information (project name, project number, AIP Grant number)
  - 4) Complaint details (description of complaint, description of resolution)
  - 5) Additional information
    - A) Confirmation that the project contracts included all applicable provisions
    - B) Confirmation that the sponsor proactively monitors prompt payment for all subcontractors and a description of monitoring.

- C) Confirmation that the sponsor has implemented enforcement actions to prevent prompt payment complaints from recurring.
- D) Confirmation that the sponsor's DBE program has been updated to address relevant USDOT prompt payment guidance.
- E) Confirmation of whether FAA was involved in the resolution of the complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Commission, the affected subcontractor may contact the FAA's Office of Civil Rights Equal Opportunity Specialist for New England, Ms. Kimberly Robinson-Harris (phone 22-267-8747, email: [Kimberly.L.Robinson.Harris@faa.gov](mailto:Kimberly.L.Robinson.Harris@faa.gov)).
- 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 Commission provides appropriate means to enforce the requirements of § 26.29. These means include:

- In accordance with the contract, withholding the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received.
- Requiring 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 Commission will actively implement the enforcement actions detailed above.

#### **Section 26.31 Directory of Certified Firms**

**The Commission** is a **non-certifying** member of the **Massachusetts** 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 is maintained by the Massachusetts Supplier Diversity Office (MA SDO) and 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. The MA SDO makes the directory available through the following website:

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

### **Section 26.33 Over-concentration**

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

### **Section 26.35 Business Development and Mentor-Protégé Programs**

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

### **Section 26.37 Monitoring Responsibilities**

**The Commission** 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.

**The Commission** 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 **tracking participation on a project-by-project basis. The Commission typically receives no more than two federally funded projects each fiscal year, so tracking achievement per project is sufficient in tracking attainment of the overall 3-year DBE goal.** This mechanism to maintain a running tally of overall goal attainment will be used to inform **The Commission's** decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process. **Due to the limited number of contracts the Commission executes in a single fiscal year, if the Commission is unable to meet the DBE goal for a particular project, it will likely be necessary to implement contract goals on a project in a future year.**

**The Commission** 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 **tracking participation and prompt payment on**

**a project-by-project basis. This was deemed sufficient due to the limited number of contract awards made by the Commission each year.** 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

The Commission 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 the consultant. Contracting records are reviewed by the consultant.

The Commission 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**

**The Commission** 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. The Commission 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.

### **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 26.43 Set-asides or Quotas**

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

#### **Section 26.45 Overall Goals**

The Commission 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 Commission* will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Commission 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 Commission 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. The Commission Montague will compare Massachusetts SDO DBE Directory against Census Bureau Data to determine the base figure. The Commission 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 Commission 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 Commission’s market.

In establishing the overall goal, the Commission 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 Commission 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 the Commission 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 Commission 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
- Franklin County Chamber of Commerce

In addition to the consultation described above, the Commission will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. 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 Airport's official internet web site.

The Commission will begin using the overall goal on October 1 of the relevant period, unless other instructions from *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

The Commission 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 Commission for calculating goals is inadequate, *FAA* may, after consulting with the Commission, adjust the overall goal or require that the goal be adjusted by the Commission. 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 Commission 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 Commission fails to administer its DBE program in good faith.

The Commission 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 Commission 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 Commission* 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 a 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 Commission 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;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

The Commission 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**

**[Note: The provisions of the following section apply only when a contract goal is established.]**

##### 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 Commission 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 the Commission. 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 the Commission 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, the Commission 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 the Commission solicits proposals to design and build a project with minimal project details at time of letting, the Commission 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, the

Commission will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The Commission 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.

The Commission 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, The Commission 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 **5 business** days of being informed by **the DBELO** 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:

Gary Colins, Airport Commission Chair  
Montague Airport Commission  
1 Avenue A  
Turners Falls, MA 01376  
Phone: (413) 863-0044  
Email: [airportoperations@montague-ma.gov](mailto:airportoperations@montague-ma.gov)

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)

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

The Commission 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.

The Commission 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 the Commission 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.

The Commission 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 the Commission's written consent as provided in § 26.53(f); and
- (2) Unless the Commission'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.

The Commission 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 the 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) The Commission 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 the Commission 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 the Commission determines compels the termination of the DBE subcontractor.

Before transmitting to the Commission 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 the Commission 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 the Commission and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the Commission should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the Commission 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 the Commission 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 Commission 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.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The Commission is a **non-certifying member** of the *Massachusetts* Unified Certification Program (UCP) and relies upon the UCP’s determinations of certification eligibility. Massachusetts UCP uses 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 Massachusetts 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:

MassUCP/DBE Certification Office  
State Transportation Building  
10 Park Plaza, Suite 2600-B  
Boston, MA 02116  
Attention: Intake Specialist  
(857) 368-8656

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>.

## **SUBPART E – CERTIFICATION PROCEDURES**

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Massachusetts UCP agreement. The full UCP agreement can be found at: <https://www.mass.gov/unified-certification-program-ucp>

### **Section 26.81 Unified Certification Programs**

The Commission is a member of a Unified Certification Program (UCP) administered by Massachusetts Supplier Diversity Office. 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 the Commission**

The Commission understands that if it fails to comply with any requirement of this part, the Commission 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.

The Commission 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**

- (1) **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).

The Commission, 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 Commission 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

DRAFT



## 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>

DRAFT

**ATTACHMENT 2**

**ORGANIZATIONAL CHART**



DRAFT

**ATTACHMENT 3**

Bidders List Collection Form

DRAFT

## 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	DBE/ Non-DBE*	NAICS Code(s)	Race and Gender of the Firm's Majority Owner		Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Black American <input type="checkbox"/> Native American	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority	<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> \$10-20 million <input type="checkbox"/> Greater than \$20 million
				<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Black American <input type="checkbox"/> Native American	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority	<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> \$10-20 million <input type="checkbox"/> Greater than \$20 million
				<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Black American <input type="checkbox"/> Native American	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority	<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> \$10-20 million <input type="checkbox"/> Greater than \$20 million
				<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Black American <input type="checkbox"/> Native American	<input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority	<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> \$10-20 million <input type="checkbox"/> Greater than \$20 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. Attach duplicate forms if necessary.

## ATTACHMENT 4

Massachusetts UCP Directory may be found here:

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectoryDBESearch.asp>

[X](#)

DRAFT

**ATTACHMENT 5**

**SUBMITTED UNDER SEPARATE COVER**

**DRAFT**

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts - Forms**

DRAFT

**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
	Employees: # _____
Annual Gross Receipts:	<input type="checkbox"/> <\$1,000,000 <input type="checkbox"/> \$1,000,000 - \$3,000,000 <input type="checkbox"/> \$3,000,000 - \$6,000,000 <input type="checkbox"/> \$6,000,000 - \$10,000,000 <input type="checkbox"/> \$10,000,000 - \$20,000,000 <input type="checkbox"/> >\$20,000,000
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 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
			Employees:	# _____
Annual Gross Receipts:	<input type="checkbox"/> <\$1,000,000	<input type="checkbox"/> \$1,000,000 - \$3,000,000		
	<input type="checkbox"/> \$3,000,000 - \$6,000,000	<input type="checkbox"/> \$6,000,000 - \$10,000,000		
	<input type="checkbox"/> \$10,000,000 - \$20,000,000	<input type="checkbox"/> >\$20,000,000		
<b>DBE Disadvantaged Group Information (DBE/Part 26 Uniform Reporting Requirement)</b>				
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 1<sup>st</sup> of each calendar year or prior to the approval of final Periodic Cost Estimate.)

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

Project Name: \_\_\_\_\_

Airport: \_\_\_\_\_

AIP Number: \_\_\_\_\_

Date: \_\_\_\_\_

## Prime Contractor

Company Name: \_\_\_\_\_

### Payments Made this Period (Ongoing Contracts)

PAYMENTS MADE ON <b>ONGOING</b> 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 <b>COMPLETED</b> 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.



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: <input style="width:90%;" type="text"/>
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**  **NO<sup>1</sup>**  
 (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.**)  
<sup>1</sup> 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 manufacture's facility) ?  **YES<sup>2</sup>**  **NO<sup>3</sup>**
- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?  **YES<sup>2</sup>**  **NO<sup>3</sup>**
- <sup>2</sup> 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%.
- <sup>3</sup> 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 **Commission** has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as follows: Each contract will include a contract assurance binding the contractor to the applicable requirements of 49 CFR Part 26. The following language will be included: “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 Commission deems appropriate.
2. Breach of contract action, pursuant to Massachusetts Uniform Commercial Code, Chapter 106, Section 2-725.

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 8**

DBE Certification Application Form and Personal Net Worth Statement:

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

DRAFT

**ATTACHMENT 9**

Massachusetts UCP Agreement

DRAFT

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN THE**

Commonwealth & Regional Authorities:

Massachusetts Department of Transportation (“MassDOT”)  
Massachusetts Bay Transportation Authority (“MBTA”)  
Massachusetts Port Authority (“MassPort”)  
Berkshire Regional Transit Authority (“BRTA”)  
Brockton Area Transit Authority (“BAT”)  
Cape Ann Transportation Authority (“CATA”)  
Cape Cod Regional Transit Authority (“CCRTA”)  
Franklin Regional Transit Authority (“FRTA”)  
Greater Attleboro-Taunton Regional Transit Authority (“GATRA”)  
Lowell Regional Transit Authority (“LRTA”)  
Martha’s Vineyard Regional Transit Authority (“VTA”)  
Metro West Regional Transit Authority (“MWRTA”)  
Merrimack Valley Regional Transit Authority (“MVRTA”)  
Montachusett Regional Transit Authority (“MART”)  
Nantucket Regional Transit Authority (“NRTA”)  
Pioneer Valley Regional Transit Authority (“PVTA”)  
Southeastern Regional Transit Authority (“SRTA”)  
Springfield Redevelopment Authority (“SRA”)  
Worcester Regional Transit Authority (“WRTA”)

Municipal and Regional Airports

Barnstable Municipal Airport  
Martha’s Vineyard Airport  
Nantucket Memorial Airport  
New Bedford Regional Airport

(Collectively, the “Recipients”)

**AND THE**

Massachusetts Supplier Diversity Office (“SDO”) of the  
Massachusetts Operational Services Division (“OSD”)

**Whereas**, 49 C.F.R. § 26.81 *et seq.*, requires any entity to which the United States Department of Transportation (“USDOT”) provides financial assistance, whether directly or through another recipient, through the programs of its operating administrations, specifically the

Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA), (and any future programs of USDOT operating administrations) to which the Disadvantaged Business Enterprise (“DBE”) program regulations apply (“Recipients”), to participate in a statewide Unified Certification Program (“UCP”) for DBEs, in this state, known as the Massachusetts Unified Certification Program (“MassUCP”); and

**Whereas**, 49 C.F.R. § 26.81(b)(2) requires the MassUCP to provide “One Stop Shopping” to all DBE applicants for certification, such that an applicant is required to apply only once for DBE certification that will be honored by all Recipients in the Commonwealth;

**Whereas**, St. 2010, c. 56, § 6, (enacting M.G.L. c. 7, §§ 57-59 and 61), created the Supplier Diversity Office (“SDO”) as the successor to the State Office of Minority and Women Business Assistance (“SOMWBA”), within the Operational Services Division of the Executive Office for Administration and Finance;

**Whereas**, St. 2011, c. 68, §§ 17 and 18 require the SDO to make all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the USDOT DBE program (“SDO” or “Certifying Agency”);

**Whereas**, St. 1956, c. 465, as amended by St. 1958, c. 599, created MassPort, an independent public authority (“MassPort” or “Certifying Agency”), which is a recipient of financial assistance from the FAA;

**Whereas**, 49 C.F.R. § 23 requires determinations regarding airport concession DBE (“ACDBE”) certification to be made by recipients of financial assistance from the FAA, including MassPort, using the procedures and standards of 49 C.F.R. §§ 26.61 – 91, except when a waiver is obtained pursuant to 49 C.F.R. § 23.13, and except as provided in 49 C.F.R. § 23.3; and

Whereas, pursuant to 49 C.F.R. § 26, *et seq.*, St. 2011, c. 68, § 19 (enacting M.G.L. c. 7, § 60), created a Unified Certification Program Trust Fund account, which shall be funded by all Recipients;

Now therefore, the Recipients and OSD/SDO agree as follows:

**A. Definitions**

The definitions of all other terms used in this MOU shall have the same meanings that the terms have in 49 C.F.R. § 26.5 and 49 C.F.R. § 23.3.

**B. Obligations of Certifying Agencies and Recipients**

1. The SDO shall perform all DBE certification activities, except for determinations regarding airport concession DBE (“ACDBE”) certification, in accordance with criteria and procedures established by the USDOT in 49 C.F.R. § 26.83 *et seq.*
2. MassPort shall perform all ACDBE certification activities in accordance with criteria and procedures established by the USDOT in accordance with criteria and procedures established by the USDOT in 49 C.F.R. Part 23 unless specifically exempt.
3. All certifications by the Certifying Agencies shall be “pre-certifications,” certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE, pursuant to 49 C.F.R. § 26.81.
4. Recipients may only use DBE firms that are certified by the Certifying Agencies.
5. SDO and MassPort shall ensure that their respective staffs participating in certification decisions have sufficient resources and expertise to carry out the criteria for DBE certification contained in all applicable statutes and regulations, including, but not limited to 49 C.F.R. Part 26, Subparts D and E, 49 C.F.R. Part 23, and 425 CMR 2.00, and of any distinction between any federal and state regulations, and shall ensure that all federal and state standards and certification procedures will be met.
6. SDO shall make all DBE certification decisions and MassPort shall make all ACDBE certification decisions on behalf of all USDOT Recipients, and such decisions shall be

binding on all Recipients, provided, however, that disputes shall be resolved in accordance with the provisions of Section D, below entitled "Dispute Resolution."

7. The Certifying Agencies shall provide information and documents to each other on a timely basis (within 7 days) upon request.
8. SDO shall maintain a unified directory of DBEs and ACDBEs (including those from other states certified under 49 C.F.R. Part 26), including the name, telephone number, street and e-mail address of a primary contact person for each certified DBE firm and the types of work and NAICS Code the firm is certified to perform as a DBE, in accordance with 49 C.F.R. § 26.31. The directory shall be available electronically, on the internet, and in print upon request. MassPort shall provide SDO with electronic updates of ACDBEs as soon as they are made. SDO shall update the electronic directory by including additions, deletions, and other changes as soon as they are made, and shall revise the print version of the Directory at least once a year, in accordance with 49 C.F.R. § 26.81(g). The print version shall be updated at least annually; provided, however, that updated information is made available electronically to contractors and the public upon written or oral request.
9. SDO shall cooperate fully with oversight, review, and monitoring activities of MassDOT and USDOT and its respective operating administrations. SDO shall implement USDOT directives and guidance concerning certification matters.
10. MassPort shall cooperate fully with oversight, review, and monitoring activities of USDOT and its respective operating administrations. MassPort shall implement USDOT directives and guidance concerning certification matters.
11. The Recipients and SDO agree that this MOU may only be modified by written agreement of all Recipients and SDO and the approval of USDOT.

### **C. Recipient Responsibility for Payment for SDO Services**

1. The Recipients acknowledge that OSD/SDO is incurring expense by taking on the responsibility for certifying DBEs for participation in USDOT-assisted DBE programs in accordance with the requirements of 49 C.F.R. § 26 *et seq.*, and that funds received from the federal government by the Recipients, for the purpose of operating the UCP, shall be

deposited in the in the OSD/SDO UCP Trust Fund account created pursuant to M.G.L. c. 7, § 60.

2. The Recipients shall collectively pay to SDO, for deposit into the UCP Trust Fund, the total amount of the SDO annual budget, as negotiated and agreed upon by the Recipients and SDO. The percentage of the SDO annual budget that each Recipient pays shall be the percentage of USDOT's total estimated obligation authority for all Recipients that USDOT estimates obligating to it.
3. Such funding participation by the Recipients shall obligate the SDO, after review by and approval from OSD, to provide budget and accounting information that documents the activities of the SDO. Agencies that intend to restrict funding to SDO for certification in specific work areas will need to identify those categories of work by NAICS code in their respective contracts. SDO will implement an accounting system that will track costs associated with specific agency restrictions.

#### **D. Dispute Resolution**

1. Where a Recipient has reason to believe that a DBE is ineligible, the Recipient should file an ineligibility complaint with the appropriate Certifying Agency in accordance with the applicable DBE Program procedures.
2. MassPort or the SDO may challenge any certification decision made by the other. Such challenges shall be submitted in writing, including a request to the certifying agency (respondent) to review the applicant firm's file and all supporting documentation that served as a basis for such decision, certification denial or decertification.

#### **E. Confidentiality**

1. The Certifying Agencies will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal and state law. This would include any information that was relied upon for the certification or renewal of a DBE firm. The UCP, however, is required to transmit this information to USDOT in any certification appeal proceeding under 49 C.F.R. § 26.89 or

upon request to any other state in which a firm has applied or is currently certified under 49 C.F.R. § 26.85.

2. The Certifying Agencies will keep the identity of complainants confidential at their election. If said confidentiality hinders the investigation, proceeding or hearing or results in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege.

#### **F. Other States' Programs & Interstate Certifications/Reciprocity Agreements**

1. The Certifying Agencies shall not process an application for a firm having a principal place of business outside of the Commonwealth if said firm is not already certified, and in good standing, by the respective state entity administering a Unified Certification Program for the State in which the firm maintains its principal place of business, in accordance with 49 C.F.R. §§ 26.81 and 26.85.
2. The Certifying Agencies shall provide information and documents on a timely basis (within 7 days) upon the request of other State Uniform Certification Programs that are considering a firm's eligibility pursuant to 49 CFR §§ 26.81 and 26.85.
3. The Certifying Agencies may enter into reciprocity agreements with other State Unified Certification Programs, which shall outline the specific responsibilities of each participant, subject to the authorization of USDOT and the written agreement of the signatories to this MOU prior to entering into such a reciprocity agreement, pursuant to 49 CFR 26.81(e).

#### **G. Matters of Cooperation and Consistency**

1. Quarterly meetings shall be conducted by the Executive Director of SDO or his/her designee, the Director of Compliance for MassPort or his/her designee, the DBE Liaison Officer from the MassDOT Office of Diversity and Civil Rights (ODCR) or his/her designee, and representatives of other Recipients, as necessary, to exchange information and discuss common practices and requirements to effectuate certification



decisions under 49 C.F.R. Parts 23 and 26. Meetings may occur more frequently as deemed necessary.

2. An agenda and invitation for each quarterly meeting shall be published by SDO the first (or other) week of the month via email to all Recipients. Any Recipient with a procedural matter related to certification is invited to submit such matter to SDO as an agenda item.
3. SDO shall take and disseminate meeting minutes to Recipients, to apprise them of all activities of the Certifying Agencies, including initiatives or changes in procedures, to ensure consistency and the reliability of DBE certifications.

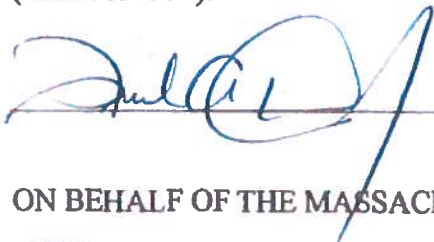
**THE REST OF THE PAGE IS LEFT INTENTIONALLY BLANK.**

**SIGNATURE PAGES TO FOLLOW.**

**SIGNATURE PAGE**

**THE RECIPIENTS:**

ON BEHALF OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
("MASSDOT"):

  
\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
("MBTA"):

  
\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE MASSACHUSETTS PORT AUTHORITY ("MASSPORT"):

\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE BERKSHIRE REGIONAL TRANSIT AUTHORITY ("BRTA")

\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE BROCKTON AREA TRANSIT AUTHORITY ("BAT")

\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE CAPE ANN REGIONAL TRANSIT AUTHORITY ("CATA")

\_\_\_\_\_

Date: \_\_\_\_\_

ON BEHALF OF THE CAPE COD REGIONAL TRANSIT AUTHORITY ("CCRTA")

\_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT 10

### Small Business Element

#### 1. Objective/Strategies

- 1) 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.
- 2) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. It should be noted that the Commission utilizes a small business, according to the definition in Section 2 below, as its engineering consultant (NAICS 541330) for all engineering contracts under their General Consulting Agreement.

#### 2. Definition

This program relies on small business classifications, as defined by the Small Business Administration. According to CFR Title 13, Chapter I, Part 121 – Small Business Size Regulations, the Small Business Administration’s size standards have been established for types of economic activity, or industry, generally under the NAICS system. The size standards are expressed in either number of employees or annual receipts and indicates the maximum allowed for a concern and its affiliates to be considered small. Small Business Size Standards by NAICS Industry are available at: <https://www.ecfr.gov/current/title-13/chapter-I/part-121/subpart-A/subject-group-ECFRf12a11421b08a31/section-121.201>.

DBE firms are eligible for participation in the Small Business Program element.

#### 3. Verification

The Commission will diligently attempt to minimize fraud and abuse in the small business element of this DBE program by verifying program eligibility of firms. This will be completed by requiring submission of a DBE/Small Business Reporting Form and a DBE/Small Business Letter of Intent with each bid package for each firm that is classified under the bid as a small business. This information will be verified, in the case of DBEs, against the certifying state’s DBE directory, and in the case of SBs, against the Small Business Administration’s Dynamic Small Business Search without limiting race, gender, or geographic location. If a firm is not included in the SBA directory, the Airport will request evidence that the firm meets the size standards, as defined in Item 2 above. For the purposes of this program, all verified DBEs are considered to be small businesses under this program. The SBA directory can be found using the following link: [https://dsbs.sba.gov/search/dsp\\_dsbs.cfm](https://dsbs.sba.gov/search/dsp_dsbs.cfm)

#### **4. Monitoring/Record Keeping**

- Small business participation will be provided by contractors with the submission of bid package via the Bidders List Collection Forms, DBE/Small Business Reporting Form and DBE/Small Business Letter of Intent Forms (DBE/SB Forms).
- Data from DBE/SB Forms will include information related to small businesses that bid on and are awarded work so that the Commission can determine if it is meeting its objective. Review and tracking of these forms will allow the Commission to confirm that prime contractors are providing subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Records of submissions will be maintained in the project files for a minimum of three (3) years.

#### **5. Assurances**

- The program is permitted 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; and
- Aggressive 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 (i.e., there is no local or other geographic preference).