

**CITY OF BUFFALO DBE PROGRAM**

**2020-2022**

**POLICY STATEMENT**

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

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

Laureen Bodin has been delegated as the DBE Liaison Officer. In that capacity, Laureen Bodin 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 City of Buffalo in its financial assistance agreements with the Department of Transportation.

The City of Buffalo has disseminated this policy statement to the City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on City of Buffalo DOT-assisted contracts. We have informed the general public and business community of this DBE program and goal through publication. We have further informed the business community that works on DOT-assisted contracts through the inclusion of DBE goal requirements into project bidding/contract documents. DBE reporting documentation is included as an attachment to this policy.

\_\_\_\_\_  
Laureen Bodin, DBE Liaison Officer (City Administrator)

\_\_\_\_\_  
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 City of Buffalo is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

**Section 26.5 Definitions**

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

**Section 26.7 Non-discrimination Requirements**

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

**Section 26.11 Record Keeping Requirements**

Reporting to DOT

The City of Buffalo will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to the FAA as follows:

The City of Buffalo will transmit to the FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The City of Buffalo will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

Bidders List

The City of Buffalo will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on the City of Buffalo DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. This information will be collected from the form in Attachment 3.

### Section 26.13 Federal Financial Assistance Agreement

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

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

The City of Buffalo 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 City of Buffalo 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 City of Buffalo 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 City of Buffalo 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 City of Buffalo will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

### ADMINISTRATIVE REQUIREMENTS

#### Section 26.21 DBE Program Updates

The **City of Buffalo** 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 **City of Buffalo** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the **City of Buffalo** is in compliance with it and Part 26. The **City of Buffalo** will continue to carry out this program until all funds from DOT financial assistance have been expended. The **City of Buffalo** does not have to submit regular updates of the DBE program document, as

long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

### **Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for the City of Buffalo:

*Laureen Bodin*

*DBE Liaison Officer (City Administrator)*

*City Hall*

*212 Central Avenue*

*Buffalo, MN 55313*

*(651) 366-3073*

*laureen.bodin@ci.buffalo.mn.us*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Buffalo complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City of Buffalo City Council 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 (1) 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 *City of Buffalo's* progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

**Section 26.27 DBE Financial Institutions**

It is the policy of the City of Buffalo 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.

**Section 26.29 Prompt Payment Mechanisms**

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

In accordance with 49 CFR §26.29, the City of Buffalo 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 City of Buffalo.

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

(Option 3) The Owner may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor. To implement this measure, the City of Buffalo includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

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. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the Owner.

From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance, 95 percent of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Section 26.31 Directory**

The City of Buffalo is a *non-certifying* member of the MN Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

Mn/DOT Office of Civil Rights

395 John Ireland Boulevard

St. Paul, MN 55155-1899

(651) 366-3073

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

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

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

### **Section 26.35 Business Development Programs**

The City of Buffalo has not established a Business Development Program.

### **Section 26.37 Monitoring Responsibilities**

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

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

#### Monitoring Payments to DBEs and Non-DBEs

The City of Buffalo undertakes monitoring of prime payments to subcontractors over the course of any covered contract.

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

The City of Buffalo proactively reviews contract payments to subcontractors including DBEs quarterly to evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City of Buffalo by the prime contractor.

#### Prompt Payment Dispute Resolution

The City of Buffalo will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29. This would include meeting with the Prime of DBE subcontractors for the purpose of resolving the dispute between the parties. Enforcement action would include withholding of final payment to Prime until the dispute is resolved and documented.

The City of Buffalo has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage.

(1) Alternative dispute resolution (ADR)

- The following subsection 70-22 Dispute Resolution is added to each prime contract:

**SUBSECTION 70-22 – DISPUTE RESOLUTION**

*Add the following Subsection 70-22 to Section 70 of the FAA General Provisions (AC150/5370-10)*

OWNER and CONTRACTOR agree that they shall submit any and all unsettled claims, counterclaims, disputes or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to the following Mediation / Arbitration procedure for dispute resolution.

1. Mediation Procedure

a. Notice to Invoke Procedure

Should a dispute arise over the interpretation or application of this Agreement, which cannot be resolved by negotiations between the parties, they shall invoke this Mediation Procedure before proceeding to litigation. Either party may invoke the Procedure by giving written notice to the other. The notice shall include the designation of an executive officer with authority to engage in mediation and settle the dispute.

b. Response

Within fourteen (14) business days of a notice given as provided above, the other party shall respond, designating an executive officer with authority to engage in mediation and settle the dispute on its behalf.

c. Submission

Within five (5) business days of a response given as provided above, the parties shall select a mutually acceptable neutral third party, who shall act as mediator, and schedule the first mediation session to resolve the dispute. All mediation meetings shall be held at the offices of the Owner unless otherwise agreed.

d. No Resolution through Mediation

In the event the parties are unable to reach a resolution of the dispute through the Mediation Procedure, described herein, each party agrees to enter into Arbitration in accordance with the terms and conditions of Subsection 70-22, 2 of the Supplementary Provisions.

e. Confidentiality

To the extent permissible under Minnesota Data Practices Act and the Minnesota Open Meeting Law, by entering into this Mediation Procedure, the parties shall be taken to agree that the entire proceeding is confidential; that the parties, their representatives and the Neutral Third Party must keep confidential all statements, whether oral or written, made in this proceeding, and all other matters relating to the proceeding, including the settlement agreement, except when, and insofar as its disclosure is necessary to implement and enforce such agreement. All

such matters will be inadmissible and not subject to discovery in any litigation, arbitration, or other proceeding.

The Neutral Third Party will be disqualified as a witness, consultant, or expert for any part to this proceeding, and his opinions, records or notes in this proceeding will be inadmissible in any litigation, arbitration or other proceeding.

2. Arbitration Agreement

- a. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by Subsection 90-09) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16.02. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16.02 will be specifically enforceable under the prevailing law of any court having jurisdiction.
- b. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with Subsection 50-01 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with Subsection 50-01; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER will be made later than thirty (30) days after the party making such demand has delivered written notice of intention to appeal.
- c. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 2.b as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in event shall any such demand be made after that date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- d. Except as provided in paragraph 2.e below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:
  1. The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and



2. Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
  3. The written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.
- e. Notwithstanding paragraph 2.d if a claim, dispute or other matter in questions between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER AND CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 2.e nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER, or ENGINEER's Consultants that does not otherwise exist.
  - f. If the amount of the dispute submitted for arbitration was less than or equal to \$ 15,000, the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.
  - g. If the amount of the dispute submitted for arbitration was greater than \$ 15,000, the award rendered by the arbitrators may be accepted by all parties and judgment may be entered upon it in any court having jurisdiction; or any party may choose to reject the proposed award of the arbitrators and elect to pursue other legal remedies that are available.
  - h. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 2.a through 2.f, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 2.b and 2.c above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Section 6.03 Progress Payment to Subcontractors (DBEs) include the following:

#### 6.03 *Progress Payment to Subcontractors*

- A. For contracts within the State of Minnesota, MN Statute 471.425 Subd. 4a. shall apply. MN Statute 471.425 Subd. 4a. requires:

1. The prime contractor shall pay any subcontractor within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor.
2. The prime contractor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.
3. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor.
4. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action."

### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City of Buffalo to resolve prompt payment disputes, affected subcontractor may contact the responsible the FAA contact.

### Enforcement Actions for Noncompliance of Participants

The City of Buffalo will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime

The City of Buffalo will actively implement the enforcement actions detailed above.

### Monitoring Contracts and Work Sites

The City of Buffalo reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by project managers/consultant. Contracting records are reviewed by compliance team. The City of Buffalo will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation**

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

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for City of Buffalo to be considered by DOT as implementing this DBE program in good faith.**

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

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

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1, 2019 (2020/2021/2022)	August 1, 2022 (2023/2024/2025)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Buffalo 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 City of Buffalo 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 City of Buffalo will use the *DBE Directory information and Census Bureau Data* as a method to determine the base figure. The City of Buffalo 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 City of Buffalo 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 City of Buffalo market.

In establishing the overall goal, the City of Buffalo 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 City of Buffalo 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 City of Buffalo 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 City of Buffalo engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City of Buffalo will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be posted on City of Buffalo official internet web site. If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the City of Buffalo. This notice will provide that the City of Buffalo and the FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the City of Buffalo responses.

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

### Project Goals

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

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

### Prior Operating Administration Concurrence

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

The **City of Buffalo** 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 City of Buffalo 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;

### **Section 26.51 Means Recipients Use to Meet Overall Goals**

#### Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City of Buffalo 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.

#### 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 number of available DBEs divided by the total number of firms.

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

Demonstration of good faith efforts (pre-award)

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

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

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

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

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

Administrative reconsideration

Within 5 business days of being informed by the City of Buffalo that it is not *responsive* 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: Susan Johnson (City Clerk), 212 Central Avenue, Buffalo MN 55313 763-682-1181, susan.johnson@ci.buffalo.mn.us. 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)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The City of Buffalo determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the City of Buffalo written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;

- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the City of Buffalo has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

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

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

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

**Section 26.55 Counting DBE Participation**

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

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



**SUBPART D – CERTIFICATION STANDARDS**

**Section 26.61 – 26.73 Certification Process**

The City of Buffalo will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The City of Buffalo makes all certification decisions based on the facts as a whole.

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

*Mn/DOT Office of Civil Rights*

*395 John Ireland Boulevard*

*St. Paul, MN 55155-1899*

*(651) 366-3073*

*<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/state-dot-and-dbe-program-websites>*

The Uniform Certification Application form and documentation requirements are found in Attachment 1 to this program. [*The Uniform Certification Form contained in the Final Rule, 49 CFR Part 26, must be used in this attachment; see §26.83(c)(2).*]

**SUBPART E – CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

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

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Section 26.101 Compliance Procedures Applicable to the City of Buffalo**

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

**Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

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

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 **City of Buffalo**, 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 **City of Buffalo** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 Fostering Small Business
- Attachment 10 Small Business Element Program

**ATTACHMENT 1**

Regulations: 49 CFR Part 26, or link to website

DOT published Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, formally administered under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Four (4) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010 and January 28, 2011 which made additional revisions to the regulation. The e-version of the regulations has combined all of these documents into one for easy reading.

The e-CFR data is current as of January 11, 2017.

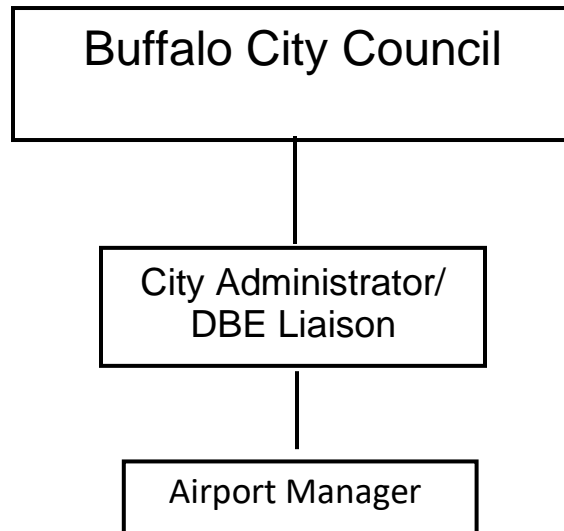
<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c557e0c662d8af4ad52a31b56b5bb2f2&n=49y1.0.1.1.20&r=PART&ty=HTML>

ATTACHMENT 2

Organizational Chart

*[The chart below is a sample only, and is not to be construed as a requirement or recommendation for any particular organizational structure]*

ORGANIZATIONAL CHART



**ATTACHMENT 3**

Bidder's List Collection Form

**DBE CERTIFICATE OF GOOD FAITH EFFORTS  
TITLE 49 CFR 26**

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

Prime Contractor: \_\_\_\_\_

Low Bid: \_\_\_\_\_

DBE Goal: 8.3%

Total DBE Commitment: \_\_\_\_\_

LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Subcontractor/Supplier/Service Provider	DBE?		Small Business? (as defined by § 26.65)		Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No	Yes	No		Letter	Phone		
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

(Make additional copies of this form as necessary)

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF BID OPENING**

**ATTACHMENT 4**

DBE Directory

State DOT and DBE Program Website: <https://www.transportation.gov/DBE%20State%20Websites>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

**Name of Recipient:** City of Buffalo - Buffalo Municipal Airport

**Goal Period:** FY-2020-2021 -2022– October 1, 2019 through September 30, 2022

**Overall Three-Year Goal:** 8.3%, to be accomplished through 8.3% RC and 0% RN

**Total dollar amount to be expended on DBE’s:** \$548,152.00

**Describe the Number and Type of Projects that the airport anticipates awarding:**

City of Buffalo Project(s)	DBE Eligible Project Cost
(FFY 2021) AIRFIELD PAVEMENT MAINTENANCE	\$323,152.00
(FFY 2022) MASTER PLAN UPDATE	\$225,000.00
<b>Total</b>	<b>\$548,152.00</b>

**Market Area:**

The market area was determined by selecting counties within a 50-mile radius of the Buffalo Municipal Airport.

Anoka	MN	Isanti	MN	Sherburne	MN
Benton	MN	Le Sueur	MN	Sibley	MN
Carver	MN	McLeod	MN	Stearns	MN
Chisago	MN	Mille Lacs	MN	Washington	MN
Dakota	MN	Ramsey	MN	Wright	MN
Hennepin	MN	Scott	MN		



**Step 1. 26.45(c) Actual relative availability of DBE’s**

The relative availability of DBE’s has been calculated by dividing the total number of DBE’s by the total number of All Firms = base figure for each project. The overall base figure for more than one project, adds all the project percentages together.

NAICS Code	Description	% of Work	# of Firms	# of DBE's	% DBE
237310	Construction	41.3%	120	32	26.7%
238210	Electrical	1.8%	852	25	2.9%
484220	Trucking	2.9%	325	55	16.9%
541330	Engineering	48.7%	723	47	6.5%
541370	Imagery/Survey	5.3%	47	12	25.5%
		<b>100.0%</b>	<b>2067</b>	<b>171</b>	<b>8.3%</b>

**Step 2: Adjustments to Step 1 base figure**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal.

There are no recent achievements to use to adjust the goal and no applicable disparity study or other evidence to adjust the Step 1 goal. The City of Buffalo is adopting Step 1 and the overall goal of 8.3 percent.

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

The City of Buffalo will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation. *[Indicate all the applicable RN measures that the recipient will use to obtain DBE participation]*

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Providing services to help DBE’s and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
5. Assist with distribution of MnDOT DBE directory, through electronic means, to the widest feasible universe of potential prime contractors; and
6. Through project opportunities, assist DBE’s and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The recipient estimates that in meeting its overall goal 8.3%, it will obtain 0% from RN participation and 8.3% through RC measures.

The City of Buffalo will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting

purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

PUBLIC PARTICIPATION

**Consultation:**

In establishing the overall goal, the City of Buffalo provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Buffalo's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The following comments were received during the course of the consultation:

No comments were received.

A notice of the proposed goal was published on the City of Buffalo's official website before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on the City of Buffalo's official website.

Notwithstanding paragraph (f)(4) of §26.45, the City of Buffalo's proposed goals will not be implemented until this requirement has been met.

**Insert comments**

**or**

**No comments were received.**

**Sample Public Notice Language:**

**PUBLIC NOTICE**

The City of Buffalo hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 8.3% for the FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2020 through 2022. The proposed goals and rationale are available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at City Hall, 212 Central Avenue, Buffalo, MN 55313 for 30 days from the date of this publication.

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

Laureen Bodin  
DBE Liaison Officer (City Administrator)  
City Hall  
212 Central Avenue  
Buffalo, MN 55313  
(763) 682-1181  
*laureen.bodin@ci.buffalo.mn.us*

AND

Federal Aviation Administration  
Office of Civil Rights  
Nancy Cibic  
FAA Great Lakes Regional Office  
2300 E. Devon Ave., Rm. 440, AGL-9  
Des Plaines, IL 60018  
Nancy.Cibic@faa.gov  
[http://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/](http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/)

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner.  
*(Please mark the appropriate box)*

- The bidder/offeror is committed to minimum of \_\_% DBE utilization on this contract. Documentation will be submitted within 5 days of the bid opening.
- The bidder/offeror, while unable to meet the DBE goal of \_\_%, hereby commits to a minimum of \_\_\_\_\_% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).
- The bidder/offeror is committed to allow for competition amongst small businesses and will document, as an attachment demonstrating good faith efforts (GFE)

\_\_\_\_\_  
Bidder's/Offeror's Firm Name

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**FORM TO BE COMPLETED AND SUBMITTED WITH THE BID**

**DBE LETTER OF INTENT**  
**TITLE 49 CFR 26**  
**Disadvantage Business Enterprise**

*(This page shall be submitted for each DBE firm)*

**Bidder/Offer:** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Firm:** DBE Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
*Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.*

**CLASSIFICATION:**  Prime Contractor  Subcontractor  Joint Venture  
 Manufacturer  Supplier

**DBE CATEGORY:**  Black American  Hispanic American  
 Native American  Subcont. Asian American  
 Asian Pacific American  Non-minority Women

Work item(s) to be performed by DBE	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above in an effort to meet the project DBE goal of \_\_\_\_%. The estimated participation is as follows:

DBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %

**AFFIRMATION:**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
 (Signature) (Title)

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

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF BID OPENING**

ATTACHMENT 7

**DBE Monitoring and Enforcement Mechanisms**

The City of Buffalo 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;

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

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

## ATTACHMENT 8

## DBE Certification Application Form

(New form October 2, 2014)



Appendix F

**UNIFORM CERTIFICATION APPLICATION**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) /**  
**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**  
**49 C.F.R. Parts 23 and 26**

***Roadmap for Applicants***

**1. Should I apply?**

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

**2. How do I apply?**

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

**3. Where can I send my application?** [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]**4. Who will contact me about my application and what are the eligibility standards?**

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

**5. Where can I find more information?**

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS):  
<http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200. Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

ATTACHMENT 9

**FOSTERING SMALL BUSINESS PARTICIPATION**

**TITLE 49 CFR 26.39 (This page shall be submitted for each Small Business firm)**

In accordance with Section 26.39, detailed information shall be completed by the Prime Contractor for work items. The firms listed may or may not be certified DBE's.

**Bidder/Offer:** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Small Business Firm:** Small Business Firm \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Contact Person:** Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**CERTIFICATION:** Is the firm a Small Business as defined by Section 26.65  
 Yes  No  
 \*Proof of eligibility may be requested

**CERTIFIED DBE:** Is the firm a Certified DBE?  
 Yes  No

Work item(s) to be performed by Small Business Firm	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named Small Business firm for the work described above in an effort to foster Small Business participation. The estimated participation is as follows:

Small Business contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %

**AFFIRMATION:**

The above-named Small Business firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
(Signature) (Title)

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

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF THE BID OPENING**



**ATTACHMENT 10**

## Small Business Element

## A. Objective/Strategies

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The Sponsor is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary and where appropriate, the Sponsor will meet its objectives using a combination of the following methods and strategies:

## 1. Race-neutral small business set-asides:

Where feasible, the Sponsor will establish a percentage of the total value of all project contracts over \$1 million to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This encourages the prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The prime contractor will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy.

## 2. Multi-year design/build contracts:

For larger “mega projects” that are compatible with the design/build procurement policy, the Sponsor will require the bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small business, including DBEs, can reasonably perform.

## 3. Unbundling larger projects:

To meet the portion of the overall DBE goal through race-neutral measures, the Sponsor, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Sponsor will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

4. Continued outreach:

The sponsor will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

B. Definitions

1. Small Business:

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

C. Implementation Schedule

The Sponsor will implement this small business element within 6 months of FAA's approval of the update of the DBE plan.

D. Assurances

The Sponsor makes the following assurances:

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