

# WESTFIELD-BARNES REGIONAL AIRPORT

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **PROGRAM & GOAL – 49 CFR PART 26**

FEDERAL FISCAL YEARS 2024–2026

(Revised Program Post-April 2024 Ruling)

## POLICY STATEMENT

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

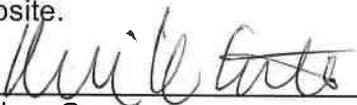
The City of Westfield, owner of the Westfield-Barnes Regional Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Airport has signed an assurance that it will comply with 49 CFR Part 26, see Attachment 1 (hereafter referred to as "Part 26").

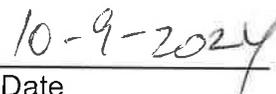
It is the policy of the Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Airport policy to engage in the following actions on a continuing basis:

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.

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

The Airport has disseminated this policy statement to the Westfield Airport Commission 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 The Airport DOT-assisted contracts. The distribution was accomplished by posting on the Airport's website.

  
\_\_\_\_\_  
William Gonet  
Chairperson, Westfield Airport Commission

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

### **Section 26.5 Definitions**

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

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

The Airport 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 Airport 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 Airport will provide data about its DBE Program to the Department as directed by the FAA.

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

The Airport 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 Airport will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system.

### Bidders List

The Airport 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 Airport DOT-assisted contracts, for use in helping to set overall goals.

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

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

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

This information will be collected in the following way(s): The “Bidder’s List” is collected at the time of bid submission. Attachment 2.

### Records Retention and Reporting:

The Airport will maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, the Airport will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Airport financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless

otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

### **Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: - Each financial assistance agreement the Airport signs with the FAA will include the following assurance:

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

Christopher Willenborg  
Airport Manager  
Westfield-Barnes Regional Airport  
110 Airport Road, suite 207  
Westfield, MA 01085  
Tel. 413-572-6275  
Email: [cwillenborg@barnesairport.com](mailto:cwillenborg@barnesairport.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chairperson of the Westfield Airport Commission concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 3 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has an engineering & planning consultant 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 Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Determine contractor compliance with good faith efforts.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the Airport 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. Currently the DBE program does not have any banks or financial institutions certified as DBE per Massachusetts UCP (UCP inquiry response 5/9/2023). The Airport will continue to periodically check to see if there are any new DBEs certified in this area. The availability of such institutions will be investigated on an annual basis.

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

The Airport 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 Airport 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 Airport.

The Airport 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 Airport has selected the following method to comply with this requirement:

The Airport 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 the Airport's payment to the prime contractor.

To implement this measure, the Airport includes the following clause from FAA Advisory Circular 150/5370-10 (Section 90-06) in each DOT-assisted prime construction contract (Option 3):

Section 90 Measurement and Payment AC 150/5370-10

90-06 Partial Payments

*a. From the total of the amount determined to be payable on a partial payment, five percent (5%) 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.*

Additionally Prompt payment is addressed in contracts under FAA Contract Provision Article 12.

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

The Airport 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 Airport 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):

- Subcontractor Register to be submitted prior to start of project by the Prime listing all subs on the project and sub-contract amounts
- A Subcontract Payment Register to be submitted with each Prime invoice indicating which subs are due payments for that period.
- The Airport will email subcontractors a notification of when payments have been made to the Prime contractor and request that if they have not received payment within 30 days to respond to the email.
- The Airport will spot check with subcontractors to verify they are being paid.

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

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

#### Prompt Payment Dispute Resolution

The Airport 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.

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

- A meeting will be organized between prime and sub, with resident project representative and/or project manager presence as well as the Airport Representative authorized to make binding decisions (DBELO or Airport Project Manager). The Airport official will lead discussions on how to resolve the dispute and if necessary, the subcontract may avail themselves to the provisions in M.G.L. Ch. 30 Section 39F

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

Contracts include language that states all contractors and subcontractors must adhere to Massachusetts laws. M.G.L. § 30 Sect. 39 F which clearly provides for the ability for subcontractors to seek direct payment from the Airport if the Prime has not followed the requirements for prompt payment.

Additionally Prompt payment is addressed in contracts under FAA Contract Provision Article 12 and with FAA Provision 90-06 b.

*90-06 b. Contract with Primes includes the following. 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.*

#### Prompt Payment Complaints

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

- The Airport would expect the subcontractor to request payment directly from Prime. Following that, if the 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 Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.

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

#### Enforcement Actions for Noncompliance of Participants

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

- Breach of contract action, pursuant to the terms of the contract and State Regulations.
- 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
- Federal Regulations Part 23 and Part 26 are available to enforce the DBE requirements.

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

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

The Airport will actively implement the enforcement actions detailed above, see Attachment 4.

#### **Section 26.31      Directory**

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

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

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

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

The Airport 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 Airport 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 Airport actively monitors attainment toward overall goals by maintaining a 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 a spreadsheet with per project goals and attainments. Each project has its own spreadsheet to monitor DBE participation. This mechanism to maintain a running tally of overall goal attainment will be used to inform the Airport's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

The Airport 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 a spreadsheet updated at the time of each Prime payment request. 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 would require the prime contractor to make a good faith effort to meet the contract goal pursuant to § 26.53(g).

#### Monitoring Contracts and Work Sites

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

Contracting records are reviewed by DBELO and / or consultant if part of the consultant's scope of work. The Airport will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. The Airport 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.

#### Attachment 4

### **Section 26.39      Fostering Small Business Participation**

The Airport has created a Small Business element, see Attachment 5, 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.

To foster small business participation, the Airport will ensure bids are posted on state online procurement websites as well as FAA Matchmaker system. In addition, all bids require a "Bidders List" (Attachment 3) this assists the Airport in maintaining information on small businesses that may be interested in future opportunities at the airport. The program elements will be actively implemented to foster small business participation. Implementation of the Small Business element is required in order for the Airport 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 Airport 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 Airport 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 Airport 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 FAA.

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Is\\_sue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDDBE_Reporting_Requirements_Dec_2017_Is_sue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Airport 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 Airport 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 Airport will use the *Massachusetts Supplier Diversity Office Directory of DBE Certified Businesses and Census Bureau Data* or other alternative method that complies with §26.45 as a method to determine the base figure, see Attachment 6.

The Airport 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 Airport 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 Airport 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 airport market.

In establishing the overall goal, the Airport 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 Airport to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, video conference with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Airport is required to submit the goal methodology to the FAA for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Airport 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 Airport 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 <https://www.cityofwestfield.org/752/Westfield-Barnes-Regional-Airport> and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by 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 Airport. This notice will provide that the Airport 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 public comment period will not extend the August 1<sup>st</sup> deadline.

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 Airport's responses. The Airport will consider and respond to any comments and information received before finalizing the goal.

The Airport 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 FAA. 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.

### Prior FAA Concurrence

The Airport 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 Airport for calculating goals is inadequate, the FAA may, after consulting with the Airport, adjust the overall goal or require that the goal be adjusted by the Airport. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the FAA 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 7 to this program.

### **Section 26.47 Failure to Meet Overall Goals**

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

The Airport 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 Airport 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:

- Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- 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;
- The Airport 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 the FAA upon request.

### **Section 26.49 How Are Overall Goals Established for Transit Vehicle Manufacturers?**

The Airport does not use transit vehicles.

### **Section 26.51 Means the Airports Use to Meet Overall Goals**

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

The Airport 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:

- 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 §26.3
- 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)
- Providing technical assistance and other services;
- 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 the Airport 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)
- Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- 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 7 to this program.

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

#### Contract Goals

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

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

## **Section 26.53      Good Faith Efforts Procedures in Situations Where There Are Contract Goals**

### Demonstration of Good Faith Efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so, see Attachment 8. Examples of good faith efforts are found in Appendix A to Part 26.

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

Within 5 days of being informed by the Airport 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:

William Gonet  
Chairperson, Westfield Airport Commission  
Westfield-Barnes Regional Airport  
110 Airport Road, suite 207  
Westfield, MA 01085  
Tel. 413-572-6275 Email: [wgonet@barnesairport.com](mailto:wgonet@barnesairport.com)

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

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.

The Airport 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 Airport 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 Airport 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 Airport written consent as provided in § 26.53(f); and
- (2) Unless the Airport 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 Airport may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- 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;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 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;
- The Airport determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides The Airport written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that the Airport 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 Airport, 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 Airport 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 Airport 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 Airport should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), The Airport 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 Airport 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 Airport 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).

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

## **SUBPART D – CERTIFICATION STANDARDS**

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

The Airport is a non-certifying member of the Massachusetts Unified Certification Program (UCP). Massachusetts UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. 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  
Tel. (857) 368-8656

<https://www.mass.gov/how-to/apply-for-disadvantaged-business-enterprise-dbe-certification>

The Uniform Certification Application form and documentation requirements are found in Attachment 9 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The Airport is a member of a Unified Certification Program (UCP) administered by MassDOT UCP. The UCP will meet all of the requirements of this section, see Attachment 10.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to the Airport**

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

### **Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs**

- (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 Airport, 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 Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

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

**Attachment 1**

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

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

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

# Attachment 2

## Bidder's List Collection Form

The information below must be collected from 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 recipients to collect information from all bidders and subcontractors, including unsuccessful ones. Prime Bidder should be listed as well.

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

**Project:** \_\_\_\_\_

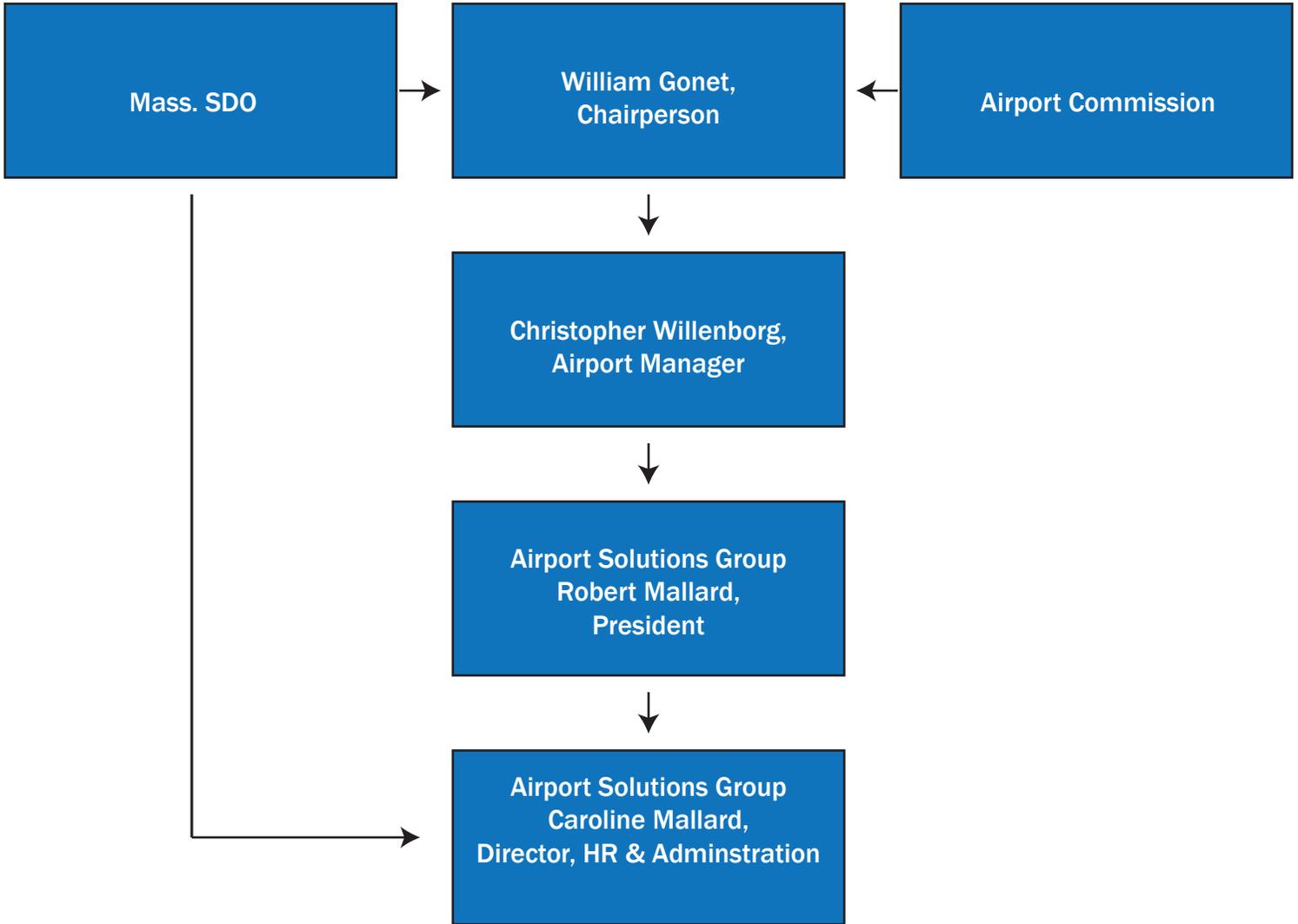
Firm Information		Age of Firm		Annual Gross Receipts	Owner Ethnicity
Firm Name: Prime	Biz Owner Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> \$5-9 million <input type="checkbox"/> Greater than \$9 million	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority
Address:	Certified as:	<input type="checkbox"/> DBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> N/A			
Phone #: Email:	NAICS Code/s:	_____		<b>Did Prime Use Firm:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm Name: Sub:	Biz Owner Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<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 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> \$5-9 million <input type="checkbox"/> Greater than \$9 million	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority
Address:	Certified as:	<input type="checkbox"/> DBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> N/A			
Phone #: Email:	NAICS Code/s:	_____		<b>Did Prime Use Firm:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm Name: Sub:	Biz Owner Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<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 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> \$5-9 million <input type="checkbox"/> Greater than \$9 million	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority
Address:	Certified as:	<input type="checkbox"/> DBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> N/A			
Phone #: Email:	NAICS Code/s:	_____		<b>Did Prime Use Firm:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm Name: Sub:	Biz Owner Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<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 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> \$5-9 million <input type="checkbox"/> Greater than \$9 million	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority
Address:	Certified as:	<input type="checkbox"/> DBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> N/A			
Phone #: Email:	NAICS Code/s:	_____		<b>Did Prime Use Firm:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm Name: Sub:	Biz Owner Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<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 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> \$5-9 million <input type="checkbox"/> Greater than \$9 million	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Non-Minority
Address:	Certified as:	<input type="checkbox"/> DBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> N/A			
Phone #: Email:	NAICS Code/s:	_____		<b>Did Prime Use Firm:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

(Add additional pages as necessary)

**Attachment 3**

**Organizational Chart**

**Westfield-Barnes Regional Airport**



## **Attachment 4**

### **DBE Monitoring and Enforcement Mechanisms**

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

- Breach of contract action, pursuant to the terms of the contract and State Regulations.
- 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
- Federal Regulations Part 23 and Part 26 are available to enforce the DBE requirements.

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

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



Maura Healey, Governor  
 Kimberley Driscoll, Lieutenant Governor  
 Monica Tibbits-Nutt, Secretary & CEO  
 Jeffrey DeCarlo, Administrator



**Project Expenditure Report<sup>1</sup>  
 Disadvantaged Business Enterprise (DBE)<sup>2</sup> Participation  
 (For Federally-sponsored Projects)<sup>3</sup>**

MassDOT Aeronautics Division Form AD4-DBE (Last Modified: November 27, 2023)

**PROJECT TITLE:** \_\_\_\_\_

**DBE CONTRACTOR:** \_\_\_\_\_

**MASSDOT PAYMENT VOUCHER (PV) NO.:** \_\_\_\_\_ **TOTAL DBE CONTRACTOR PARTICIPATION: \$** \_\_\_\_\_

**AIP NO.:** \_\_\_\_\_ **PERCENTAGE OF CONTRACT:** \_\_\_\_\_

Contract Item No.	Description of Work to be Performed by DBE Contractor	Estimated Quantity	Unit Price	Item Amount

Total amount requested by DBE contractor this invoice (add item amounts): \$ \_\_\_\_\_

Total amount previously requested by DBE contractor: \$ \_\_\_\_\_

Total amount requested by DBE contractor to date: \$ \_\_\_\_\_

The undersigned certifies that the DBE Contractor has successfully completed the above referenced work associated with this project and further assures that said DBE Contractor will be paid in full for the services indicted above.

Name of Prime Contractor: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

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

Name of DBE Contractor: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

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

<sup>1</sup> Form must be submitted with each PV. Separate forms for each DBE contractor.

<sup>2</sup> Must be register with the MA Supplier Diversity Office (SDO) and must be listed as a DBE with a valid certification when work is completed. Suppliers must be discounted at 60%. The participation of the Prime Contractors and Subcontractors that are DBEs may be counted toward the DBE goal.

<sup>3</sup> For projects with any amount of federal participation.

# Commercially Useful Function (CUF)/ Compliance Evaluation Form - Service Providers

**Airport:** \_\_\_\_\_ **Address:** \_\_\_\_\_

This form is required to meet the Commercially Useful Function (CUF) verification requirements of 49 CFR §26.55. This form also contains data and questions related to the running tally of DBE payments, termination of work, and changes in contract scope that may require prompt action to ensure final compliance.

## Section I- Project and Payment Data

Sub Contract on File: Yes  No

ASG Project #:  Project Name:

Prime Provider:  DBE Goal:  District/Region:

DBE Subcontract \$:  DBE Commitment \$:  % of DBE Work Completed:

DBE Start Date:  DBE Payments to Date \$:

Provider Name: DBE  DBE Representative:

Provider Owner:  DBE Representative Title:

DBE is Performing as  Prime Service Provider  Sub Service Provider  Lower-tier Service Provider

: Service Category: Other

Provide a brief description of the DBE's scope of work/services from the approved subcontract/sub-agreement:

The following two questions pertain to DBE participation submitted (under commitment) to meet a contract goal:

➤ Are the descriptions of work in the DBE's subcontract/sub-agreement and the Prime's DBE commitment consistent?

YES  NO (If "NO," how was this resolved?)  N/A

➤ Have there been any changes in project scope that would affect the DBE commitment?

YES (If "YES," describe changes in scope, impacts, and actions to resolve)  NO  N/A

**Section II- Evaluation and CUF Determination**

<b>Supervision and Management</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
1. Was all work performed directed by the DBE's supervisory personnel ? (e.g. DBE directs its own employees and controls all elements of work; approving signatures/ initials on work products, title blocks and other relevant documents were those of DBE supervisory personnel)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Do workflows indicate that the designated DBE Project Manager/Supervisor is directing all work?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. If the DBE project team or its representative is co-located in the prime's office, is it evident that the DBE has sufficient on-site expertise and control that allows it to manage its work independently?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments Required for all "NO" or "N/A" Responses:**

<b>Performance</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
4. Did the Airport make adjustments in counting where the DBE itself sublet or outsourced any portion of its work to a non-DBE?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Did the DBE perform at least 30% of the work under its contract/agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
6. Provide the value of any DBE work (under commitment) that was terminated by the prime and performed by another firm without the Airport's prior written consent:		OR	<input type="checkbox"/>
6a. Where written consent was not obtained, did/will the Airport deny payment to the prime for DBE work it self-performed or DBE work performed by another firm?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Did the prime make every good faith effort to replace the value of work under commitment not performed by the DBE for any reason (other than Airport-initiated changes in scope)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments Required for all "NO" or "N/A" Responses:**

<b>Workforce</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
8. Based on the site visit, were the personnel observed/performing work consistent with the DBE's affirmed listing of project personnel, payrolls, or other valid document?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. With respect to professional services, are document authors and signers of certifications, stamps, seals, title blocks, etc. consistent with the DBE's affirmed listing of qualified project personnel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Workforce (continued)**

YES NO N/A

10. Based on employee interviews, is the DBE the only service provider that is compensating the personnel performing the work?

-Provide the names of DBE personnel observed or interviewed in the Comments box

**Comments Required for all "NO" or "N/A" Responses:**

[Empty text box for comments]

**Equipment**

YES NO N/A

11. Did the DBE use its own equipment to perform the work specified in its contract/ agreement? (Total stations, computer hardware, plotters, computer automated design software, personal protective equipment, tools, and other equipment required to perform or produce the work.)

12. For equipment not owned by the DBE, did the DBE lease it from a company other than the prime or an upper-tier service provider?

13. If 12. above is "NO," provide the value of equipment borrowed or leased from the prime or an upper-tier service provider:

[Empty text box for value]

OR →

14. Provide information about equipment leased or borrowed by the DBE:

[Empty text box for equipment information]

15. Did the prime increase DBE participation to replace the value of equipment borrowed or leased from the prime or upper-tier service provider, as indicated in "13." above?

16. Is all equipment being operated by DBE employees and under the direct supervision of the DBE?

**Comments Required for all "NO" or "N/A" Responses:**

[Empty text box for comments]

**CUF Determination**

Based on the observations reported in this document, including relevant attachments, I affirm that the participation of the DBE entered at the top of this form has been counted in accordance with 49 CFR §26.55, and accurately reflected in our agency's reporting system.

Reviewer Signature:

Date:

[Empty text box for date]

Printed Name and Title of Reviewer:

[Empty text box for name and title]

**Determination Comments:**

[Empty text box for determination comments]

**DBE Document Check List**

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

**DBE Goal:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Prime Name:** \_\_\_\_\_

**ASG Project #:** \_\_\_\_\_

**Prime Address:** \_\_\_\_\_

**AIP#:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

# DBE Firms: \_\_\_\_\_  
Contract Cost: \_\_\_\_\_

**Email:** \_\_\_\_\_

**Tel.:** \_\_\_\_\_

Required Project Forms	✓ if Received
Fostering Small Business Participation	
Bidders List Collection Form	
DBE Good Faith Effort (if not enough DBE)	
Anticipated Sub List	
Bidder Certification EEO	
Contractor Certification EEO	
SubContractor Certification EEO per sub	
FAA DBE Utilization Form	

**DBE Details & Forms**

DBE Firm Name:				
DBE Firm Address:				
	✓ if Received	✓ if Received	✓ if Received	✓ if Received
FAA Letter of Intent				
DBE Certification Letter (current)				
FAA Report of Certified DBE Contractors				
MassDOT Letter of Intent				
Description of Work to be Provided:				

DBE Firms Listed:	%	\$ to DBE	Type DBE *	Type Descript	Type Code	Man / Woman (M/W)
	0	#DIV/0!		Black American	BA-	M or W
	0	#DIV/0!		Hispanic American	HA-	M or W
	0	#DIV/0!		Native American	NA-	M or W
	0	#DIV/0!		Asian-Pacific American	APA-	M or W
	0	#DIV/0!		Subcontinent Asian American	SAA-	M or W
Total DBE		\$0.00		Non-Minority Men	NM-	M
				Non-Minority Women	NM-	W

\* per FAA Report of Certified DBE Contractors  
if Received: If documents have not yet been received, you must make all efforts to obtain them ASAP

**Issues:**

**Sub-Contractors Section:**

Names	Contract Rec'd	EEO Cert	Language EEO verified	Language Prompt Pay verified	\$ Amount of Contract	Function





## Attachment 5

### Small Business Element

#### 1. Objective/Strategies

(1) In design-build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(2) 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.

(3) Continue to use Bidders List and the Fostering Small Business forms to identify smaller businesses for work at the Airport.

#### 2. Definition

Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.

All businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

#### 3. Verification

Prime Contractors must complete the Fostering Small Business form for subcontractors that it will use on the project that are SBA classified as a "Small Business". The Airport will verify their small business status with the SBA.

#### 4. Monitoring/Record Keeping

Fostering Small Business Forms will be reviewed at time of Bid Selection and records will be maintained.

#### 5. Assurance

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 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.

**FOSTERING SMALL BUSINESS PARTICIPATION**

Sponsor's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	20__

**In accordance with CFR Part 26, Section 26.39 the following detailed list shall be completed by Prime Bidding Contractor for this proposed Construction Work. The Prime Contractor must list all sub-contractors meeting the federal requirement for a Small Business who provided the Prime Contractor with a quote to perform work on this project, regardless if the sub-contractor will be performing the work**

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

Small Business Firms to be Utilized (Name, Address, Phone)	Work to be Performed	Total Estimated Cost of Work
---	----------------------	------------------------------

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**(DUPLICATE FORM AS NECESSARY)**

The following notation is for Sponsor Use Only:

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment 6**

**DBE Directory**

The Disadvantaged Business Enterprise Directory used by the Airport is:

Supplier Diversity Office (SDO)  
The McCormack Building  
One Ashburton Place, 1017  
Boston, MA 02108  
617-502-8851

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

**Attachment 7**

**Section 26.45: Overall DBE Three-Year Goal Methodology**

**Name of Recipient:** Westfield-Barnes Regional Airport

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

**DOT-assisted contract amount:**

<b>Fiscal Year</b>	<b>Project</b>	<b>FAA \$ Amount</b>
<b>2024</b>	Part 150 Sound Insulation Program	\$2,500,000
	Runway 15 Easement Tree Clearing	\$150,000
<b>2025</b>	Part 150 Sound Insulation Program	\$2,500,000
	Regaining Runway 15 Threshold Improvements	\$585,000
	Construct New Access Taxiway to Southwest Quadrant	\$1,291,500
	Part 150 Noise Exposure Map Update	\$800,000
<b>2026</b>	Part 150 Sound Insulation Program	\$2,500,000
	Reconstruct Taxilane & Apron by T hangars ph 1	\$1,775,700
	Reconstruct Existing Aircraft Parking Ramps adjacent to Hangar 2 Ph2	\$1,023,300
	Purchase SRER	\$306,000
	Land Acquisition for Runway 2 RPZ (Camfour Property)	\$150,000

**Overall Three-Year Goal:** 2.89%, to be accomplished through 2.0% RC and 0.89% RN (weighted percentage)

**Total dollar amount to be expended on DBE's:** \$389,420

## **Market Area:**

### **Determination of Market Area:**

The Airport determined that an approximate 50-mile radius of the Airport was a realistic market area based on past contracts. Massachusetts counties that fell within 50 miles of the Airport were used as the Market Area. The substantial majority of the Airport's contractors and subcontractors and the substantial majority of contracting dollars spent by the Airport are within this Market Area.

The Airport used the following counties in its analysis.

### **Counties Used:**

Berkshire MA  
Franklin MA  
Hampden MA  
Hampshire MA  
Worcester MA

### **Step 1. 26.45(c) Actual Relative Availability of DBE's**

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

To determine eligible DBE companies by county, the MA Supplier Diversity Office (SDO) website (<https://www.sdo.osd.state.ma.us/>) was used to download the "Directory of Certified Businesses". DBE firms were filtered by NAICS code.

All Established Firms" in the same market area were determined using data from the U.S. Census Bureau, County Business Patterns 2021 ([https://data.census.gov/table?q=CBP2021.CB2100CBP&q=040XX00US25,25\\$0500000&n=562910&tid=CBP2021.CB2100CBP](https://data.census.gov/table?q=CBP2021.CB2100CBP&q=040XX00US25,25$0500000&n=562910&tid=CBP2021.CB2100CBP)), based on NAICS code.

The total number of "DBE's" was divided by the "total number of establishments" from the Census data for each anticipated NAICS code used in upcoming projects. This percentage was used to determine DBE participation amounts per project.

Projects were divided by "Engineering Services" and "Construction Services" to establish the weighted goal percentage. Estimated costs per project, per NAICS were determined and used to establish a weighted percentage of costs per project, per NAICS. These were totaled to determine the weighted percentage.

Total of all DBE Dollar amounts were divided by Total of all Project Dollars to determine DBE Goal for Fiscal 2024-2026.

(Total: DBE Engineering + DBE Construction Services) \_\_\_\_\_ = **Weighted DBE Goal**

(Total: Engineering + Construction Services Contracts)

Method: Used DBE Directories: <https://www.sdo.osd.state.ma.us/> and Census Bureau Data (Source: U.S. Census Bureau-All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2021)

## **PUBLIC PARTICIPATION**

### **Consultation: Section 26.45(g)(1).**

The Airport will solicit public participation by way of advertising in local media to understand actual DBE interest in projects using the following methods: MASSDOT and the Westfield-Barnes Regional Airport Commission Meetings and Public notice. Multiple emails were sent asking for comments and inviting various shareholders to a virtual meeting held on July 24, 2023 at 10:00am. To date the only comment was from MASSDOT.Aeronautics, stating that they had no issues with DBE Plan or goal.

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

The Airport will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation such as:

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. Carrying out information and communications programs on specific contract opportunities; ensuring email notification to DBEs of opportunities, using the FAA Matchmaker system and the MA Central Register to register bid opportunities.
3. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
4. Ensuring DBE goals are published in in all bid and contract documents.

The Airport estimates that in meeting its overall goal of 2.89%, it will obtain 0.89% from RN participation and 2.00% through RC measures.

The Airport 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.

### **Contract Goals**

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

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

Westfield-Barnes Regional Airport BAF

Highway, Street & Bridge 237310			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	4	0	0.00%
Franklin MA	3	0	0.00%
Hampden MA	30	6	20.00%
Hampshire MA	0	0	0.00%
Norfolk MA	26	1	3.85%
Worcester MA	21	6	28.57%
<b>Totals</b>	<b>84</b>	<b>13</b>	<b>15.48%</b>

All Other Speciality Trade 238990			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	19	0	0.00%
Franklin MA	12	0	0.00%
Hampden MA	48	3	0.00%
Hampshire MA	11	0	0.00%
Norfolk MA	91	3	3.30%
Worcester MA	111	1	0.90%
<b>Totals</b>	<b>292</b>	<b>7</b>	<b>2.40%</b>

Site Preparation Contractors 238910			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	44	0	0.00%
Franklin MA	17	0	0.00%
Hampden MA	56	2	3.57%
Hampshire MA	28	1	3.57%
Norfolk MA	140	3	2.14%
Worcester MA	178	6	3.37%
<b>Totals</b>	<b>463</b>	<b>12</b>	<b>2.59%</b>

Landscaping Services 561730			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	134	0	0.00%
Franklin MA	44	0	0.00%
Hampden MA	207	3	1.45%
Hampshire MA	103	3	2.91%
Norfolk MA	446	0	0.00%
Worcester MA	498	0	0.00%
<b>Totals</b>	<b>1432</b>	<b>6</b>	<b>0.42%</b>

Engineering Services 541330			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	19	0	0.00%
Franklin MA	9	1	11.11%
Hampden MA	38	3	7.89%
Hampshire MA	19	1	5.26%
Worcester MA	159	5	3.14%
<b>Totals</b>	<b>244</b>	<b>10</b>	<b>4.10%</b>

Environmental Consulting Services 541620			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	9	2	22.22%
Franklin MA	6	1	16.67%
Hampden MA	9	0	0.00%
Hampshire MA	11	0	0.00%
Worcester MA	29	1	3.45%
<b>Totals</b>	<b>64</b>	<b>4</b>	<b>6.25%</b>

Survey & Mapping (except 541370)			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	3	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	6	0	0.00%
Hampshire MA	5	0	0.00%
Worcester MA	16	0	0.00%
<b>Totals</b>	<b>30</b>	<b>0</b>	<b>0.00%</b>

GeoTech/Testing 541380			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	3	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	16	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	23	0	0.00%
<b>Totals</b>	<b>42</b>	<b>0</b>	<b>0.00%</b>

Electrical 238210			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	66	0	0.00%
Franklin MA	26	0	0.00%
Hampden MA	125	2	1.60%
Hampshire MA	43	1	2.33%
Worcester MA	310	2	0.65%
<b>Totals</b>	<b>570</b>	<b>5</b>	<b>0.88%</b>

Real Estate Appraisers 531320			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	5	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	15	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	21	0	0.00%
<b>Totals</b>	<b>41</b>	<b>0</b>	<b>0.00%</b>

Plumbing HVAC Mechanical 238220			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	69	0	0.00%
Franklin MA	21	0	0.00%
Hampden MA	136	1	0.00%
Hampshire MA	60	0	0.00%
Worcester MA	321	0	0.00%
<b>Totals</b>	<b>607</b>	<b>1</b>	<b>0.16%</b>

Architectural Services 541310			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	15	0	0.00%
Franklin MA	3	0	0.00%
Hampden MA	10	0	0.00%
Hampshire MA	13	0	0.00%
Worcester MA	25	1	4.00%
<b>Totals</b>	<b>66</b>	<b>1</b>	<b>1.52%</b>

Oil & Gas Structures Constr. 237120			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	0	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	0	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	0	0	0.00%
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>

Logistics Consulting 541614			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	3	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	0	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	20	2	10.00%
<b>Totals</b>	<b>23</b>	<b>2</b>	<b>8.70%</b>

Other Heavy & Civil Constr. 237990			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	0	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	0	0	0.00%
Hampshire MA	3	0	0.00%
Worcester MA	6	0	0.00%
<b>Totals</b>	<b>9</b>	<b>0</b>	<b>0.00%</b>

Construction Machinery Mfg 333120			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	0	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	0	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	0	0	0.00%
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0.00%</b>

All Other Professional Scientific & 541990			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	7	0	0.00%
Franklin MA	3	0	0.00%
Hampden MA	24	1	0.00%
Hampshire MA	9	0	0.00%
Worcester MA	42	0	0.00%
<b>Totals</b>	<b>85</b>	<b>1</b>	<b>1.18%</b>

Remediation 562910			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	0	0	0.00%
Franklin MA	0	0	0.00%
Hampden MA	16	0	0.00%
Hampshire MA	0	0	0.00%
Worcester MA	25	2	8.00%
<b>Totals</b>	<b>41</b>	<b>2</b>	<b>4.88%</b>

Offices of Lawyers 541110			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	67	0	0.00%
Franklin MA	17	0	0.00%
Hampden MA	213	0	0.00%
Hampshire MA	56	0	0.00%
Worcester MA	340	0	0.00%
<b>Totals</b>	<b>693</b>	<b>0</b>	<b>0.00%</b>

Residential Remodelers 236118			
County Name	ESTAB	Relevant DBE	% of co. DBE
Berkshire MA	114	0	0.00%
Franklin MA	44	0	0.00%
Hampden MA	180	2	1.11%
Hampshire MA	72	0	0.00%
Worcester MA	489	1	0.20%
<b>Totals</b>	<b>899</b>	<b>3</b>	<b>0.33%</b>

	NAICS	Total Firms	DBEs	% DBE
Highway, Street & Bridge Construction	237310	84	13	15.48%
All Other Speciality Trade Contractors (fences)	238990	292	7	2.40%
Site Preparation Contractors	238910	463	12	2.59%
Landscaping Services	561730	498	6	1.20%
Electrical	238210	570	5	0.88%
Plumbing HVAC Mechanical	238220	607	1	0.00%
All Other Professional Scientific & Tech	541990	85	1	0.00%
Remediation	562910	41	2	0.00%
Offices of Lawyers	541110	693	0	0.00%
Residential Remodelers	236118	899	3	0.33%
Construction Machinery Mfg	333120	0	0	0.00%
<b>Construction Totals</b>		<b>1337</b>	<b>38</b>	<b>2.84%</b>

	NAICS	Total 2024	Total 2025	Total 2026	Total 3 years	DBE portion
Highway, Street & Bridge Construction	237310		\$327,587	\$707,708	\$1,035,295	\$160,224
All Other Speciality Trade Contractors (fences)	238990	\$154,000	\$154,000	\$154,000	\$462,000	\$11,075
Site Preparation Contractors	238910	\$536,423	\$936,672	\$1,473,095	\$38,180	
Landscaping Services	561730	\$120,000	\$49,723	\$104,075	\$273,798	\$3,299
Electrical	238210	\$87,000	\$569,475	\$425,155	\$1,081,630	\$9,488
Plumbing HVAC Mechanical	238220	\$350,000	\$350,000	\$350,000	\$1,050,000	\$0
All Other Professional Scientific & Tech	541990				\$0	\$0
Remediation	562910	\$78,000	\$78,000	\$78,000	\$234,000	\$0
Offices of Lawyers	541110	\$7,500	\$7,500	\$7,500	\$22,500	\$0
Residential Remodelers	236118	\$1,238,500	\$1,238,500	\$1,238,500	\$3,715,500	\$12,399
Construction Machinery Mfg	333120		\$275,400	\$275,400	\$550,800	\$0
<b>Total Construction</b>		<b>\$2,035,000</b>	<b>\$3,311,208</b>	<b>\$4,277,010</b>	<b>\$9,623,218</b>	<b>\$234,665</b>
					<b>Construction DBE</b>	<b>2.44%</b>

	NAICS	Total Firms	DBEs	% DBE
Engineering Services	541330	244	10	4.10%
Environmental Consulting Services	541620	64	4	6.25%
Survey & Mapping (except Geophysical)	541370	30	0	0.00%
GeoTech/Testing	541380	42	0	0.00%
Real Estate Appraisers	531320	41	0	0.00%
Architectural Services	541310	66	1	0.00%
Oil & Gas Structures Constr.	237120	0	0	0.00%
Logistics Consulting	541614	23	0	0.00%
<b>Engineering Totals</b>		<b>380</b>	<b>14</b>	<b>3.68%</b>

	NAICS	Total 2024	Total 2025	Total 2026	Total 3 years	DBE portion
Engineering	541330	\$431,500	\$1,394,624	\$1,088,297	\$2,914,421	\$119,443
Environmental	541620	\$103,500	\$352,203	\$109,292	\$564,995	\$35,312
Non-Geotech Survey	541370		\$23,614	\$28,201	\$51,815	\$0
GeoTech/Testing	541380		\$14,852	\$28,201	\$43,053	\$0
Real Estate Appraisers	531320			\$24,000	\$24,000	\$0
Architectural Services	541310	\$80,000	\$80,000	\$80,000	\$240,000	\$0
Oil & Gas Structures Constr.	237120				\$0	\$0
Logistics Consulting	541614				\$0	\$0
<b>Total Engineering</b>		<b>\$615,000</b>	<b>\$1,865,293</b>	<b>\$1,357,991</b>	<b>\$3,838,284</b>	<b>\$154,756</b>
					<b>Engineering DBE</b>	<b>4.03%</b>

\* If less than 3 DBE firms, use 0 per FAA Goal setting guidelines

	Total Contracts	DBE Portion	DBE Portion	Weighted DBE Goal
Total 3 Year Construction	\$9,623,218	\$234,665		
Total 3 Year Engineering	\$3,838,284	\$154,756	Total Contracts	
<b>Combined Totals</b>	<b>\$13,461,502</b>	<b>\$389,420</b>		<b>2.89%</b>

Project	PA&S Amount
Part 150 Sound Insulation Program	\$2,500,000
Runway 15 Easement Tree Clearing	\$150,000
	\$2,650,000

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$2,500,000	
<b>Notice Consultant</b>		
The Jones Payne Group	\$17,250,000	70%
Engineering Services	302,500	40%
Sub Environmental Consulting Services	541,620	7%
Sub Environmental Consulting Services	541,620	6%
Sub Architectural Services	541,310	11%
Sub Engineering Services	541,300	13%
Sub Residential Remodelers	236,118	21%
Sub Offices of Lawyers	541,110	1%
<b>Construction Projects:</b>		
TBD		
Residential Remodelers	236,118	10%
Electrical Contractor	238,220	5%
Mechanical Contractor	238,220	20%
Remediation Services	562,910	4%
All Other Specialty Trade Contractors (Invoiced)	238,990	9%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$150,000	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	35.00%
Sub Environmental Consulting Services	541,620	20.00%
Sub Survey & Mapping (except Geophysical)	541,370	80.00%
Sub Engineering Services	541,300	80.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	80.00%
Site Preparation Contractors	238,910	100.00%
Landscaping Services	561,720	100.00%
Electrical	238,210	100.00%

Project	PA&S Amount
Part 150 Sound Insulation Program	\$2,500,000
Realigning Runway 15 Threshold Improvements	\$585,000
Construct New Access Trailway to Southwest Quadrant	\$1,293,500
Part 150 Noise Exposure Map Update	\$600,000
	\$5,178,500

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$2,500,000	
<b>Notice Consultant</b>		
The Jones Payne Group	750,000	30.00%
Engineering Services	302,500	40%
Sub Environmental Consulting Services	541,620	7%
Sub Environmental Consulting Services	541,620	6%
Sub Architectural Services	541,310	11%
Sub Engineering Services	541,300	13%
Sub Residential Remodelers	236,118	21%
Sub Offices of Lawyers	541,110	1%
<b>Construction Projects:</b>		
TBD		
Residential Remodelers	236,118	10%
Electrical Contractor	238,220	5%
Mechanical Contractor	238,220	20%
Remediation Services	562,910	4%
All Other Specialty Trade Contractors (Invoiced)	238,990	9%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$585,000	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	35.00%
Sub Environmental Consulting Services	541,620	3.00%
Sub Survey & Mapping (except Geophysical)	541,370	3.00%
Sub Engineering Services	541,300	92.00%
<b>Construction Projects:</b>		
TBD - Electrical		
Highway, Street & Bridge Construction	237,310	67.00%
Site Preparation Contractors	238,910	10.00%
Landscaping Services	561,720	10.00%
Electrical	238,210	80.00%

Project	PA&S Amount
Part 150 Sound Insulation Program	\$2,500,000
Reconstruct Taxiway & Apron by T Hangers ph 1	\$1,775,700
Reconstruct Existing Aircraft Parking Bays Subject to Hangar 2 Ph 2	\$1,029,300
Purchase SRP	\$306,000
Land Acquisition for Runway 2 Ph 2 (Camford Property)	\$150,000
	\$5,759,000

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$2,500,000	
<b>Notice Consultant</b>		
The Jones Payne Group	750,000	30.00%
Engineering Services	302,500	40%
Sub Environmental Consulting Services	541,620	7%
Sub Environmental Consulting Services	541,620	6%
Sub Architectural Services	541,310	11%
Sub Engineering Services	541,300	13%
Sub Residential Remodelers	236,118	21%
Sub Offices of Lawyers	541,110	1%
<b>Construction Projects:</b>		
TBD		
Residential Remodelers	236,118	10%
Electrical Contractor	238,220	5%
Mechanical Contractor	238,220	20%
Remediation Services	562,910	4%
All Other Specialty Trade Contractors (Invoiced)	238,990	9%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,775,700	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	28.00%
Sub Environmental Consulting Services	541,620	2.00%
Sub Survey & Mapping (except Geophysical)	541,370	5.00%
Sub Engineering Services	541,300	88.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	34.00%
Site Preparation Contractors	238,910	45.00%
Landscaping Services	561,720	45.00%
Electrical	238,210	16.00%

Project	PA&S Amount
Reconstruct Existing Aircraft Parking Ramps Adjacent to Hangar 2 Ph 2	\$1,029,300
Land Acquisition for Runway 2 Ph 2 (Camford Property)	\$150,000
	\$1,179,300

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,029,300	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	28.00%
Sub Environmental Consulting Services	541,620	2.00%
Sub Survey & Mapping (except Geophysical)	541,370	5.00%
Sub Engineering Services	541,300	88.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	34.00%
Site Preparation Contractors	238,910	45.00%
Landscaping Services	561,720	45.00%
Electrical	238,210	16.00%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,029,300	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	25.00%
Sub Environmental Consulting Services	541,620	2.00%
Sub Survey & Mapping (except Geophysical)	541,370	1.00%
Sub Engineering Services	541,300	2.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	34.00%
Site Preparation Contractors	238,910	45.00%
Landscaping Services	561,720	45.00%
Electrical	238,210	16.00%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,293,500	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	23.00%
Sub Environmental Consulting Services	541,620	3.00%
Sub Survey & Mapping (except Geophysical)	541,370	6.00%
Sub Engineering Services	541,300	84.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	29.00%
Site Preparation Contractors	238,910	50.00%
Landscaping Services	561,720	5.00%
Electrical	238,210	16.00%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$585,000	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	23.00%
Sub Environmental Consulting Services	541,620	3.00%
Sub Survey & Mapping (except Geophysical)	541,370	3.00%
Sub Engineering Services	541,300	84.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	29.00%
Site Preparation Contractors	238,910	50.00%
Landscaping Services	561,720	5.00%
Electrical	238,210	16.00%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,029,300	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	25.00%
Sub Environmental Consulting Services	541,620	2.00%
Sub Survey & Mapping (except Geophysical)	541,370	1.00%
Sub Engineering Services	541,300	2.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	34.00%
Site Preparation Contractors	238,910	45.00%
Landscaping Services	561,720	5.00%
Electrical	238,210	16.00%

Part 150 Acquisition and Sound Insulation	PA&S Amount	
<b>Prime</b>	\$1,029,300	
<b>Engineering Projects:</b>		
ASG		
Testing Laboratories	541,380	25.00%
Sub Environmental Consulting Services	541,620	2.00%
Sub Survey & Mapping (except Geophysical)	541,370	1.00%
Sub Engineering Services	541,300	2.00%
<b>Construction Projects:</b>		
TBD		
Highway, Street & Bridge Construction	237,310	34.00%
Site Preparation Contractors	238,910	45.00%
Landscaping Services	561,720	5.00%
Electrical	238,210	16.00%



Attachment 8

**DISADVANTAGE BUSINESS ENTERPRISE**  
**(DBE) GOOD FAITH EFFORT**  
*to be completed by General Contractor*

*(The Bidder shall prepare additional copies of this information form in the quantity necessary to comply with the bidding requirements)*

I, \_\_\_\_\_,  
Name Title

of \_\_\_\_\_  
Contractor Name

certify that on \_\_\_\_\_, I contacted the below listed DBE requesting a bid for  
Date of Contact

Project \_\_\_\_\_ as a DBE for the provision of

{ } Goods & Services or { } Labor to accomplish \_\_\_\_\_  
Subcontract Work Offered to this DBE Company

\_\_\_\_\_  
Name of Prospective Sub-Contractor

\_\_\_\_\_  
Address City and State Telephone #

Contact was made by { } Telephone { } In Person

Said sub-contractor was unavailable for work on this project or unable to prepare a bid for the following reason(s):  
(check appropriate answer):

{ } DBE Firm Declined Job

{ } DBE Firm offered to do a job at the price of \$ \_\_\_\_\_, which was not acceptable

because: \_\_\_\_\_

{ } Other \_\_\_\_\_

The above information is accurate and complete, to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

\_\_\_\_\_  
Signature of Authorized Representative, General Contractor Date

**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

*\*Percentage is to be used only in negotiated procurements*

*\*\*For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

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

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

\_\_\_\_\_  
Signature of DBE's Authorized Representative

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

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

**Submit this page for each DBE subcontractor.**

**FEDERAL AVIATION ADMINISTRATION**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid Specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this Contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this Contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By: \_\_\_\_\_

Title

Signature \_\_\_\_\_

### Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of Transportation

## DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

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

DBE Name:

Authorized DBE Representative (Name and Title):

Total Subcontract/Purchase Order Amount:

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 9**

**DBE Certification Application Form**

<https://www.transportation.gov/DBEFORMS>

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

Attention: Intake Specialist

**Attachment 10**  
**State UCP Agreement**

**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 Regional Transit 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 Transit Authority (“VTA”)  
MetroWest Regional Transit Authority (“MWRTA”)  
Merrimack Valley Regional Transit Authority (“MVRTA”)  
Montachusett Regional Transit Authority (“MRTA”)  
Nantucket Regional Transit Authority (“NRTA”)  
Pioneer Valley Regional Transit Authority (“PVRTA”)  
Southeastern Regional Transit Authority (“SRTA”)  
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 “Participants”)

**AND THE**

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

Whereas, in accordance with the provisions of 49 C.F.R. § 26 *et seq.*, any entity to which the United States Department of Transportation (“USDOT”) provides financial assistance, whether directly or through another recipient, through the programs of the Federal Aviation Administration, Federal Highway Administration, or the Federal Transit Administration or which applied for such assistance (“Recipients”) and operates Disadvantaged Business Enterprise (“DBE”) programs are required to participate in a statewide Unified Certification Program (“MassUCP”); and

Whereas, the MassUCP must provide “One Stop Shopping” to all DBE applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all Recipients in the Commonwealth;

Whereas, the SDO, as the successor entity to the assets, liabilities, and obligations of the State Office of Minority and Women Business Assistance as provided in St. 2010, c. 56, § 6, shall provide such One Stop Shopping to any qualified applicant seeking DBE certification other than certification as a DBE airport concessionaire;

Now therefore, under the terms set forth below, the Participants and OSD/SDO agree that the SDO shall be the designated and responsible entity for the administration, management, and operation of the MassUCP; provided, however, that MassPort shall make its own determinations regarding airport concession DBE (“ACDBE”) certification as authorized pursuant to 49 C.F.R. § 23, *et seq.*

#### A. Definitions

“Disadvantaged Business Enterprise” (“DBE”) means a for-profit small business concern, at least 51% owned by one or more individuals who are socially and economically disadvantaged, or, in the case of a corporation, at least 51% of the stock of which is owned by one or more such individuals; and the management and daily business operations of such business are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Participant” means the following entities and any other entities that may be required to participate in the future: Massachusetts Department of Transportation, Massachusetts Bay Transportation Authority, Massachusetts Port Authority, Barnstable Municipal Airport, Berkshire Regional Transit Authority, Brockton Area Transit Authority, Cape Ann Transportation Authority, Cape Cod Regional Transit Authority, Franklin Regional Transit Authority, Greater Attleboro-Taunton Regional Transit Authority, Lowell Regional Transit Authority, Martha’s Vineyard Transit Authority, Martha’s Vineyard Airport, Merrimack Valley Regional Transit Authority, Montachusett Regional Transit Authority, Nantucket Regional Transit Authority, Nantucket Memorial Airport, and New Bedford Regional Airport, Pioneer Valley Regional Transit Authority, Southeastern Regional Transit Authority, and Worcester Regional Transit Authority.

“Recipient” means any entity, public or private, to which USDOT financial assistance is extended through programs of the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and/or Federal Transit Administration (FTA), whether directly, as the primary recipient, or indirectly as a sub-recipient through a primary recipient, or an entity that has applied for such assistance.

“Unified Certification Program”: The Unified Certification Program makes all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the USDOT DBE Program.

**B. Scope of Services to be Provided by SDO**

1. SDO agrees to perform all DBE certification activities in accordance with the criteria and procedures established by the USDOT in 49 C.F.R. § 26, *et seq.*, unless specifically exempt. All obligations of Recipients with respect to certification and nondiscrimination must be carried out by the SDO, and Recipients may only use DBE firms that obtain SDO Certification and comply with all applicable state and federal certification and nondiscrimination requirements. MassPort similarly agrees to comply with all applicable state and federal regulations regarding the DBE certification for airport concessions and MassUCP participation.
2. The parties agree that a Unified Certification Program Plan (“UCP Plan”) has been established consistent with all applicable provisions of 49 C.F.R. § 26, *et seq.*, and with the provisions of this Memorandum of Understanding. The SDO agrees to implement the UCP Plan. The parties further agree that the UCP Plan may only be modified by written agreement of the parties during the implementation period and upon USDOT approval.
3. SDO agrees that all staff participating in DBE certification activities will be thoroughly knowledgeable of the criteria for DBE certification contained in all statutes and regulations, including, but not limited to 49 C.F.R. § 26 subparts D and E, and the UCP Plan and of any distinction between any federal or state regulations and that all standards and procedures of the federal regulation will be met.
4. The SDO shall make DBE certification decisions on behalf of all USDOT Participants and Recipients and such decisions shall be binding on all Participants and Recipients within the Commonwealth.
5. The SDO shall maintain a DBE directory that includes the telephone number and address of each certified DBE and the types of work the firm is certified to perform as a DBE. The directory shall be available electronically and in print upon request. The electronic directory shall be updated at least weekly. 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.
6. The SDO shall cooperate fully with oversight, review, and monitoring activities of MassDOT and FHWA, FTA and FAA and their respective administrations. The SDO shall implement FHWA, FTA and FAA directives and guidance concerning certification matters.

**C. Participant Responsibility for Payment for SDO Services:**

1. The Participants 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 shall, through a separate

funding allocation agreement, ensure such pro rata financial support as the parties agree is necessary to cover the costs incurred. Such funding agreement(s) shall obligate the SDO, after review by and approval from OSD, to provide budget and accounting information that document the activities of the SDO and shall be signed prior to the execution of the Memorandum of Understanding (“MOU”).

**D. Dispute Resolution**

1. A Participant and/or Recipient that disagrees with a SDO certification decision may file a written complaint with and request a hearing from the SDO alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible, or in the case of a denial, the reasons why the firm should have been found eligible. Said hearing shall be conducted by OSD, or such other appropriate designated entity, in accordance with the requirements of 49 C.F.R. § 26.87(e), M.G.L. c. 30A, and 801 C.M.R. § 1.00 *et seq.*

2. A firm applying for either state or federal certification shall have the right to appeal a decision of the SDO with respect to its certification status in accordance with this MOU and the UCP Plan.

**E. Confidentiality of Information & Reciprocity**

1. The SDO shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information consistent with Federal, State and local law. Notwithstanding any contrary interpretation of State law, the MassUCP shall be prohibited from releasing personal financial information submitted in response to the personal net worth requirements of 49 C.F.R. § 26.67(a)(2).

**F. Other States' Programs**

1. The SDO shall not process an application for a firm having its principal place of business outside 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.

2. The SDO shall provide information and documents on a timely basis upon the request of other State Uniform Certification Programs that are considering a firm's eligibility.

3. The SDO may enter into reciprocity discussions with other State Uniform Certification Programs, but must have the written agreement of the signatories to this MOU prior to entering into a reciprocity agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement

This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Jeffrey B. Mullan, Secretary/CEO

Approved as to form:

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Monica E. Conyngham, General Counsel