
Norfolk Airport Authority
Norfolk International Airport



NORFOLK INTERNATIONAL AIRPORT

Disadvantaged Business Enterprise Program

October 2023

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UNITED STATES DEPARTMENT OF TRANSPORTATION

DBE PROGRAM – 49 CFR PART 26

Norfolk Airport Authority
for the **Norfolk International Airport**
Norfolk VA

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Norfolk Airport Authority (hereafter ‘the Airport Authority’) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. The Airport Authority has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, the Airport Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Airport Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts. It is also the policy:

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

Ashley Sumner, Project Manager, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351 asumner@norfolkairport.com has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Project Manager 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 Authority in their financial assistance agreements with the US Department of Transportation.

The Airport Authority has disseminated this policy statement to its board members and all of the components of the organization. The Airport Authority will distribute this statement to DBE and non-DBE business communities that perform work for the Airport on USDOT-assisted contracts in the following manner:

1. *This Policy statement will be prepared as a handout, and made available at pre-bid conferences, and/or outreach meetings conducted by the Airport Authority.*
2. *The policy statement will be posted to the Airport Authority’s website.*



President and CEO, Mark Perryman

November 10, 2023

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Airport Authority is a recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Airport Authority will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to USDOT: 26.11(b)

The Airport Authority will report DBE participation to USDOT as follows:

The Airport will submit annually on December 1 the *Uniform Report of DBE Awards or Commitments and Payments*, as modified for use by FAA recipients, via FAA Civil Rights Connect (<https://faa.civilrightsconnect.com/>).

Bidders List: 26.11(c)

The Airport Authority will create and maintain a bidders' list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

The Airport Authority will collect this information in the following ways:

- a. *Include a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.*
- b. *Include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report the approved information directly to the DBELO for inclusion in the bidder's list.*
- c. *Request the above information from all potential bidders who contact the Airport seeking bid information, and/or who attend pre-bid meetings, conferences, etc., at the Airport.*
- d. *The Airport Authority may also consider the use of the Bidders List Data Collection form, as shown in Attachment 9.*

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The Norfolk Airport Authority (hereafter 'the Airport Authority') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Airport Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The Airport Authority's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 Authority of its failure to carry out its approved program, the Department may impose sanction 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.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

The Airport Authority will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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 USDOT 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-responsive.*

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Airport Authority is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Airport Authority is not eligible to receive DOT financial assistance unless DOT has approved its DBE program, and the Airport Authority is in compliance with it and this part. The Airport Authority will continue to carry out the DBE program until all funds from DOT financial assistance have been expended. The Airport Authority does not have to submit regular updates of the program, as long as it remains in compliance. However, the Airport Authority will submit significant changes in the program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The Airport Authority has designated the following individual as its DBE Liaison Officer:

Ashley Sumner, Project Manager, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351 asumner@norfolkairport.com. In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport Authority comply with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the President and CEO concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO, along with his staff, will administer the program. The duties and responsibilities include the following:

1. *Gathers and reports statistical data and other information as required by USDOT.*
2. *Reviews third party contracts and purchase requisitions for compliance with this program.*
3. *Works with all departments to set overall triennial 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 attainment and identifies ways to improve progress.*
6. *Analyzes the Airport Authority's progress toward attainment and identifies ways to improve progress.*
7. *Participates in pre-bid meetings.*
8. *Advises the Airport Authority on DBE matters and achievement.*
9. *Chairs the DBE Advisory Committee (when formed).*
10. *Determines compliance of bidders/offerors with good faith efforts in bid submittals.*
11. *Plans and participates in DBE training seminars.*
12. *Provides outreach to DBEs and community organizations to advise them of opportunities.*

Section 26.27 DBE Financial Institutions

It is the policy of the Airport Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. The Airport Authority has not identified any financial institutions owned and controlled by socially and economically disadvantaged individuals. The Airport Authority will investigate the availability of financial institutions owned and controlled by socially and economically disadvantaged annually. One source is the FDIC Minority Depository Institutions List www.fdic.gov.

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR 26.29, the Airport Authority has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment made to the prime contractor.

The Airport Authority ensures prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Airport Authority has selected the following method to comply with this requirement:

The Airport Authority 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 seven (7) days after the Airport Authority's payment to the prime contractor.

To implement this measure the Airport Authority will include the following clause from the FAA Advisory Circular 150-5370-10 (latest version) in each DOT-assisted prime contract.

From the total of the amount determined to be payable on a partial payment, an amount not to exceed ten percent of such total amount will be deducted and retained by the Airport Authority for protection of the Airport Authority's interests. Unless otherwise instructed by the Airport Authority, the amount retained by the Airport Authority 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 Airport Authority in accordance with Section 50-14 of the above referenced Advisory Circular. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Airport Authority 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 of the above referenced Advisory Circular.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than seven (7) days after the Contractor has received a partial payment. Contractor must provide the Airport Authority evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within seven (7) 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 Airport Authority. When the Airport Authority 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 Airport Authority'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 Airport Authority may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The Airport Authority uses the Virginia Unified Certification Program (VA UCP) DBE directory, maintained by the Virginia Department of Small Business and Supplier Diversity (DSBSD). The

directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The Airport Authority will refer potential bidders to the SBSB directory that is available online. The link for the directory can be found in Attachment 2 to this program.

Section 26.33 Overconcentration

The Airport Authority has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Airport Authority has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

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

Monitoring Payments to DBEs and Non-DBEs

The Airport Authority will provide ongoing monitoring of prime contractor payments to subcontractors over the course of any covered contract. The Airport Authority will require prime contractors to report documentation of payments to subcontractors monthly. The DBELO will review and verify that payments have been made and retainage has been returned to subcontractors in accordance to section 26.29.

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

The Airport Authority uses a number of DBE forms, which can be found in Attachment 10, to collect DBE information for initial project setup and for ongoing monitoring of DBE participation:

- DBE Project Compliance Review Checklist
- Listing of DBE Subcontractors
- DBE Monthly Report
- DBE Commercially Useful Function Report

The DBELO or the Airport Authority's representative will conduct onsite compliance reviews of FAA-funded projects. The DBELO will review all DBE subcontracts and payments. The DBELO will also evaluate any DBE firms working on the project during the date of the visit. The DBELO will conduct a commercially useful function (CUF) review at least once during the project for all DBEs. The DBELO will also review monthly progress reports submitted by prime contractors to determine if they are on track to meet the DBE goal. Written certification will be documented by the DBELO on the DBE Project Compliance Review Checklist form.

Prompt Payment Dispute Resolution

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

A meeting will be scheduled with the prime contractor, subcontractor, the DBELO, and other appropriate Airport Authority representative(s). Any meeting for the purpose of dispute resolution will include Airport Authority representative(s) authorized to bind each interested party, including representative(s) with authorization to take enforcement action.

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

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

If the prime contractor has not paid subcontractors in accordance with 26.29, the Airport Authority will not reimburse the prime contractor for work performed by subcontractors until the prime contractor is in compliance with 26.29.

Prompt Payment Complaints

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

1. The affected subcontractor shall file a complaint with the prime contractor directly regarding payment.
2. If filing a complaint with the prime contractor does not result in timely and meaningful action by the prime contractor to resolve the prompt payment dispute, the affected subcontractor may contact the Airport Authority's DBELO.

3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport Authority to resolve prompt payment disputes, the affected subcontractor may contact the FAA Office of Civil Rights.

Enforcement Actions for Noncompliance of Participants

The Airport Authority will provide appropriate means to enforce the requirements of §26.29. These means may include:

- Assessing liquidated damages, in accordance with the contract, against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advising 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
- Paying subcontractors directly and deducting this amount from the retainage owed to the prime contractor
- Issuing a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays, for the purposes of calculating liquidated damages, if milestones are not met.

The Airport Authority will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The Airport Authority will review contracting records and will engage in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring will be performed by the DBELO with assistance from the resident project representative. The contracting records will be reviewed by the DBELO. The Airport Authority will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

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

This element has been submitted to the FAA. The program element is included as Attachment 8.

The Airport Authority will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The Airport Authority will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Airport Authority will submit its Overall Three-year DBE Goal to FAA by August 1st as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Small Hub Primary	All Regions	August 1, 2020(2021/2022/2023)	August 1, 2023 (2024/2025/2026)

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

26.45 (g)(1) In establishing the overall goal, the Airport Authority will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport Authority’s efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the Airport Authority’s goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the

consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

In addition, the Airport Authority will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA Department of Civil Rights, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the Airport Authority and DOT/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 1st deadline.

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should 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 your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent

The Airport Authority understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for

calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

Section 26.47 Goal Setting and Accountability

The Airport Authority will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the awards and commitments shown on the Airport Authority’s Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, the Airport Authority will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. 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. The Airport Authority will retain a copy of the analysis and corrective actions in its records for a minimum of three years. The Airport Authority will make it available to the FAA upon request.

Section 26.49 Transit Vehicle Manufacturers Goals

N/A

Section 26.51 Breakout of Estimated Race-Neutral & Race-Conscious Participation

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

Contract Goals

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

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

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

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder is to make good faith efforts to meet the DBE goal. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

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

The Airport Authority will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before it commits to the performance of the contract by the bidder.

Information to be submitted (26.53(b))

The Airport Authority treats bidders' compliance with good faith efforts' requirements as a matter of responsiveness. This means that the information required for the bid is to be submitted at time of the bid opening.

Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information:

- 1. The names and addresses of DBE firms that will participate in the contract;*
- 2. A description of the work that each DBE will perform;*
- 3. The dollar amount of the participation of each DBE firm participating;*
- 4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*

5. *Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and*
6. *If the contract goal is not met, evidence of good faith efforts.*

This information will be collected using the forms found in Attachment 5.

Administrative reconsideration (26.53(d))

Within seven (7) days of being informed by the Airport Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official: **Mark Perryman, President and CEO, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351**. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the Airport Authority's administrative reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Airport Authority will send the bidder 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 US Department of Transportation.

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have 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 us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

Each prime contract will include a provision stating:

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

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

We 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 we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Norfolk Airport Authority, as owner of the Norfolk International Airport, to practice nondiscrimination based on race, color, sex, or national

origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder will be required to submit the following information:

- (1) The names and addresses of DBE firms that will participate in the contract;
- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4);
- (6) If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract 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.

If the 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, we will not count the firm's participation 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 Authority will refer all matters pertaining to certification to the Virginia Department of Small Business and Supplier Diversity or the Metropolitan Washington Airports Authority (MWAA) in accordance with the Virginia UCP program. The UCP program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in

USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP will 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:

Virginia Department of Small Business and Supplier Diversity
101 N. 14th Street, 11th Floor
Richmond, VA 23219
(804) 786-6585

<https://www.sbsd.virginia.gov/>

Metropolitan Washington Airports Authority
Equal Opportunity Programs Department
1 Aviation Circle
Washington, DC 20001
Phone: (703) 417-8625
<http://www.mwaa.com/business/departmentsupplier-diversity-dsd-2>

A link to the certification application forms and documentation requirements can be found in Attachment 6 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Airport Authority is a member of the Virginia Unified Certification Program (UCP) administered by the Virginia Department of Small Business and Supplier Diversity. The UCP will meet all of the requirements of this section. Virginia's UCP program uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT/FAA-assisted contracts. Under the Virginia UCP Program, only Virginia Department of Small Business and Supplier Diversity and the Metropolitan Washington Airport Authority will conduct DBE certifications. To be certified as a DBE, a firm must meet all certification eligibility standards. The Airport Authority will refer all certifications to either of these two agencies.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to [Recipient]

The Airport Authority understands that if it fails to comply with any requirement of this part, the Airport Authority may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts

until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 Information, Confidentiality, Cooperation

The Airport Authority will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Airport Authority will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

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 Authority, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If the Airport Authority violates this prohibition, the Airport Authority will be in noncompliance with this part.

ATTACHMENTS

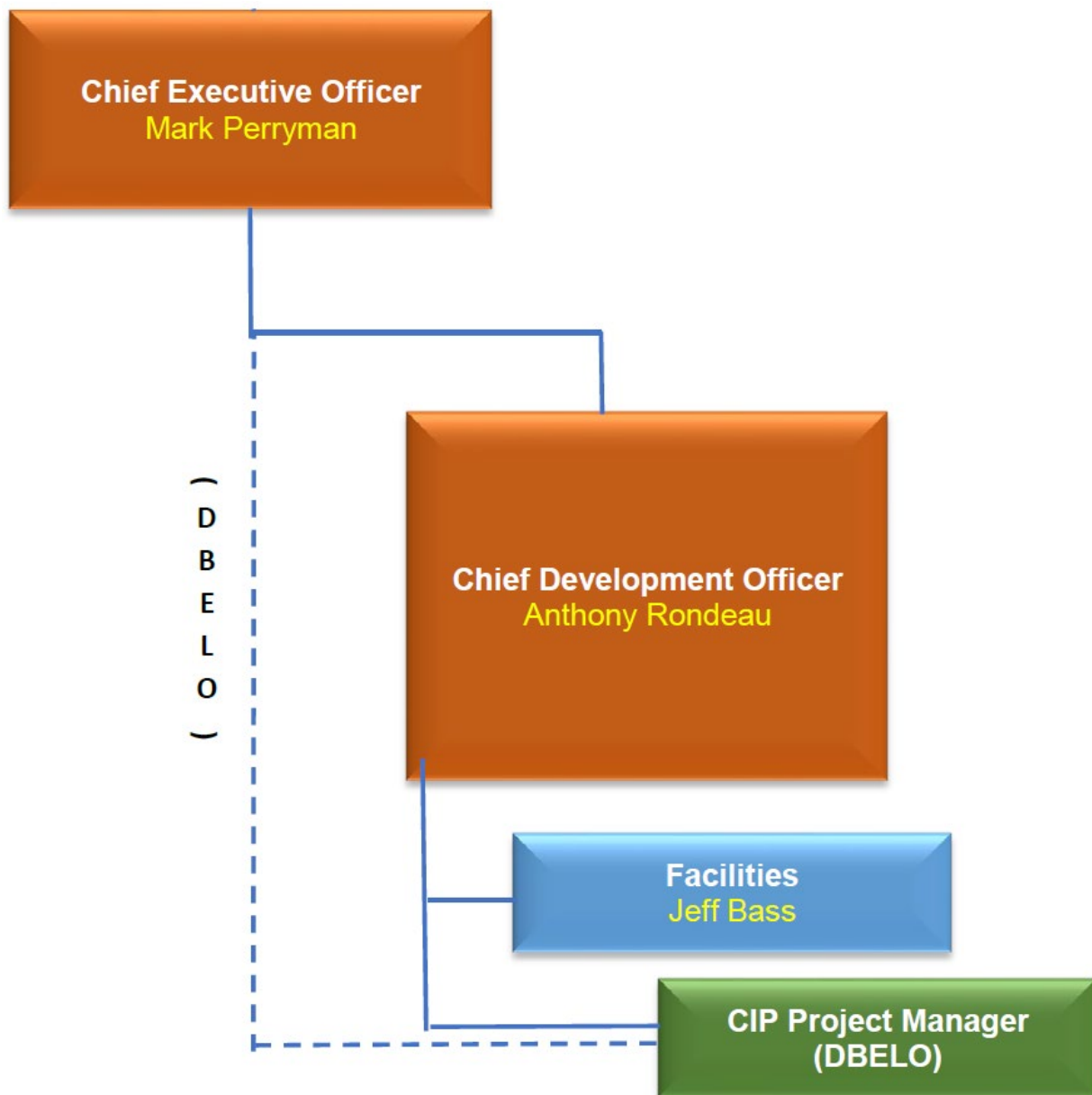
Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation; Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 6	Certification Application Forms
Attachment 7	Regulations: 49 CFR Part 26
Attachment 8	Fostering Small Business Participation
Attachment 9	Bidder's List Collection Form
Attachment 10	DBE Forms
Attachment 11	State UCP Agreement

Attachment 1

Organizational Chart

Norfolk Airport Authority

Organizational Chart



Attachment 2

DBE Directory

<https://www.sbsd.virginia.gov/>

Attachment 3

Monitoring and Enforcement
Mechanisms

Norfolk Airport Authority

1. All participants are hereby notified that pursuant to Title 49 Code of Federal Regulations, United States Department of Transportation, Part 26 and the Disadvantaged Business Enterprise Participation Program for the Norfolk Airport Authority ('the Airport Authority'), they must affirmatively ensure that, in any contract entered into with the Norfolk Airport Authority, DBEs will be afforded *equal* opportunity to participate in subcontracting activities. It is the policy of the Airport Authority to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is further the policy of the Airport Authority to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
2. All contracts between the Airport Authority and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the Airport Authority's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Under authority granted by Virginia law, the Airport Authority may impose liquidated damages, contract suspension, or even contract termination.
3. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the Airport Authority's DBE Liaison Officer.
4. Should a DBE firm not certified by the Virginia Unified Certification Program be proposed by a potential contractor as a part of his/her DBE plan efforts, the inclusion of said firm will not be considered a demonstration of making good faith efforts towards meeting the DBE goal.
5. In contracts with DBE contract goals, bids submitted which do not meet the DBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered non-responsive bids, and bidders will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Official (49 CFR 26.53). The bidder will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Official will make the determination on the sufficiency of the good faith efforts.
6. The Airport Authority reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsive and qualified bidder. A bid will not be considered responsive unless the bidder complies with Title 49 Code of the Federal Regulations, Part 26, and the Disadvantaged Business Enterprise Program of the Airport Authority.

7. The Airport Authority shall require contractors to make good faith efforts to replace a DBE subcontractor that is terminated, or fails to complete its work on the contract for any reason, with another DBE subcontractor. If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must notify the Airport Authority immediately. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the established contract goal. The Airport Authority shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBEs.

Additional information on the Airport Authority's Disadvantaged Business Enterprise Program can be obtained from the DBE Liaison Officer **Ashley Sumner, Project Manager, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351.**

8. The Airport Authority will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBE's. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
 - a. *Review bid package documentation thoroughly, obtaining clarification, if necessary.*
 - b. *Review monthly reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
 - c. *Monitor progress of payments to DBEs through monthly reports from prime contractors.*
 - d. *Monitor progress of DBEs work through on-site visits and communication with DBEs. The Airport will implement a monitoring and enforcement mechanism that will include written certification that the Airport has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during routine project site visits by the Airport's representative. In addition to the engineering consultant, the DBELO will sign-off on the written certifications.*
9. The Airport Authority will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
10. The Airport Authority also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. In addition, the Airport Authority may apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.
11. In its reports of DBE participation to the USDOT, the Airport Authority will show both commitments and attainments, as required by the USDOT reporting form.

Attachment 7 contains a link to 49 CFR Part 26, which describes federal regulations, provisions, and contract remedies available to the Airport Authority in the event of non-compliance by a participant.

Attachment 4

Overall Goal Calculation; Breakout of Estimated Race-Neutral &
Race-Conscious Participation

Attachment 5

Form 1 & 2 for Demonstration
of Good Faith Efforts

NORFOLK AIRPORT AUTHORITY

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

_____ The bidder is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's firm: _____

State Registration No. _____

By _____
(Signature) Title

NORFOLK AIRPORT AUTHORITY

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:

Description of Work	NAICS	Dollar Amount / %*	Dealer/Manufacturer**

**Percentage is to be used only in negotiated procurements, including design-build contracts*

***For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

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, any and all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor.

Attachment 6

Certification Application Forms

<https://www.sbsd.virginia.gov/>

Attachment 7

Regulations: 49 CFR Part 26

www.ecfr.gov

Attachment 8

Fostering Small Business
Participation (26.39)

Norfolk Airport Authority

Section 26: 39- Fostering Small Business Participation

Contents:

- I. Purpose and Objective of this Element**
- II. Small Business Participation Plan- Strategy**
 - 1. Race-neutral Subcontracting Goal
 - 2. Reduction in size of Prime Contracts
 - 3. Consideration of Unbundling
- III. Definitions for this Element**
- IV. Verification Standards and Procedures**
- V. Supportive Services**
- VI. Implementation Plan and Time-Table**
- VII. Principal Responsible Person-DBELO**

Section 26: 39- Fostering Small Business Participation

A. Purpose and Objective of this Element

This element, part 26:39, included as an amendment to the Norfolk Airport Authority DBE Program Plan, is herein referenced as the Small Business Participation Plan (SBPP). Part 26.39 calls for the inclusion of an element to “*structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.*” The Norfolk Airport Authority hereby sets forth the plan to implement these requirements. The Airport Authority’s SBPP is also regarded as a substantial effort in helping fulfill the overall intent of part 26.51, i.e. to meet the “*maximum feasible portion*” of its overall goal by using race-neutral means to obtain DBE participation. Therefore, implementation of the Airport Authority’s SBPP will be based on the standard of *business size*, without regard to race or gender of the business owner.

This element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors.

Further, the Airport Authority perceives the objectives of this section to be consistent with its DBE Program Policy Statement, which states in part:

*“- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To help remove barriers to the participation of DBEs in DOT assisted contracts...”*

Our Policy Statement and this small business element (SBPP) are consistent with the Airport Authority’s long history of creating and implementing economic development strategies to support and encourage business growth at all levels.

B. SBPP Strategy

The Airport Authority intends to carry out the objectives of this part by employing the following strategies and supporting activities:

1. Establishment of a Race-Neutral “Subcontracting Goal”

The Airport Authority proposes that, where feasible, on certain prime contracts that do not have a DBE contract goal (race-conscious), that Prime Contractors be required to provide subcontracting opportunities to qualified Small Business Concerns, (SBC’s) as herein defined, *without* regards to race or gender of the business owner. Again, verified “business size” and subcontracting opportunities will be the basis of the Subcontracting Goal. The opportunities must be of a size that SBC’s, including some which may happen to also be DBE’s, can reasonably perform. The Airport Authority staff will assist the potential primes by reviewing the project (s), in advance of the solicitation, and

suggesting potential subcontracting opportunities in the solicitation documents, thereby establishing a reasonable Subcontracting Goal.

2. Reduction in “size” of Prime Contracts.

Each program year, the Airport Authority Staff will review upcoming projects and determine, where feasible, that some larger projects be “broken up” i.e. reduced in scope and size, so that smaller “prime” contracts might be let of a reasonable size so that Small Business Concerns (SBC’s) may reasonably bid as primes. This may increase the number of solicitations, but again, some of the smaller businesses might also be DBE’s and therefore add to the Airport Authority’s bidders list. The Airport Authority will consider developing a “Tier” of Contracts Size, based on estimated dollar value, and recommend which “Tier” should or could be available for SBC (Small Business Concern) as a prime contract.

3. Consideration of “Unbundling” of Large Contracts

The second strategy noted above, proposed by the Airport Authority, essentially is “unbundling” to a large degree and addresses the required consideration of this approach.

C. Definitions for this Element

1. Small Business

For purposes of this program element, which is part of our approved DBE program, “small business” shall have the *same* definition as “small business concerns” contained in 49 CFR, 26.5, which states:

“Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).”

For additional clarification, it is useful to include here some excerpts from the SBA regulations, 13 CFR, 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor....” and,

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

2. Disadvantaged Business Enterprise

Disadvantaged Business Enterprise or **DBE** means a for-profit small business concern— (defined by SBA rules, above), and that is,

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

It is understood that in the implementation of this element, all of the “Small Business Concerns” may not necessarily be DBE firms. However, small businesses which are also owned and controlled by individuals who meet the DBE standard will be encouraged to seek DBE certification. Only DBE certified firms who participate as small business concerns pursuant to this element, will be counted towards DBE race-neutral participation on FAA-assisted contracts in this program.

D. Verification Standards and Procedures

For purposes of this small business element, The Airport Authority will require the following verification and/or certification:

1. **Virginia Unified Certification Program (VA UCP) DBE Certification** – DBE Certification by a certifying member of the VA UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a certifying member of the VA UCP. It should be noted that the Airport Authority is a non-certifying member of the VA UCP and relies on certification decisions of the Virginia Department of Minority Business Enterprise (VDSBSD). The VDSBSD certification staff applies the standards and procedures for DBE certification applicants contained in Subpart D-Certification Standards, and Subpart E-Certification Procedures , of 49 CFR (26.61 –

26.91). The Airport Authority will also rely on the small business verifications of the VDMBE.

2. **A non-DBE certified potential small business concern** may have to complete a simplified application and/or provide the following information at time of response to a solicitation or a bid submittal, as evidence of the small business status:
 - i. Evidence of SBA 8(a) or SBD Certification (as described in 13 CFR Parts 121 and 124)
 - ii. A copy of the business tax returns for the most recent three year period indicating the gross receipts; and/or
 - iii. A notarized statement from a Certified Public Accountant indicating the firms average gross receipts for the past three years.

For additional clarification, it is useful to include here an excerpt from the SBA regulations, 13 CFR, 124.1:

***§ 124.1 What is the purpose of the 8(a) Business Development program?** Sections 8(a) and 7(j) of the Small Business Act authorize a Minority Small Business and Capital Ownership Development program (designated the 8(a) Business Development or "8(a) BD" program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.*

3. **Use of Personal Net Worth:** The Airport Authority, in addition to the standards for small business concerns described above, plans to utilize the current Personal Net Worth standards of the DBE program (26.67), presently at \$1.32 million dollars.

E. Supportive Services

The Airport Authority is a non-certifying member of the Virginia UCP, i.e. does not conduct DBE certifications, but relies on certifications of the VDSBSD. The Airport Authority also does not provide direct supportive services and/or business development programs to DBEs or small businesses. However, the Airport Authority does coordinate and make referrals to other providers of these and similar services, such as the VDOT Business Opportunity Workforce Development (BOWD) programs, the VDSBSD and the Hampton Roads Small Business Development Center. These services, as relevant, will also be referred to verified small business concerns. These services may include:

1. The distribution and dissemination of information about the new Small Business Participation program, as well as bid information to certified DBEs and by extension, to potential small business concerns.
2. Conducting outreach efforts, i.e., information sessions, open houses, etc., as part of recruitment efforts for both qualified DBE firms and verifiable small business concerns, without regard to race or gender.
3. Publicizing information to the small business community with regard to current, on-going and future opportunities at the Airport.

F. Implementation Plan and Time-Table -Airport Authority Small Business Participation Plan (SBPP)

The Airport Authority proposes to have its SBPP fully implemented within 120 days (four months) of the FAA final approval of the Plan. The Airport Authority will utilize the time frame to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

1. Review all upcoming projects to try and pre-determine which, if any, will be conducive for application of either of the two selected SBPP strategies, described in Section B, above.
2. Review necessary revisions and modifications to solicitation language etc., prior to implementation.
3. Coordinate properly with the Virginia UCP to initiate discussions as to whether any changes/modifications are implicated in the UCP stakeholder agreement, due to verification of small business concerns.
4. Coordinate with other entities currently providing relevant supportive services and/or business development to consider preparation of special programs appropriate for the small business community to increase their competitive opportunities at the Airport.
5. The Airport Authority, during the pre-implementation period, “may” seek consultation with the representative small business community.

G. Assurances

To insure the successful implementation of the Small Business Participation Plan (SBPP), the Airport Authority, by way of review, accepts the following assurances:

1. *A detailed description of the small business program, its objectives, and how it is designed to operate.*
 - a. The details of the proposed SBPP are described in sections A through G, of this part.
2. *Assurance that the program is authorized under state law.*
 - a. The Airport Authority's SBPP will adhere to all applicable local and state laws and regulations.
3. *Assurance that certified DBEs that meet the size criteria established under the program are **presumptively** eligible to participate in the program;*
 - a. As stated in D. 4 of this section, certified DBE firms that meet the size criteria established under the program are presumptively eligible to participate in the small business program.
4. *Assurance that there **are no geographic preferences** or limitations imposed on any federally assisted procurement included in the program.*
 - a. The Airport Authority will assure that there will be no geographic preferences or limitations imposed on any federally assisted procurement included in the Airport Authority's DBE program.
5. *Assurance that there **are no limits** on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.*
 - a. The Airport Authority will assure that it will not limit the number of contracts awarded to firms that are participating in the small business program. The Airport Authority further assures that it will make a concerted effort to avoid creating barriers to the use of new, emerging, or untried businesses.
6. *Assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
 - a. The Airport Authority recognizes that, while some firms encountering its SBPP program may be small-business eligible, not all are certified as DBEs. If, in the verification process, such firms appear to be DBE-eligible as well, they will be referred to the state UCP and encouraged to become DBE-certified. The Airport Authority will also inform firms of additional potential business opportunities if they become certified as DBEs.

7. *Assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*
 - a. The assurance stated in item 4, above, is also applicable to specifically to the airport's SBPP program as well.

H. Principal Responsible Person

The principal responsible person for overseeing and implementing the Airport's SBPP, will be the currently designated Disadvantaged Business Enterprise Liaison Officer. The DBELO at Airport is **Ashley Sumner, Project Manager, Norfolk Airport Authority, 2200 Norview Ave, Norfolk VA 23518, 757-857-3351.**

ATTACHMENT 9
Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

Attachment 10

DBE Forms

Attachment 11

State UCP Agreement