

**Schenectady County, New York**

**Schenectady County Airport (SCH)**

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**FY 2020-2021-2022**

**[October 1, 2019 - September 30, 2022]**

**DEPARTMENT OF TRANSPORTATION**

**DBE PROGRAM – 49 CFR PART 26**

DOT published Title 49 of the Code of Federal Regulations (49 CFR) Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, which was formerly codified under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Five (5) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010, January 28, 2011 and November 3, 2014, which made additional revisions to the regulation. The current version of the regulations is available online in the Electronic Code of Federal Regulations:

<https://www.law.cornell.edu/cfr/text/49/part-26>

## **POLICY STATEMENT**

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

Schenectady County (herein referred to as 'the County'), owner of Schenectady County Airport (SCH), 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 County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

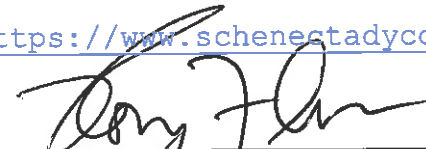
It is the policy of the County to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the County's policy to engage in the following actions on a continuing basis:

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

The County's Affirmative Action Manager has been delegated as the DBE Liaison Officer. In that capacity, Nikita Hardy 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 County in its financial assistance agreements with the Department of Transportation.

The County has disseminated this policy statement to County Officials, the Airport, 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 Schenectady County Airport's DOT-assisted contracts. The distribution was accomplished by placing the Program and Goals on the County website:

<https://www.schenectadycounty.com/>

  
Clerk Rory Fluman  
Rory Fluman, Schenectady County Manager

11/4/20  
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 County is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

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

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

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

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

The County 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 County will similarly report the required information about participating DBE firms. All reporting will be done through the FAA's official reporting system, or another format acceptable to the FAA, as instructed thereby.

### Bidders List

The County 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 Schenectady County Airport's DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s): data included in the bid proposals will be used to collect the information required for the bidder's list. A sample bidder's list can be found in Attachment 3 of this Program.

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

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

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

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

Nikita Hardy, *Affirmative Action Manager*  
County Office Building  
620 State Street, 2<sup>nd</sup> Floor  
Schenectady, New York 12305  
Tel: 518-388-4233, ext. 4171  
Fax: 518-388-4235  
Email: [Nikita.Hardy@schenectadycounty.com](mailto:Nikita.Hardy@schenectadycounty.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the County Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two, consisting of the Affirmative Action Manager and the consultant for Schenectady County Airport, 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 annuai goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Analyzes the County's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and achievement.
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 County 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.

At the present time, no minority-owned financial institutions have been located; however, the County will investigate on an annual basis.

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

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

In accordance with 49 CFR §26.29, the County 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 County.

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

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

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



**Clause from AC-150/5370-10, Standard Specifications for Construction of Airports  
(Date: 12/21/2018)**

**90-06 Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, Payment for Materials on Hand. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars. [ Retainage Option 3]  
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**Option 3:** The Owner may hold retainage from prime Contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime Contractors based on these acceptances, and require a contract clause obligating the prime Contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the Owner's payment to the prime Contractor. ~~If Option 3 is selected,~~ the percent withheld may range from 0% to 10% but in no case may it exceed 10%. When establishing a suitable retainage value that protects the Owner's interests, give consideration that the performance and payment bonds also provide similar protection of Owner interests. Owner may elect to incrementally release retainage if owner is satisfied its interest with completion of the project are protected in an adequate manner. ~~If Option 3 is selected, insert the following clause and specify a suitable value where indicated:~~

a. From the total of the amount determined to be payable on a partial payment, 10% percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

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It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment*.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

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In some areas, release of liens prior to paying the full amount to the prime Contractor may void the contract. In those areas, revise the previous paragraph as required to meet all state and local regulations.

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## **Section 26.31      Directory**

The County is a *non-certifying* member of the New York State Unified Certification Program ('NYSUCP' or 'UCP'). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.



**Section 26.33 Over-concentration**

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

**Section 26.35 Business Development Programs**

The County has not established a Business Development Program.

**Section 26.37 Monitoring Responsibilities**

The County 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 sets forth these mechanisms in the County's DBE program.

The County 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 County undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Each time the prime contractor requests payment from the Recipient, the prime contractor must provide proof that payment was made to the subcontractors. An example would be if a prime contractor requests payment in the month of July and then again in the month of August, they must include with their request in August proof that payment was made to all subcontractors from the July request.
- With each request, the prime contractors must provide the County with a summary of DBE participation

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

- The County proactively reviews contract payments to subcontractors including DBEs *not less than quarterly to ensure compliance*. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to County by the prime contractor.

### Prompt Payment Dispute Resolution

The County 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 held between the prime contractors and subcontractors, with the resident project representative and/or project manager present, as appropriate. The DBELO *will* be present at all meetings regarding dispute resolution and will serve as the authority authorized to *bind* each interested party, including the recipient representative(s), *and to take enforcement action*.

The County 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.

*Prime contracts will be required to provide the County with documentation authorizing that payments to subcontractors have been made within the time limit stated within their contract. Since the County is required to approve applications for payment, a record of amounts billed to date is available. It will also be noted, in the contract between the County and the Prime Contractor, that the Prime Contractor will not be reimbursed for work performed by the subcontractors unless and until the Prime Contractor assures the County that the subcontractors have been paid for the work they have performed.*

### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO (Schenectady County Affirmative Action Manager) to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the County to resolve prompt payment disputes, affected subcontractor may contact the responsible Federal Aviation Administration 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 County will provide appropriate means to enforce the requirements of §26.29. These means include:

- Withhold payment to the Prime Contractor until the provisions of the DBE Program are complied with;
- The County Manager, upon recommendation of the DBELO, may stop the work of the Prime Contractor and charge the Prime Contractor for the cost of the delay;
- Or in the alternative, terminate the contract with the Prime Contractor and replace the Prime Contractor with another contractor and charge the Prime Contractor with the costs of such replacement.

The County will enforce contractual rights in New York State Supreme Court, Schenectady County or United States District Court in the Northern District of New York.

#### **Monitoring Contracts and Work Sites**

The County reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the *DBELO and the Airport's consultant*. Contracting records are reviewed *DBELO and the Airport's consultant*. The County 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 County has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation.

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

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

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

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

The County 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 County will submit its Overall Three-year DBE Goal to the FAA by August 1<sup>st</sup> of the year in which the

goal is due, as required by the schedule established by and posted to the website of the FAA.

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/business\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/business_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the two-step process as specified in 49 CFR Part 26.45. If the County 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 County 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 County will use *New York State Unified Certification Program (NYSUCP) Certified Directory and Census Bureau Data* as a method to determine the base figure. The County understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The County 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 Schenectady County Airport's market.

In establishing the overall goal, the County 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 County to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the County is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process

in which the County 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 County will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the County's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

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 County's responses.

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

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

#### Prior Operating Administration Concurrence

The County understands that prior FAA concurrence with the overall goal is not required. However, if the FAA's review suggests that the overall goal has not been correctly calculated or that the method employed by the County for calculating goals is inadequate, the FAA may, after consulting with the County, adjust the overall goal or require that the goal be adjusted by the County. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.



**Section 26.47 Failure to meet overall goals**

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

The County understands that to be considered 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 County also understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;

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

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

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

The County 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 Federal share of a DOT-assisted contract*.



**Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals****Demonstration of good faith efforts (pre-award)**

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

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

The County 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:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the

information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration

Within seven (7) days of being informed by the County that it is not 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 one of the following reconsideration officials:

Rory Fluman, *Schenectady County Manager*  
*County Office Building*  
620 State Street, 2<sup>nd</sup> Floor  
Schenectady, New York 12305  
Tel: 518-388-4355  
Fax: 518-388-4590

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 so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

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

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's *bid* response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the County 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 County will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the County requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the contractor. The County shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

#### **Section 26.55      Counting DBE Participation**

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

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

## **SUBPART D – CERTIFICATION STANDARDS**

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

The County is a non-certifying member of the New York State Unified Certification Program (UCP). The New York State 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. Certifying New York State UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, contact any of the following:

<b>NYSDOT DBE Certification Program</b> <b>DBE Certification Unit</b> 50 Worf Road, 6 <sup>th</sup> Floor Albany, NY 12232 Rep: John Cisneros, <i>Supervisor</i> Tel: 518-417-6631 Fax: 518-457-1675 Email: DBECert@dot.ny.gov	<b>Metropolitan Transportation Authority (MTA)</b> <b>Department of Diversity and Civil Rights</b> 2 Broadway, 16 <sup>th</sup> Floor New York, NY 12232 Email: dcamacho@mtahq.org
<b>PANYNJ</b> <b>Office of Business Diversity and Civil Rights</b> 2 Montgomery Street, 2 <sup>nd</sup> Floor Jersey City, NJ 07302 Email: lperich@panynj.gov	Niagara Frontier Transportation Authority EEO/Diversity Development Department 181 Ellicott Street Buffalo, NY 14203 Email: Christine_Farrow@nfta.com

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

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The County is the member of a Unified Certification Program (UCP) administered by the state of New York. The UCP will meet all of the requirements of this

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

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

The County understands that if it fails to comply with any requirement of this part, the County may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA

program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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

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

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



### **ATTACHMENTS**

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

**ATTACHMENT 1**

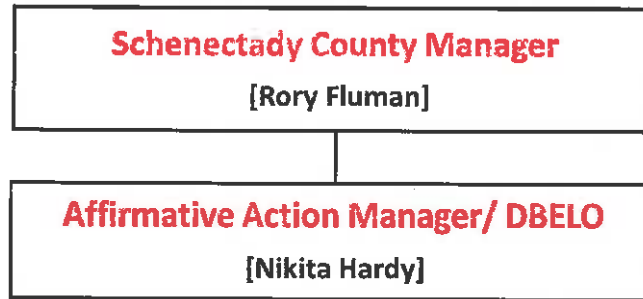
**Regulations: 49 CFR Part 26**

Link to website:

<https://www.law.cornell.edu/cfr/text/49/part-26>

## ATTACHMENT 2

### Organizational Chart



**ATTACHMENT 3****Bidder's List Collection Form***(SAMPLE BIDDERS LIST COLLECTION FORM)*

**[Reminder: 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.]**

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 4**

**New York State DBE Directory**

**Web Link:**

<https://nysucp.newnycontracts.com/>

**ATTACHMENT 5****Overall DBE Three-Year Goal Methodology****Name of Recipient:** Schenectady County Airport (SCH)**Goal Period:** FY 2020-2021-2022 – October 1, 2019 through September 30, 2022

<b>DOT-assisted contract amount:</b>	FY-2020 (Contract #1)	\$ 324,000
	FY-2020 (Contract #2)	\$ 135,000
	FY-2021 (Contract #1)	\$ 157,500
	FY-2021 (Contract #2)	\$ 315,000
	FY-2022 (Contract #1)	\$ 2,428,900
	FY-2022 (Contract #2)	\$ 270,000
	FY-2022 (Contract #3)	\$ 270,000
	<b>Total FY-2020</b>	<b>\$ 459,000</b>
	<b>Total FY-2021</b>	<b>\$ 472,500</b>
	<b>Total FY-2022</b>	<b>\$ 2,968,900</b>
	<b>Total FY-2020-2021-2022</b>	<b>\$ 3,900,400</b>

**Overall Three-Year Goal:** 4.4%, to be accomplished through RC**Total dollar amount to be expended on DBEs:** \$171,444**The Number and Type of Contracts that the airport anticipates awarding:****Contracts Fiscal Year 2020**

1. Taxiway E, F, K Rehabilitation (Design): \$324,000
2. Pavement Management Program: \$135,000

**Contracts Fiscal Year 2021**

1. Runway Off-Airport Obstruction Removal (Design): \$157,500
2. Taxiway A, B, D Rehabilitation (Design): \$315,000

**Contracts Fiscal Year 2022**

1. Taxiway E, F, K Rehabilitation (Construction CA/CI): \$2,428,900
2. Runway Off-Airport Obstruction Removal (Construction CA/CI): \$270,000
3. Taxiway 'A' South Rehabilitation (Design): \$270,000

**Market Area:** The Market Area for Schenectady County Airport was defined to include the following counties in the state of New York: Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, & Schoharie.



**Step 1. Actual relative availability of DBEs**

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

Method: Use DBE Directories

New York's NYSUCP Data from:

<https://nysucp.newnycontracts.com/>

and Census Bureau Data from:

<https://data.census.gov/cedsci/all?q=county%20business%20patterns%20by%20Legal%20Form%20of%20Organization&hidePreview=false&tid=CBP2017.CB1700CBP&t=Legal%20Form%20of%20Organization&vintage=2017>

**Unweighted Availability of DBE Firms:****FY 2020****Project: Taxiway E, F, K Rehabilitation (Design)**

**DBE Availability: 5.2%**

NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (Pavement & Electrical Designs)	7	220
541370	Survey	5	21
541380	Testing (Geotechnical)	2	27
<b>Total</b>	<b>-</b>	<b>14</b>	<b>268</b>

**Project: Pavement Management Program**

**DBE Availability: 4.1%**

NAICS	Type of Work	Total DBEs	Total All Firms
238990	Other Specialty (PCI Calculations)	5	171
541330	Engineering (Report Writing)	7	220
541370	Survey (Field Inspection)	5	21
<b>Total</b>	<b>-</b>	<b>17</b>	<b>412</b>

**FY 2021****Project: Runway Off-Airport Obstruction Removal (Design)**

**DBE Availability: 5.0%**

NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (Obstruction Design)	7	220
541370	Survey	5	21
<b>Total</b>	<b>-</b>	<b>12</b>	<b>241</b>

**Project: Taxiway A, B, D Rehabilitation (Design)****DBE Availability: 5.2%**

NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (Pavement & Electrical Designs)	7	220
541370	Survey	5	21
541380	Testing (Geotechnical)	2	27
<b>Total</b>	-	<b>14</b>	<b>268</b>

**FY 2022****Project: Taxiway E, F, K Rehabilitation (Construction CA/CI)****DBE Availability: 2.3%**

NAICS	Type of Work	Total DBEs	Total All Firms
237310	Heavy Construction (Pavement Milling, Crack Repair, Pavement)	11	55
238210	Electrical	2	270
238320	Painting (Pavement Markings)	0	122
541330	Engineering (CA/CI)	7	220
541370	Survey	5	21
561730	Landscape/Erosion Control (Silt Fence, Seeding & Mulching)	2	479
<b>Total</b>	-	<b>27</b>	<b>1,167</b>

**Project: Runway Off-Airport Obstruction Removal (Construction CA/CI)****DBE Availability: 3.7%**

NAICS	Type of Work	Total DBEs	Total All Firms
238910	Site Prep/Clearing Grub (Tree Removal)	4	194
541330	Engineering (CA/CI)	7	220
541370	Survey	5	21
<b>Total</b>	-	<b>16</b>	<b>435</b>

**Project: Taxiway 'A' South Rehabilitation (Design)****DBE Availability: 5.2%**

NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (Pavement & Electrical Designs)	7	220
541370	Survey	5	21
541380	Testing (Geotechnical)	2	27
<b>Total</b>	-	<b>14</b>	<b>268</b>

As previously mentioned, the data source or demonstrable evidence used to derive the numerator was:

New York's NYSUCP Data from:  
<https://nysucp.newnycontracts.com/>

The data source or demonstrable evidence used to derive the denominator was:

Census Bureau Data from:  
<https://data.census.gov/cedsci/all?q=county%20business%20patterns%20by%20Legal%20Form%20of%20Organization&hidePreview=false&tid=CBP2017.CB1700CBP&t=Legal%20Form%20of%20Organization&vintage=2017>

Dividing the total number of DBEs by the total number of All Firms gives a base DBE availability figure for each contract. The availability figures for all contracts were then combined and averaged to provide the basis for the three-year overall goal.

The base goal projections are as follows:

- Fiscal Year 2020
  - Contract #1: 5.2%
  - Contract #2: 4.1%
- Fiscal Year 2021
  - Contract #1: 5.0%
  - Contract #2: 5.2%
- Fiscal Year 2022
  - Contract #1: 2.3%
  - Contract #2: 3.7%
  - Contract #3: 5.2%

Average of weighted availability:  $(5.2\% + 4.1\% + 5.0\% + 5.2\% + 2.3\% + 3.7\% + 5.2\%) / 7 = 4.4\%$

Base of DBE Goal: 4.4%

We do not intend to weight the DBE goal. Rather, the Base of the DBE Goal of 4.4% will be used.

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

We do not believe adjustments are required at this time.

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

The County will meet the maximum feasible portion of the overall goal by using RC means of facilitating DBE participation.

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

**PUBLIC PARTICIPATION****Consultation:**

In establishing the overall goal, the County will provide for consultation and publication. This process will include 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 County’s efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and will be conducted before the goal methodology is submitted to the operating administration for review.

The nature of consultation to be engaged in (*e.g., face-to-face meeting, teleconference, video conference*) will be provided, as well as details pertaining to location, date, and time.

A notice of the proposed goal will be published on the County’s official website before the methodology is submitted to the Federal Aviation Administration.

If the proposed goal changes following review by FAA, the revised goal will be posted on County’s official website.

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

**ATTACHMENT 6****Demonstration of Good Faith Efforts - Forms 1 & 2****FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

☐ Bidder/offeror has met the DBE contract goal

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

☐ Bidder/offeror has not met the DBE contract goal

The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted *[or "will submit," if recipient made compliance a matter of responsibility]* documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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:

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 7****DBE Monitoring and Enforcement Mechanisms**

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

1. Breach of contract action, pursuant to the terms of the contract.

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

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

## **ATTACHMENT 8**

### **DBE Certification Application Form**

The DBE Certification Application Form can be found at:

<https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/305271/uniform-certification-application.pdf>

**ATTACHMENT 9**

**State's UCP Agreement**

Information regarding the NYSUCP can be found at:

<https://nysucp.newnycontracts.com/>

**ATTACHMENT 10****Small Business Element****1. Objective/Strategies**

(1) Prime contracts under [a stated amount (e.g., \$1 million)] will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.

(2) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(3) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

**2. Definition****1. Small Business:**

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

**2. Disadvantaged Business Enterprise:**

A for-profit small business (as defined by the Small Business Administration) —

- 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; and
- Has been certified as a DBE by the New York State Department of Transportation (NYSDOT) in accordance with 49 CFR 26.

For the purposes of the small business element of the County's DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

### **3. Verification**

The County will accept the following certifications for participation in the small business element of the County's DBE Program with applicable stipulations:

1. (New York State) DOT DBE Certification (through the Unified Certification Program) – DBE Certification by the (New York State) DOT 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 the (New York State) DOT.
2. (New York State) DOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the (New York State) DOT DBE Certification application after contract award.
3. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

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

- Information for this program will be collected similar to information collected for reporting DBE accomplishments.

### **5. Assurance**

1. The program is authorized under state law;
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. 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
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

