

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM GENERAL AVIATION AIRPORTS STATE OF NORTH DAKOTA

**Prepared by
NORTH DAKOTA AERONAUTICS COMMISSION
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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The North Dakota General Aviation NPIAS Airports (hereafter referred to as Airport) have established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airports have received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Airport has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of each Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also each Airports 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.

Each Airport has an airport manager or airport authority member that has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Airport in its financial assistance agreements with the Department of Transportation.

Each Airport has disseminated this policy statement to their governing board (*i.e. Airport Authority or City Commission*) and all of the components of their organization. This statement

has been distributed to DBE and non-DBE business communities that may perform work on the Airport's DOT-assisted contracts. The distribution was accomplished by including this policy statement in all bid documents.


Adam Dillin
Airport Planner

7/13/2022
Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

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

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

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

Bidders List

The Airport will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on the Airport'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):

Both successful and unsuccessful bidders will be queried either through the pre-qualification process, the request for sublet approval process, or by survey to determine the following: the age of the firm and the annual gross receipt of the firm.

The Airport will collect this information either in a notice in all solicitations, or a widely disseminated request to firms quoting on subcontracts to report information directly to the Airport through the utilization of the Bidder's List Collection form (see Attachment 3).

Section 26.13 Federal Financial Assistance Agreement

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

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

The Airport shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Airport shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Airport DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Airport of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts.

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Airport is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Airport is in compliance with it and Part 26. The Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. The Airport does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

Each General Aviation NPIAS Airport has an airport manager or airport authority member that has been delegated as the DBE Liaison Officer. To receive an updated list of each airport's contact information please contact:

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In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to their governing board (*i.e. Airport Authority or City Commission*) concerning DBE program matters. An organizational chart displaying the DBELO's position in a typical Airport organization is included in Attachment 2 of this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a consultant engineering firm and airport authority 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. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
4. Participates in pre-bid meetings.
5. Advises the Airport Authority or governing body on DBE matters and achievement.
6. Determines contractor compliance with good faith efforts with assistance of legal counsel and engineer consultant.
7. Provides DBEs with information.

The Airport consultant's duties include:

1. Write contracts and reviews third party contracts for compliance with this program.
2. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Participates in pre-bid meetings.
4. Assists DBELO with review of contractor proposal to determine compliance with good faith efforts. Make recommendations on bid disposition to DBELO.
5. Collects and records required information for Bidder's List Collection Form.
6. Reviews requests for reimbursements for compliance with this program.
7. Reports statistical data to DBELO.
8. Provide DBE's with information and assistance in preparing bids.
9. Analyzes the Airport's progress toward goal attainment and makes recommendations to DBELO for improvements.
10. Reviews contract payments to DBEs to ensure the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the schedule of DBE participation.
11. Completes and maintains bidders list.
12. Reviews contract payments to ensure prompt payment and retainage to subcontractors.
13. Provides written certification that they have reviewed contracting records and worksite for compliance with contract.

Section 26.27 DBE Financial Institutions

It is the policy of the Airport to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

For up-to-date information on financial institutions listed as DBE-owned, please see the NDDOT's DBE directory at: <https://dotnd.diversitycompliance.com/>

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR §26.29, the Airport established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Airport.

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

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

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

a. From the total of the amount determined to be payable on a partial payment, an amount not to exceed 10% 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.

Section 26.31 Directory

The Airport is a non-certifying member of the North Dakota Unified Certification Program (UCP). Under the NDDOT's Unified Certification Program (UCP), the NDDOT's Civil Rights Division maintains a DBE Directory (link below) identifying all firms certified as DBEs under the UCP. The Directory lists the firm's name, owner's name, address, phone number, type of DBE designation, year formed, whether bonded, whether insured, area of work, labor force, equipment, North American Industry Classification System (NAICS) code, and type of work the DBE firm has been certified to perform. The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

The Directory is published electronically and is located on the NDDOT website at:

<https://dotnd.diversitycompliance.com/>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The Airport has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

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

The Airport 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 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):

- The Airport will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- The Airport will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 6 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by participant in this DBE Program.
- The Airport will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
- 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. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
- The Airport will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment made to DBE firms), including a means of comparing these attainments to commitments. In the reports of DBE participation to DOT, the Airport will show both commitments and attainments, as required by the DOT uniform reporting form.

The Airport requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the [Recipient's] financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Airport or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

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

Prompt Payment Dispute Resolution

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

- The subcontractor shall attempt to resolve the discrepancy with the prime contractor.

- If the subcontractor is unable to resolve the discrepancy with the prime contractor, the subcontractor shall present and attempt to resolve the discrepancy with the engineer consultant.
- If the subcontractor is unable to resolve the discrepancy after meeting with the prime contractor and the Engineer Consultant, the subcontractor shall present its complaint to the DBELO. In addition to the complaint, subcontractor shall provide documentation stating their efforts to resolve the discrepancy with the prime contractor and Engineer Consultant.
- If the subcontractor is unable to resolve the discrepancy through the DBELO the subcontractor shall contact the Airport Authority.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

The Airport 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.
2. Breach of contract action, pursuant to North Dakota Century Code 44-04-18.4.

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.

The Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The Airport reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Consultant. Contracting records are reviewed by the Consultant. The Airport 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 implements 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 NDDOT considers those contractors, subcontractors, consultants and subconsultants bidding under \$500,000 per year to be small business enterprises. The DOT has implemented many processes that assist small business enterprises which help in fostering small business participation. They include the following:

- All projects are initially reviewed, and most are of a size that small businesses can reasonably perform either as a prime contractor or as a subcontractor. Very few projects last longer than one construction season.
- All projects are reviewed in the development stage, to determine if it is feasible to unbundle large projects to such a size that small businesses can reasonably perform.
- In the actual bidding process small businesses are afforded the opportunity to retrieve a pre-bid list, generated the day before the bid opening, which lists the projects each prime contractor or subcontractor over \$500,000 is bidding on.
- All small business enterprises have the ability to access the Civil Rights Division's Listserv which posts the pre-bid addendums, notification of projects being let by other local, state, and federal agencies, and other pertinent notifications regarding the DOT's bid opening process
- All small business enterprises may receive or view the Supportive Services Newsletter, via the Listserv or online. This newsletter provides the following:
 - A means by which primes and large subcontractors over \$500,000 solicit participation on both race-conscious and race-neutral projects.
 - This newsletter contains advertisements by prime contractors and large subcontractors over \$500,000, soliciting quotes, and provided contact information so all subcontractors and suppliers may contact them to provide quotes.
 - Training opportunities relative to performing on a DOT project or to aid small business enterprises in all facets of their business.
 - List contacts for Civil Rights.
 - Small business-related articles and information.

The implementation of a small business program is intended to facilitate compliance with the twin obligations in 49 CFR 26.51:

1. To meet the maximum feasible portion of the overall goal by using race-neutral means of obtaining DBE participation and.
2. To establish DBE contract goals to meet any portion of the overall goal the Airport is unable to meet using race-neutral means alone.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Airport will use the DBE Directory as a method to determine the base figure. The Airport understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the 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 Airport will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Airport market.

In establishing the overall goal, the Airport will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the Airport to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, 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 Airport 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 Airport engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

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

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the 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 Airport understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Airport for calculating goals is inadequate, the FAA may, after consulting with the Airport, adjust the overall goal or require that the goal be adjusted by the Airport. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the 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 Failure to meet overall goals

The Airport cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Airport fails to administer its DBE program in good faith.

The Airport understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

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

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

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

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

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

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

Contract Goals

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

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

Contract goals will be expressed as a percentage of the 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 Responsible.

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

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

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

- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Responsiveness or Responsibility, depending on the chosen bid process.

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

OR,

No later than 5 days after bid opening as a matter of **responsibility**.

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 7 days of being informed by the Airport that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the Airport Authority or City Commission as appropriate based on the airport's organizational structure. To receive an updated list of each airport's contact information, the bidder/offeror may contact:

Adam Dillin
Airport Planner
PO Box 5020
Bismarck, ND 58502
701-328-9657
adillin@nd.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do 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 Airport. 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 Airport 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 Airport determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Airport 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 Airport has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Airport 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 Airport, 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 Airport 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 or solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Airport 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 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 Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The Airport 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 Airport 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, 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 NDDOT shall act as agent for the Airport in handling certifications. The Airport will use the NDDOT DBE Directory/Roster, which follows the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must first meet all certification eligibility standards applied by the NDDOT certification program. Certification decisions are based on the facts as a whole.

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

North Dakota Department of Transportation
Civil Rights
608 East Boulevard Avenue
Bismarck, ND 58505-0700
701-328-2563

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

Or

<https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/276536/dbe-state-certifying-agencies-list-8312017.pdf>

The Uniform Certification Application form and documentation requirements are found at the below link:

<https://dotnd.diversitycompliance.com/>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Airport is the member of a Unified Certification Program (UCP) administered by NDDOT. The UCP will meet all of the requirements of this section. Each Airport maintains its own individual agreement between itself and the NDDOT. To obtain the most recent agreement for a given airport, please contact the NDDOT using the information found on their DBE website at:

<https://www.dot.nd.gov/divisions/civilrights/civilrights.htm#contacts>.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Airport

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

The Airport shall safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information including, but not limited to, trade secrets, proprietary, commercial, financial, and research information, consistent with applicable Federal, state, and local law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The Airport, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Overall Goal Calculations
- Attachment 5 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 6 DBE Monitoring and Enforcement Mechanisms

ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

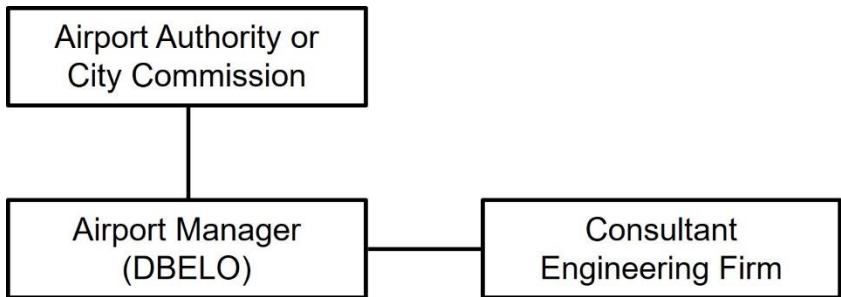
To access 49 CFR Part 26, go to the following website:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl.

ATTACHMENT 2

Organizational Chart

The chart below is only an example of a typical General Aviation airport organization. It is not a requirement and may not reflect a given airport's structure.



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

FY 2023 – FY 2025 DBE GOAL UPDATE

Airport Sponsor: North Dakota Aeronautics Commission & North Dakota General Aviation Airports

City/State: PO Box 5020
Bismarck, North Dakota 58502

Name of Preparer: Adam Dillin, Airport Planner, ND Aeronautics Commission

Preparer's Phone: (701) 328-9657 – Adam Dillin

Goal Period: October 1, 2022 to September 30, 2025

Overall Goal: 3.47% (3.47% race conscious + 0% race neutral)

OVERALL GOAL:

The overall goal of the North Dakota Aeronautics Commission and North Dakota General Aviation Airports for FY 2023 – FY 2025 is 3.47% of the FAA grant program. We anticipate approximately \$28,530,000 of FAA funding of which \$989,991 will be anticipated with DBE participation in these fiscal years. The Commission and General Aviation airports compete for bidders with other public airports and with highway-related work.

METHOD:

Step 1: The North Dakota Department of Transportation determined the availability of DBEs from information supplied by all bidders on prime contracts and subcontracts from April 1, 2019 to March 30, 2020. This information was used to determine the pool of ready, willing, and able DBEs and non-DBEs. There was a total of 264 bidders: 229 non-DBEs and 35 DBEs. A total of 78 consultants bid on consulting projects: 67 non-DBEs and 11 DBEs. A weighted average was developed by determining what percent non-DBEs and DBEs did of both the prime contracting and subcontracting work. This calculation established a base figure for Step 1 of 4.66%.

Description of Calculation Performed - The relative availability was calculated by dividing the number of DBE primes that bid on Asphalt contracts (0) by the number of total prime bidders (60); and multiplying that quotient by the percentage of dollars projected for asphalt work in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$634,644,331 / \$1,442,388,984 = 43.99\% \times 66.66\% = 29.32\%$).

$$0 \text{ DBE primes} / 60 \text{ total primes} = 0.00\% \times 29.32\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on Bridge contracts (0) by the number of total prime bidders (20); and multiplying that quotient by the percentage of dollars projected for bridge work in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$295,652,438 / \$1,442,388,984 = 20.49\% \times 66.66\% = 13.65\%$).

$$0 \text{ DBE primes} / 9 \text{ total primes} = 0.00\% \times 13.65\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on Concrete contracts (0) by the number of total prime bidders (35); and multiplying that quotient by the percentage of dollars projected for concrete work in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$87,028,051 / \$1,442,388,984 = 6.03\% \times 66.66\% = 4.01\%$).

$$0 \text{ DBE primes} / 8 \text{ total primes} = 0.00\% \times 4.01\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on Dirt contracts (1) by the number of total prime bidders (30); and multiplying that quotient by the percentage of dollars projected for dirt work in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$185,297,017 / \$1,442,388,984 = 12.84\% \times 66.66\% = 8.55\%$).

$$1 \text{ DBE primes} / 30 \text{ total primes} = 3.33\% \times 8.55\% = 0.28\%$$

The relative availability was calculated by dividing the number of DBE primes that bid on Additional Contracting Opportunities contracts (0) by the number of total prime bidders (23); and multiplying that quotient by the percentage of dollars projected for other work in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$68,282,614 / \$1,442,388,984 = 4.73\% \times 66.66\% = 3.15\%$).

$$0 \text{ DBE primes} / 23 \text{ total primes} = 0.00\% \times 3.15\% = 0.00\%$$

The relative availability was calculated by dividing the number of DBE Consultants that responded to an RFP or were included in a consultants response to an RFP (2) by the number of total consultants (24); and multiplying that by the percentage of dollars projected for consultants in FY 2021-2023 as compared to overall dollars projected to be spent in FY 2021-2023 and multiplying that by the percent of work paid to primes in 2019-2020 ($\$37,570,200 / \$1,442,388,984 = 2.60\% \times 2.32\% = 0.06\%$).

$$2 \text{ DBE consultants} / 24 \text{ total consultants} = 8.33\% \times 0.06\% = 0.004\%$$

The relative availability was calculated by dividing the number of DBE Subcontractors that bid (33) by the number of total subcontractors (183); and multiplying that sum by the percentage of dollars in 2019-2020 (24.30%). This serves as an indicator of the overall total dollars projected to be spent in FY 2021-2023.

$$33 \text{ DBE subcontractors} / 183 \text{ total subcontractors} = 18.03\% \times 24.30\% = 4.38\%$$

Resulting Baseline Goal - The baseline goal for North Dakota is **4.66%**.

$$0.28\% + 0.004\% + 4.38\% = 4.66\%$$

Step 2: We calculated the median participation from the past eight years which came to 2.27%. Averaging 2.27% and 4.66% brings the adjusted base figure to 3.47%.

The median past participation was calculated by sorting the DBE achievements in numerical order and then removing an equal number of entries from the lowest and the highest achievements. The remaining percentages were summed and then divided by the count of the remaining entries.

Fiscal Year	Percent Achieved
2015	0.23%
2018	0.84%
2014	1.09%
2017	1.46%
2020	3.08%
2016	3.19%
2021	4.39%
2019	14.86%

$$\text{Median Past Participation Calculation: } 1.46\% + 3.08\% = 4.54\% / 2 = 2.27\%$$

The average of the Step One Base Figure and the median past participation was calculated by adding the Median Past Participation in Step 1 and dividing by two.

$$2.27\% + 4.66\% = 6.93\% / 2 = 3.47\% \text{ Step One Base Figure adjusted for past participation.}$$

ADJUSTMENTS

ND DOT also considered available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. To determine the effects of discrimination on opportunities for DBEs to get financing, bonding, or insurance, The ND DOT contacted the following:

- ND Attorney General's Office
- ND Department of Banking and Financial Institutions
- ND Department of Commerce
- ND Department of Human Services
- ND Small Business Development Center
- ND Office of Management and Budget
- ND University System
- Independent Bankers Association

No information was received from these sources. An adjustment based on this evidence was not warranted.

It is estimated that the Commission and General Aviation airports would achieve 3.47% from race conscious participation and 0% through race neutral measures. This goal will be sent forward to consultation prior to publishing a public notice.

PROCESS

The North Dakota Aeronautics Commission and North Dakota's General Aviation airports submit an overall goal on August 1st of each three-year cycle for all FAA grants that exceed \$250,000. Before establishing the overall goal, the Commission and General Aviation airports will consult with the North Dakota Department of Transportation and then utilize the current listing of minority contract associations in the DBE roster (Minority Contractors Association of ND and Minority Association of Contractors) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts to establish a level playing field for participation of DBEs. The NDDOT web site provides information on the DBE program, goals, and certification.

Following this consultation, and prior to submitting the goal to the operating administration, the North Dakota Aeronautics Commission will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection and comments during normal business hours at the North Dakota Aeronautics Commission offices for a period of 30 days following the date of this notice. The notice will be posted on the agency's website at <https://aero.nd.gov> and will include addresses to which comments may be sent and where the proposal may be reviewed. The North Dakota Aeronautics Commission and North Dakota General Aviation airports will begin using the updated overall goal on October 1st of each third year, unless different instructions are received from the FAA or DOT.

BREAKOUT OF ESTIMATED RACE-NEUTRAL AND RACE CONSCIOUS PARTICIPATION:

The North Dakota Aeronautics Commission and North Dakota General Aviation airports will meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation. The Commission and airports use the following race-neutral means to increase DBE participation:

1. Advertise program goals.
2. Encourage prime contractors to subcontract portions of their work they would otherwise perform.
3. Provide engineer consultant technical assistance and other services to fill out bids.
4. Ensure prime contractors have lists of potential DBE subcontractors.
5. Inform prime contractors of past DBE participants.

6. Ensure prime contractors have the web address for the ND DOT DBE Directory.
7. Utilize engineer consultants to administer and monitor compliance.

For reporting purposes, race-neutral DBE participation includes but is not necessarily limited to:

1. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures or through the consultant selection process;
2. DBE participation through a subcontract on a prime contract that does not carry a DBE goal; and
3. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

It is estimated that, in meeting the overall goal of 3.47%, the Commission and General Aviation airports will achieve 3.47% from race-conscious participation and 0% through race-neutral means.

CONTRACT GOALS

The Commission and General Aviation airports will use contract goals to meet any portion of the overall goal. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-conscious means.

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

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

ATTACHMENT 5

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:

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

**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

DBE Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to North Dakota Century Code 44.04-18.4;

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

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