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# Norfolk Airport Authority Norfolk International Airport



Disadvantaged Business Enterprise Program

December 2024

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**UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**DBE PROGRAM – 49 CFR PART 26**  
NORFOLK AIRPORT AUTHORITY  
for the **Norfolk International Airport**  
Norfolk VA

**POLICY STATEMENT**

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

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

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

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

**Ashley Sumner, Project Manager, Norfolk Airport Authority** has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Project Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded with the same priority as compliance with all other legal obligations incurred by the airport in their financial assistance agreements with USDOT.

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

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

  
\_\_\_\_\_  
President and CEO, Mark Perryman

4/14/2025

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

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

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

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

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

### **Section 26.11 Record Keeping Requirements**

#### Reporting to USDOT: 26.11(b)

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

The Airport will submit annually, by or before December 1, the *Uniform Reports of DBE Awards or Commitments and Payments*, as modified for use by FAA recipients, via FAA Civil Rights Connect (<https://faa.civilrightsconnect.com/>). The report will include information about all participating DBE firms.

#### Bidders List: 26.11(c)(2)

The Airport Authority will capture and compile the bidders list information as described in § 26.11(c)(2) and enter it into USDOT's designated system. This data will assist the Airport Authority in gathering accurate data on both DBE and non-DBE contractors and subcontractors who want to work on federally assisted projects at the Airport. The list may also assist the Airport Authority in setting overall DBE goals and provide USDOT with data to assess how well the Airport Authority is meeting the objectives of § 26.1.

The Airport Authority will collect the following information about all DBE and non-DBE firms who bid as prime contractors and subcontractors on each of its federally assisted contracts:

- Firm name
- Firm address, including ZIP code
- DBE or non-DBE status of the firm
- Race and sex information of the firm's majority owner
- Applicable NAICS codes for the scopes of work the firms sought to perform
- Age of the firm
- Annual gross receipts of firms.

The Airport Authority will collect the data from all bidders for its federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements. The Airport Authority will collect this information using the Bidders List Data Collection form, as shown in Attachment 9.

The Airport Authority will enter this data into USDOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the Airport Authority will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

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

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

#### Assurance: 26.13(a)

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

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

### Contract Assurance: 26.13b

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

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

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The Airport Authority is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Airport Authority is not eligible to receive USDOT financial assistance unless USDOT has approved this DBE program and the Airport Authority is in compliance with it and Part 26. The Airport Authority will continue to carry out this program until all funds from USDOT financial assistance have been expended. The Airport Authority 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 USDOT approval.

### **Section 26.23 Policy Statement**

The policy statement is elaborated on the first page of this program.

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

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

**Ashley Sumner**  
**Project Manager**  
**Norfolk Airport Authority**  
**2200 Norview Ave**  
**Norfolk VA 23518**  
**757-857-3351**  
[asumner@norfolkairport.com](mailto:asumner@norfolkairport.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Airport Authority board concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

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

1. Gathers and reports statistical data and other information as required by USDOT.
2. Works with all departments to set overall triennial goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals).
5. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Airport Authority on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Determines compliance of bidders/offerors with good faith efforts in bid submittals.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

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

In developing this DBE program, the Airport Authority's efforts did not identify any such institutions within its service area. The Airport Authority will conduct an evaluation on a yearly basis; if any such institutions are established in the Airport's service area, the Airport Authority will consider the services offered by these institutions and refer contractors to them as noted above.

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

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

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

The Airport Authority will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. The Airport Authority will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based

on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after payment to the prime contractor.

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

To implement this measure, for every airport construction project funded under federal grant assistance programs, the Airport Authority will include the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim with the exception that the reference to "30 days" will be changed to "seven (7) days" in accordance with the Commonwealth of Virginia's prompt payment act.<sup>1</sup>

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 Norfolk Airport Authority for protection of the Airport Authority's interests. Unless otherwise instructed by the Airport Authority, the amount retained by the Airport Authority will be in effect until the final payment is made except as follows:*

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

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

b. *The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than seven (7) days after the Contractor has received a partial payment. Contractor must provide the Airport Authority evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Airport Authority. When the Airport Authority has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.*

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

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<sup>1</sup> <https://law.lis.virginia.gov/vacodefull/title2.2/chapter43/article4/>



The Airport Authority will proactively monitor prime contractors' compliance with subcontractor prompt payment and return of retainage requirements. The Airport Authority will share information regarding required documentation for payment with subcontractors. The Airport Authority will take steps to promote the timely submission by contractors of invoices for payment, and will also maintain adequate internal controls to facilitate timely payment to contractors.

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

The Airport Authority clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the Airport Authority will undertake proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. The Airport Authority will require prime contractors to report documentation of payments to subcontractors monthly. The Airport Authority will send emails to subcontractors on the day that prime contractors have been paid to inform them of when the payment clock starts. The DBELO will review and verify that payments have been made and retainage has been returned to subcontractors in accordance with section 26.29.

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

The Airport Authority uses a number of DBE forms, which can be found in [Attachment 3](#), to collect DBE information for initial project setup and for ongoing monitoring of DBE participation:

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

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

#### Prompt Payment Dispute Resolution

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

A meeting will be scheduled with the prime contractor, subcontractor, DBELO and other appropriate Airport Commission representative(s). Any meeting for the purpose of dispute resolution will

include Airport Commission representative(s) authorized to bind each interested party, including Airport representative(s) to take enforcement action.

The Airport Authority has established, as part of its DBE program plan, 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.

#### Prompt Payment Complaints

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

1. The affected subcontractor shall file a complaint with the prime contractor directly regarding payment.
2. If filing a complaint with the prime contractor does not result in timely and meaningful action by the prime contractor to resolve the prompt payment dispute, the affected subcontractor may contact the Airport's DBELO.
3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport Authority to resolve prompt payment disputes, the affected subcontractor may contact the FAA Office of Civil Rights.
4. Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported via FAA Civil Rights Connect, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

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

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

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

## **Section 26.31                      Directory**

The primary Disadvantaged Business Enterprise Directory for the Airport Authority comes from the Virginia Department of Small Business and Supplier Diversity (SBSD) and contains listings of certified minority- and women-owned construction firms and material suppliers from throughout the Commonwealth.

SBSD maintains an active list of certified disadvantaged businesses located throughout the state. Therefore, all of the firms listed in the directory have been certified by this state and in accordance with USDOT criteria. It should also be noted that these listings and certifications are periodically updated with some firms being added, while others are removed. The directory should enable prime contractors for projects at the Airport to proceed more easily in their attempts to comply with overall goals regarding Disadvantaged Business Enterprises.

The directory lists the following details about each certified firm:

- Business name
- Business address
- Business phone number
- Firm website(s)
- Types of work the firm has been certified to perform as a DBE and/or ACDBE
- The specific North American Industry Classification System (NAICS) code(s) that describes the type of work a DBE and/or ACDBE is eligible to perform

The UCP directory may include additional data fields of other items that are readily verifiable in state or locally maintained databases, such as state licenses held, pre-qualifications, and bonding capacity. The UCP directory is an online system that permits the public to search and/or filter for DBEs by:

- Physical location
- NAICS code(s)
- Work descriptions
- All additional data fields of readily verifiable optional information described above.

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

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

Prime contractors may also consider the FAA's DBE directory, which can be found at FAA Matchmaker (<https://faa.dbesystem.com>).

## **Section 26.33                      Overconcentration**

The Airport Authority has not identified that overconcentration exists in the types of work that DBEs perform. However, the DBELO will continue to monitor the various categories every three years to ensure that non-DBE firms are not unduly burdened.

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

The Airport Authority has not established a business development program. The DBELO will re-evaluate the need for such a program every three years.

### **Section 26.37                      Monitoring and Enforcement Mechanisms**

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

#### Running Tally

The Airport Authority will implement a running tally mechanism to compare the cumulative DBE awards and commitments on federally funded projects to determine whether or not the implementation of contract goals is sufficient to meet the annual DBE goal. The Airport Authority will also implement a running tally to provide for a comparison of payments made to each DBE firm relative to the progress of work. The running tally mechanism will help the Airport Authority whether or not there exists a projected shortfall such that the prime contractor would need to address via good faith efforts to meet the DBE contract goal. The Airport Authority will use the DBE Monthly Report form (see [Attachment 3](#)) to track the progress of DBE participation on its federally funded projects. The DBELO, with assistance from the Airport Authority's engineering consultant, will maintain the running tally of DBE participation.

#### Monitoring Contracts and Work Sites

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

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

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

The program element is included as [Attachment 4](#). The Airport Authority will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of the DBE program.

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

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

The Airport Authority does not use quotas in any way in the administration of this DBE program. However, the use of race neutral set-asides for small businesses is permissible as a strategy under 26.39 (b) (1).

### **Section 26.45 Overall Goals**

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

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Small-Hub Primary</b>	<b>All Regions</b>	<b>August 1, 2023 (2024/2025/2026)</b>	<b>August 1, 2026 (2027/2028/2029)</b>

[https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart New\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart%20New_Final.pdf)

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Airport Authority will use the DBE Directory information and Census Bureau's Airport Commission Business Patterns database as the method to determine the base figure. The Airport Authority 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 Authority 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 Authority's market. A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program. This section of the program will be updated triennially.

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 that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the Airport's goal setting process, and it will occur before submitting the goal methodology to the FAA for review pursuant to paragraph (f) of this section. The Airport will document in the goal submission the consultation process that was utilized. Notwithstanding paragraph (f)(4) of this section, the Airport will not implement the proposed goal until this requirement is fulfilled.

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

The Airport Authority's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

The Airport Authority will begin using the overall goal on October 1 of each year unless it has received other instructions from USDOT. If the Airport Authority establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a USDOT-assisted contract for the project.

#### Section 26.45 (e) - Project Goals

If permitted or required by the FAA, the Airport Authority will express its overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a recipient may adjust a project goal to reflect changed circumstances, with the concurrence of the FAA. A project goal is an overall goal, and it must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated. If the Airport Authority establishes a goal on a project basis, the Airport Authority will begin using its goal by the time of the first solicitation for a USDOT-assisted contract for the project.

#### Section 26.45(f) - Prior Operating Administration Concurrence

The Airport Authority understands that it is not required to obtain prior FAA concurrence with the overall goal. However, if the FAA's review suggests that the overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the FAA may, after consulting with the Airport Authority, adjust the overall goal or require that the Airport Authority do so. The adjusted

overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the FAA will be guided by the goal setting principles and best practices identified by USDOT in guidance issued pursuant to § 26.9.

#### **Section 26.47                      Goal Setting and Accountability**

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

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. The Airport Authority will retain a copy of the analysis and corrective actions in its records for a minimum of three years. The Airport Authority will make it available to the FAA upon request.

#### **Section 26.49                      Transit Vehicle Manufacturers Goals**

N/A

#### **Section 26.51(a-c)              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. This section of the program will be updated when the goal calculation is updated.

#### **Section 26.51(d-g)              Contract Goals**

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

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

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

## **Section 26.53                    Good Faith Efforts Procedures**

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

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

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

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

### Information to be submitted (26.53(b))

In its solicitations for USDOT/FAA-assisted contracts for which a contract goal has been established, the Airport Authority will require the following:

- (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 Airport Authority, at the time provided in paragraph (b)(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 (see Appendix A of 49 CFR 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 Airport Authority will require that the bidder/offeror present the information required by paragraph (b)(2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.



For each DBE listed as a regular dealer or distributor, the Airport Authority will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The Airport Authority will make the preliminary determination based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the Airport Authority will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

If the Airport Authority utilizes the design-build method for project delivery, the Airport Authority may set a DBE goal that proposers must meet by submitting a DBE Open-Ended Performance Plan (OEPP). The Airport Authority will require proposers to be responsive by including a commitment to meet the DBE goal and to provide details of the types of subcontracting work or services that the proposer will solicit DBEs to perform. Upon the award of a design-build contract, the Airport Authority will actively monitor the contract to evaluate whether the design-builder is utilizing good faith efforts to comply with the OEPP and the schedule.

This information will be collected using the forms found in [Attachment 6](#).

#### Administrative reconsideration (26.53(d))

Within seven calendar (7) days of being informed by the Airport Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official:

**Mark Perryman**  
**President and CEO**  
**Norfolk Airport Authority**  
**2200 Norview Ave**  
**Norfolk VA 23518**  
**757-857-3351**

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

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have the opportunity to meet in person with the Airport Authority's administrative reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Airport Authority will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to USDOT.

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

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

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

The Airport Authority requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without the Airport Authority's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

In those instances where "good cause" exists to terminate a DBE's contract, the Airport Authority will require the prime 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, to the extent needed to meet the contract goal. The Airport Authority will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the Airport Authority will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The Airport will provide such written consent only if the Airport agrees, for reasons stated in a 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 has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides 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 its request to the Airport 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, and the reason for the request.

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

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

Each prime contract will include a provision stating:

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

The Airport Authority will require a contractor to make good faith efforts to replace a DBE that has been 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 the Airport Authority established for the procurement. The contractor shall document good faith efforts. If the Airport Authority 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 seven (7) days, if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The Airport Authority will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the Airport Authority deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply within the time specified, the Airport Authority's contracting office will 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 proceedings.

#### Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Norfolk Airport Authority, as owner of the Norfolk International Airport, to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder will be required to submit the following information:

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

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

The Airport Authority will count DBE participation toward overall and contract goals as provided in 49 CFR 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 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 Airport Authority will refer all matters pertaining to certification to the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with the Commonwealth's UCP program. The UCP program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP will make all certification decisions based on the facts as a whole.

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

Virginia Department of Small Business and Supplier Diversity  
101 N. 14th Street, 11th Floor  
Richmond, Virginia 23219  
Phone: (804) 786-6585  
<https://www.sbsd.virginia.gov/certification-division/dbe/>

Metropolitan Washington Airports Authority  
Equal Opportunity Programs Department  
1 Aviation Circle  
Washington, DC 20001  
Phone: (703) 417-8625  
<https://mwaa.diversitycompliance.com/>

A link to the certification application forms and documentation requirements is found in Attachment Z to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

SBSD currently manages the Unified Certification Program (UCP) for the Commonwealth of Virginia, and the Norfolk Airport Authority is a non-certifying participant (see Attachment 10). The Airport Authority will use and count for DBE credit only those DBE firms certified by SBSD or the Metropolitan Washington Airports Authority, the other certifying agency in the Commonwealth's UCP.

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

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

The Airport Authority understands that if it fails to comply with any requirement of this part, it may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the FAA, such as the suspension or termination of federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

The Airport Authority understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented

from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

### **Section 26.103, 105      Enforcement Actions Applicable to FAA Programs**

Compliance reviews (§26.103(b)): The FAA may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the FAA to initiate a compliance review based on complaints received.

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

### **Section 26.107              Enforcement Actions Applicable to Participating Firms**

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts [180](#) and [1200](#).

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts [180](#) and [1200](#).

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the FAA may consider the fact that a recipient has certified a purported DBE. Such certification does not preclude USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

### **Section 26.109              Information, Confidentiality, Cooperation**

#### Availability of Records

1. USDOT adheres to the Federal Freedom of Information and Privacy Acts when responding to requests about the DBE program and can release information unless prohibited by federal law.
2. Confidential business information, such as DBE certification applications, cannot be released to third parties without the firm's written consent. However, this information must be shared with USDOT during certification appeals or with other states for certification purposes.

### Confidentiality of Information on Complainants

- Complainants' identities are kept confidential unless necessary for due process. If confidentiality hinders proceedings, complainants may need to waive this right to avoid investigation closure or dismissal. FAA procedures for confidentiality are followed as per [14 CFR part 16](#).

### Cooperation

- All participants in the DBE program must fully and promptly cooperate with USDOT and recipient compliance reviews, investigations, and other requests for information. Non-cooperation can lead to penalties, such as noncompliance findings, denial of certification, or suspension.

### Intimidation and Retaliation

- Participants in the program must not intimidate, threaten, coerce, or discriminate against anyone for exercising their rights under this part or for participating in investigations. Violating this prohibition results in noncompliance.

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## ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Fostering Small Business Participation
Attachment 5	Overall DBE Goal Calculation
Attachment 6	Forms 1, 2 & 3 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 9	Regulations: 49 CFR Part 26
Attachment 8	Bidders List Data Collection Form
Attachment 9	UCP Agreement

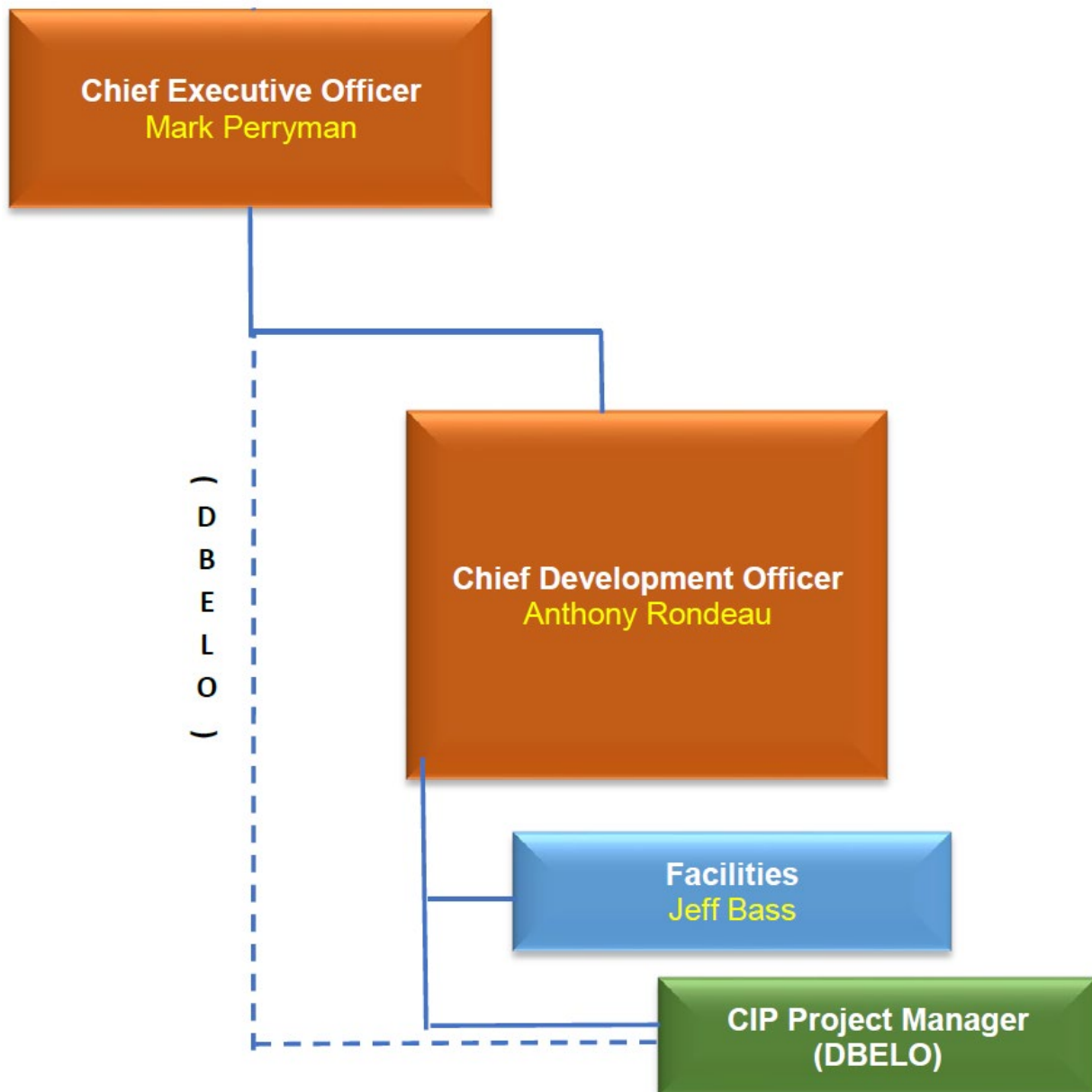
# **Attachment 1**

## Organizational Chart



# Norfolk Airport Authority

## Organizational Chart



## **Attachment 2**

DBE Directory

The DBE Directory for the  
Commonwealth of Virginia may be  
found at

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

## **Attachment 3**

### Monitoring and Enforcement Mechanisms

## **Norfolk Airport Authority – Norfolk International Airport**

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

contract goal. The Airport Authority shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBEs.

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

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

Attachment 8 contains a weblink to 49 CFR Part 26, which describes federal regulations, provisions, and contract remedies available to the Airport Authority in the event of non-compliance by a participant.

**DBE Commercially Useful Function Report**

Project:	
AIP Number:	
Prime Contractor:	
DBE Firm:	
DBE Start/Complete	
CUF Review Date:	

**GENERAL****Yes No N/A**

1. Does the DBE have its own employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE own the equipment being utilized to perform its work? If No, attach equipment list, ownership documents, and rental/lease agreements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the DBE self-performing the subcontract defined task for a specific item of work (distinct element) on the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**HAULING FIRMS****Yes No N/A**

1. Does the DBE hauling firm own and/or lease their trucks? (review ownership/vehicle registration and/or lease documents to verify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**MATERIAL SUPPLIERS, DISTRIBUTORS, OR MANUFACTURERS/FABRICATORS****Yes No N/A**

1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the DBE had any materials drop shipped to the project site, was the invoice addressed to the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the DBE deliver materials to the site with their own and/or leased trucks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**SUPERVISION****Yes No N/A**

1. Is the DBE self-performing work without assistance from the prime or another subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the DBE providing supervision of its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the supervisor a full-time employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Completed by:

Date:

**Listing of DBE Subcontractors  
(to be submitted with bid)**

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

The Bidder hereby proposes the following DBE participation:

<b>DBE Subcontractor/Supplier/Distributor</b>	<b>Work to be performed</b>	<b>NAICS Code</b>	<b>Subcontract Amount</b>	<b>Amount Applicable to Goal (suppliers = * .60; distributors = *.40)</b>
Total DBE Participation				
Base Bid Amount				
DBE Participation Proposed (%)				
DBE Participation Goal (%)				

Bidder (Firm Name)	Signature	Date



**DBE Monthly Report**

<b>Contractor:</b>
<b>Project:</b>
<b>AIP Number:</b>
<b>Date:</b>

DBE Subcontractor/Supplier/Distributor	Committed Award	Total Prior Payments	Current Payment	Total	Date Paid to Vendor / Sub this Invoice	Percent
Totals						

Contractor Name:

Signature:

Title:

Date:

--	--	--	--

## DBE Project Compliance Review Checklist

Project:
AIP Number:
Prime Contractor:

### Pre-Bid Checklist

- ☐ Review project to determine if a DBE contract goal is needed.
- ☐ Attend pre-bid meeting to inform bidders of DBE requirements.

### Pre-Award Project Checklist

- ☐ Collect the Listing of DBE Subcontractors form.
- ☐ Collect letters of intent for all committed DBEs.
- ☐ If prime contractor is unable to meet the DBE goal, collect documentation of its good faith effort.

### Post Award (Pre-Construction/Design) Project Checklist

- ☐ Collect fully executed (signed) subcontracts for all DBE firms.
- ☐ Review DBE subcontract(s) to ensure scope of work is consistent with what has been committed.
- ☐ Review contracts to verify that all required contract clauses are included.
- ☐ Ensure dollar value of DBE subcontract(s) is/are equal to or greater than the amount committed.

### During Construction and/or Design Checklist

- ☐ Complete DBE Commercially Useful Function Report form, to verify that the DBEs are performing a commercially useful function.
- ☐ Verify that business names on equipment and vehicles are not covered with paint or magnetic signs (visual inspection of vehicles on site).
- ☐ Verify who employs the workers on site (visually inspect badges/IDs; establish reporting relationships of workers on site/review certified payrolls).
- ☐ Review supplier invoices and cancelled checks to verify what firm orders and pays for the necessary supplies being used by the DBE subcontractor.
- ☐ Ensure all DBE firms are paid promptly (within seven (7) days of payment to the prime contractor per 49 CFR 26.29) by collecting and reviewing the DBE monthly report form.
- ☐ Document and file any correspondence related to terminations, substitutions, or deletions of DBE firms.
- ☐ If terminations, substitutions, or deletions were approved, collect documentation of prime contractor's good faith effort to find a replacement firm

### Post Construction/Design Checklist

- ☐ Ensure DBE goal has been achieved by collecting and reviewing the final DBE report.
- ☐ If a shortfall exists, collect Good Faith Effort documentation from prime contractor explaining reasons shortfall took place.

### Certification:

I, \_\_\_\_\_ hereby certify that the contracting records for the federally-funded project have been reviewed and the work site has been visited/monitored.

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

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

## **Attachment 4**

### Fostering Small Business Participation Plan

## **Attachment 5**

### Overall DBE Goal Calculation

## **Attachment 6**

Forms 1, 2 & 3 for Demonstration  
of Good Faith Efforts

## Norfolk Airport Authority

### FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

☐

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

☐

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

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

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

By \_\_\_\_\_  
Signature Title

## Norfolk Airport Authority

### FORM 2: LETTER OF INTENT

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

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

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

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

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

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

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

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

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

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Dealer/Distributor/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, a regular dealer, or a distributor 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 Bidder/Offeror'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.*

**Form 3: DBE Regular Dealer/Distributor Form**

OMB Approval Pending 04/17/2024

U.S. Department of  
Transportation**DBE Regular Dealer/Distributor  
Affirmation Form**

Bidder Name:

Contract Name/Number:

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

**DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory? ☐ YES ☐ NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

\* If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? ☐ YES ☐ NO<sup>1</sup>

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:



## **Attachment 7**

Certification Application Forms

The DBE certification application for the Commonwealth of Virginia may be found at

<https://www.sbsd.virginia.gov/certification-division/dbe/>.

## **Attachment 8**

Regulations: 49 CFR Part 26

The federal regulations, Title 49 Code of Federal Regulations Part 26, can be found at

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

## **Attachment 9**

Bidders List Data Collection Form

## BIDDERS LIST DATA COLLECTION FORM

Firm Name	Firm Address and Phone No.	DBE or Non-DBE Status (verify via UCP DBE Directory)	NAICS Code(s) of Scope(s) Bid	Race/Sex of Majority Owner		Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE		<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M

# **Attachment 10**

UCP Agreement