

**POLICY STATEMENT**

**Section 26.1, 26.23**

**Objectives/Policy Statement**

Through its contract with our current aviation consultant, the City of Delaware has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Delaware has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, they have signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-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 DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Public Services Director, Dan Whited, has been delegated as the DBE Liaison Officer. In that capacity, Dan is responsible confirming that our current aviation consultant has implemented the required 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 City of Delaware in its financial assistance agreements with the Department of Transportation.

The DBE Liaison Officer has disseminated this policy statement to the City of Delaware and all of the components of our organization. Through its contract with our current aviation consultant we have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. This notice was posted on the Delaware web site: [www.Delawareohio.net](http://www.Delawareohio.net)

  
Jackie Walker, Assistant City Manager  
City of Delaware

3.5.15  
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 City of Delaware is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The City of Delaware will use terms in this program that have the meaning defined in Section 26.5.

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

The City of Delaware 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 City of Delaware, through a contract with our current aviation consultant, 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: 26.11**

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

Through its contract with our current aviation consultant, we will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor's Form or other similar format.

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

The City of Delaware, through its contract with our current aviation consultant, 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 our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address and DBE and non-DBE status and be collected from bid proposals we receive during the bid process of our projects and through recipient-directed surveys.

The Bidder's List is found in Attachment 3 to this program.

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

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

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The City of Delaware 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 City of Delaware 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 City of Delaware's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Delaware of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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: 26.13b

The City of Delaware, through its contract with our current aviation consultant, will ensure that the following clause is included in each contract we sign 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 City of Delaware deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

The City of Delaware Airport will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The City of Delaware is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

### **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)**

We have designated the following individual as our DBE Liaison Officer:

Dan Whited, Public Services Director  
City of Delaware  
City Hall, 1 S. Sandusky Street  
Delaware, OH 43015  
(740) 203-1010  
E-mail: [dwhited@delawareohio.net](mailto:dwhited@delawareohio.net)

In that capacity, the DBELO, through its contract with our current aviation consultant, is responsible for implementing all aspects of the DBE program and ensuring that the City of Delaware complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City of Delaware concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO, through its contract with our current aviation consultant, is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 2 to assist in the administration of the program. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. 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 attainment and identifies ways to improve progress.
5. Analyzes Delaware Municipal Airport's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO\governing body on DBE matters and achievement.
8. Maintains the Delaware Municipal Airport's updated directory on certified DBEs.

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

It is the policy of the City of Delaware to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. At the present time no minority owned financial institutions have been located.

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

The City of Delaware has established, through its contract with our current aviation consultant, 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 10 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. We will use one of the following methods to comply with this requirement:

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

The City of Delaware 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 City of Delaware. When the City of Delaware 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.

The City of Delaware will provide appropriate means to enforce the requirements of this section. These means include:

The City of Delaware, through its contract with our current aviation consultant, will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the City of Delaware. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Delaware. This clause applies to both DBE and non-DBE subcontractors.

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

(2) 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.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

### **Section 26.31 Directory**

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

The State of Ohio revises the Directory periodically. The Directory may be found at: <https://www.ohiouncp.org/reports>

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

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

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

The City of Delaware has not established a business development program.

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

The City of Delaware, through its contract with our current aviation consultant, will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. After evaluating all proposals or construction bids: The DBE Liaison Officer will investigate or make "good faith effort" to verify that each submitted proposals or construction bids meets the contractual goal.

2. After awarding the contract, the DBE liaison Officer will only credit DBE participation upon payments to the subcontractor
3. We 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.
4. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism 49 CFR Part 26 will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished by requiring the contractor to submit signed affidavits from both the General Contractor and all Sub-contractors verifying that payments have been made, the amount and dates payments were made. No additional payments will be released to the General Contractor until all Sub-contractors have verified their payments.
5. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.

**Section 26.39 Fostering small business participation.**

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

The City of Delaware's small business program element is incorporated as Attachment 9 to this DBE Program. We will actively implement the program elements to foster small business participation, doing so is a requirement of good faith implementation of our DBE program.

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

The City of Delaware, through its contract with our current aviation consultant, will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$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 City of Delaware will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the following established schedule.

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Large &amp; Medium Hub Primary</b>	<b>All Regions</b>	<b>August 1, 2010 (2011/2012/2013)</b>	<b>August 1, 2013 (2014/2015/2016)</b>
<b>Small Hub Primary</b>	<b>All Regions</b>	<b>August 1 2011 (2012/2013/2014)</b>	<b>August 1, 2014 (2015/2016/2017)</b>
<b>Non-Hub Primary</b>	<b>All Regions</b>	<b>August 1 2012 (2013/2014/2015)</b>	<b>August 1, 2015 (2016/2017/2018)</b>
<b>Non-Primary</b>	<b>Alaskan, Eastern, &amp;</b>	<b>August 1 2010</b>	<b>August 1, 2013</b>

<b>(GAs, Relievers and State DOTs)</b>	<b>Great Lakes</b>	<b>(2011/2012/2013)</b>	<b>(2014/2015/2016)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>New England, Northwest Mountain, &amp; Southern</b>	<b>August 1 2011 (2012/2013/2014)</b>	<b>August 1, 2014 (2015/2016/2017)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>Central, Southwest, and Western-Pacific</b>	<b>August 1 2012 (2013/2014/2015)</b>	<b>August 1, 2015 (2016/2017/2018)</b>

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Delaware does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the City of Delaware will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust 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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, the City of Delaware will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Delaware's efforts to establish a level playing field for the participation of DBEs, if available.

We will then publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Delaware Municipal Airport, 1075 Pittsburgh Dr., Delaware, OH 43015 for 30 days following the date of the notice, and informing the public that the City of Delaware and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

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

**Section 26.47 Failure to meet overall goals.**

The City of Delaware, through its contract with our current aviation consultant, will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City of Delaware awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) City of Delaware will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

**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.

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

The City of Delaware, through its contract with our current aviation consultant, 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.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not 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.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

**Section 26.53 Good Faith Efforts Procedures**

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror 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 Part 26.

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

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

Information to be submitted (26.53(b))

The City of Delaware treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.



Responsiveness - Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

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

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by the City Delaware that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Jackie Walker, City of Delaware, City Hall, 1 S. Sandusky Street, Delaware, OH 43015. 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror 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 when a DBE is replaced on a contract (26.53(f))

The City of Delaware, through its contract with our current aviation consultant, 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, to the extent needed to meet the contract goal. We 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, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

If the contractor fails or refuses to comply in the time specified, our 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 proceeding.

**Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Delaware 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/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror 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/offeror'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); and (6) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

We will count, through its contract with our current aviation consultant, DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract

toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

#### **SUBPART D – CERTIFICATION STANDARDS**

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

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

Ohio Department of Transportation  
DBE Services Section  
Office of Contracts, 1<sup>st</sup> Floor  
Columbus, OH 43223  
1-800-459-3778

The certification application forms and documentation requirements are found in Attachment 8 to this program.

#### **SUBPART E – CERTIFICATION PROCEDURES**

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

The City of Delaware is the member of a Unified Certification Program (UCP) administered by the State of Ohio. The UPC will meet all of the requirements of this section.

##### **Section 26.83 Procedures for Certification Decisions**

The City of Delaware has never certified a firm under former Part 23 or under Part 26. The City will rely upon the State of Ohio to administer the certification process.

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

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

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

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

##### **Monitoring Payments to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Delaware or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

## **ATTACHMENTS**

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

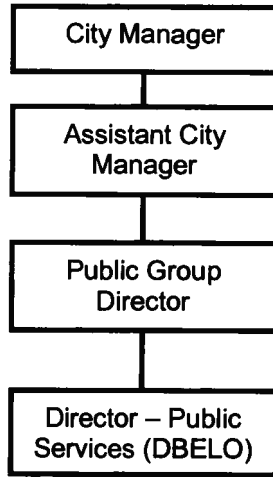
## **ATTACHMENT 1**

**Regulations: 49 CFR Part 26**

The electronic Code of Federal Regulations (eCFR), Title 49 (Transportation) Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs) can be found at [ecfr.gov/cgi-bin/text-idx?c=/ecfrbrowse/Title 49/49cfr26\\_main\\_02.tpl](http://ecfr.gov/cgi-bin/text-idx?c=/ecfrbrowse/Title%2049/49cfr26_main_02.tpl)

**ATTACHMENT 2**

**Organizational Chart**



**ATTACHMENT 3**  
**Sample Bidder's List Collection Form**

SAMPLE BIDDER'S LIST

NAME	ADDRESS	DBE	NON-DBE	TYPE OF WORK
Luburgh Inc.	4174 E. Pike		X	general
Kokosing Construction Co.	6235 Westerville Road, Suite 200		X	general
Allied Fence Builders	1644 Kuntz Road		X	speciality
G. B. Hastie Fence	734 Route 4 East		X	speciality
Petty Group	550 Harvard Ave., Rear		X	speciality
Cuyahoga Fence LLC	3100 E. 45th St #504		X	speciality
Long Fence Company	42521 John Mosby Highway		X	speciality
Abel Fence, Inc.	791 Cool Creek Rd.		X	speciality
Lake Erie Construction	25 S. Norwalk Rd.		X	speciality
	Zanesville, OH 43701			
	Westerville, Ohio 43081			
	Dayton, Ohio 45404			
	Rutland, VT 05701			
	Cuyahoga Heights, OH 44105			
	Cleveland, OH 44127			
	Chantilly, VA 20152			
	Wrightsville, PA 17368			
	Norwalk, OH 44857			



## **ATTACHMENT 4**

### **Ohio DBE Directory**

The DBE directory is maintained by the Ohio Department of Transportation. This Directory is periodically updated and can be found on their website at the following address: <https://www.ohioup.org/reports>



<b>3</b>	\$11,000.00	561730	7	1610	0.4%	0.4%	0.0%
<b>Total</b>	\$2,572,000		38	2191	1.7%	100.0%	13.9%

**FY 2018 – Full Parallel Taxiway – Design & Phase 1 Construction**

<b>NAICS</b>	<b>Type of Work</b>	<b>Total DBE's</b>	<b>Total All Firms</b>
237310	Construction	20	141
238210	Electrical	20	766
238320	Paint	11	440
561730	Erosion Control	7	1610
541380	Testing	4	92
541370	Surveying	4	77
541330	Engineering	17	677
<b>Total</b>		<b>83</b>	<b>4,701</b>

**Weighted Construction Percentage**

<b>Item #</b>	<b>Total Cost</b>	<b>NAICS Codes</b>	<b>DBE Firms</b>	<b>All Firms</b>	<b>DBE Availability</b>	<b>% of Project</b>	<b>Weighted Total of Availability</b>
<b>1</b>	\$967,625.34	237310	20	141	14.2%	96.1%	13.6%
<b>2</b>	\$100,166.67	238210	20	766	2.6%	10.0%	0.3%
<b>3</b>	\$10,208.33	238320	11	440	2.5%	1.0%	0.0%
<b>4</b>	\$28,833.33	561730	7	1610	0.4%	3.7%	0.0%
<b>Total</b>	\$7,452,123.00		<b>58</b>	<b>2957</b>	<b>2.0%</b>	<b>100.0%</b>	<b>13.9%</b>

**Step 2. Analysis:** Adjustments to Step 1 base figure.

For the FY 2015 project, the 237310 NAICS is expected to comprise approximately 85% of the total work, 541380 is approximately 1%, 541370 is approximately 1%, and 541330 is approximately 13% of the total. These percentages were applied to the numerator and denominator to appropriately weigh the DBE goal calculation according to the following formula:

$$[(13.9\%) \times .94 + (4/92) \times .01 + (17/677) \times .05] \times 100 = 13.25\% \text{ weighted base figure.}$$

For the FY 2018 project, the 237310 NAICS is expected to comprise approximately 92% of the total work, 541380 is approximately 1%, and 541330 is approximately 7% of the total. These percentages were applied to the numerator and denominator to appropriately weigh the DBE goal calculation according to the following formula:

$$[(13.9\%) \times .89 + (4/92) \times .01 + (4/77) \times 0.01 + (17/677) \times .05] \times 100 = 12.71\% \text{ weighted base figure.}$$

**Past History Participation.** The Delaware Municipal Airport has not had a substantial or similar construction project to obtain accurate historical data from to make any adjustments.

Although a disparity study was completed several years ago for the City of Cleveland, the State of Ohio has concerns regarding the validity of the study. Therefore, no adjustments were made.

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

26.51(b) (1-9)

The City of Delaware will meet the maximum feasible portion of its overall goal by using RC means of facilitating DBE participation. The City of Delaware does not have a current history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, we are applying the entire goal of 13.1% to race-conscious participation. The City of Delaware will use the following to increase DBE participation through RN means:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

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

#### PUBLIC PARTICIPATION

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

The City of Delaware will publish the Policy Statement at: [www.Delawareohio.net](http://www.Delawareohio.net). The program and the proposed overall goals and rationale are available for inspection during normal business hours at the airport terminal building for 30 days following the date of the notice, and informing the public that the City of Delaware and DOT will accept comments on the goals for 45 days from the date of the notice.

The goal will also be announced at the pre-bid meeting for each of the projects.

A consultation meeting was held on December 16, 2014. Those in attendance included Karla Price and Mark Heckroth with CHA, Kevin Piatt, the Airport Manager, and Joe Bullis, Superintendent. Phone calls were made to the following contractors but none attended: Kokosing Construction Company, Chagrin Valley Paving, Karvo Paving Company, Shelly & Sands, Shelly Company and Barbicas Construction Company.

#### PUBLIC NOTICE

The City of Delaware hereby announces its fiscal years 2014, 2015, 2016, 2017, and 2018 goal of 13.1% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at the Delaware Municipal Airport terminal building, 1075 Pittsburgh Drive, Delaware, OH 43015 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

Dan Whited, Public Services Director (DBELO)  
City of Delaware  
1 S. Sandusky Street, City Hall  
Delaware, OH 43015  
(740) 203-1010  
[dwhited@delawareohio.net](mailto:dwhited@delawareohio.net)

or

Federal Aviation Administration  
Office of Civil Rights Staff  
2300 E. Devon Ave., Ste. 440  
Des Plaines, IL 60018

### **Contract Goals**

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

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

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts - Forms 1 & 2**

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*

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

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

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

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

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

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

By \_\_\_\_\_  
(Signature) Title

**FORM 2: LETTER OF INTENT**

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

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

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

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

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

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

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By \_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Title)

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

## **ATTACHMENT 7**

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

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

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

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE 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.



**ATTACHMENT 8**  
DBE Certification Application Form

The DBE Certification Application Form can be found at: <http://www.in.gov/idoa/2489.htm>

**ATTACHMENT 9**  
Small Business Element Program

<b>Fostering Small Business Participation</b>	
<b>Sponsor's Name:</b>	
<b>Airport Name:</b>	
<b>City, State:</b>	
<b>AIP Number:</b>	
<b>Federal Fiscal Year:</b>	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

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

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

(Duplicate form as necessary.)

The following notation is for Sponsor Use Only:

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