

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Fitchburg Airport Commission (Commission), owner of the Fitchburg Municipal Airport, 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 Commission has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Commission has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

Mr. Peter Kettle, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, Mr. Kettle is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Commission in its financial assistance agreements with the Department of Transportation.

The Commission has disseminated this policy statement to the City Council and posted the Program to the City's internet website. This statement has been distributed to DBE and non-DBE business communities that may perform work on Commission DOT-assisted contracts. The distribution was accomplished by publication to the City's website.

Mr. Clayton Raymond, Chairman
Fitchburg Municipal Airport

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT

The Commission will provide data about its DBE Program to the Department as directed by DOT operating administrations. DBE participation will be reported to the FAA as follows:

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

Bidders List

The Commission 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 Commission DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, and DBE or non-DBE status. DBEs will be required to submit a copy of their DBE certification as part of their bids.

The Commission will collect this information using the data collection forms included in Attachment 3. The forms and a contract clause requiring this information will be included in the bid documents and collected from contractors at the time of bid.

Records retention and reporting:

The Commission will retain records documenting compliance with the requirements of 49 CFR Part 26 for a minimum of three (3) years.

Section 26.13 Federal Financial Assistance Agreement

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

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

The Commission 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 Commission 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 Commission 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 Commission of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Commission 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 Commission is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Commission is in compliance with it and Part 26. The Commission will continue to carry out this program until all funds from DOT financial assistance have been expended. The Commission does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the Commission:

Mr. Peter Kettle, Airport Manager
Fitchburg Municipal Airport
567 Crawford Street
Fitchburg, MA 01420
Phone: (978) 345-9580
pkettle@fitchburgma.gov

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Commission's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

11. Participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the Commission 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. A review of the FAA DBE Directory and Massachusetts Supplier Diversity Office DBE Directory revealed that there are zero (0) financial institutions registered as DBEs in the state of Massachusetts (NAICS Codes 522110: Commercial Banking, 522291: Consumer Lending, 522310: Mortgage and Nonmortgage Loan Brokers).

Section 26.29 Prompt Payment Mechanisms

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

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

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

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

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

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

- a) From the total of the amount determined to be payable on a partial payment, five (5) percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:
 - (1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR (resident project representative) that supports the value of retainage held by the Owner for partially accepted work.
 - (2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

- b) The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c) When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The Commission is a non-certifying member of the MA Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

The Commission utilizes the Massachusetts Supplier Diversity Office (SDO) DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, 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 MA SDO revises the directory on a daily basis. The MA SDO makes the Directory available through their website:

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The Commission has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

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

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

Monitoring Payments to DBEs and Non-DBEs

The Commission 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 Commission or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

With each Periodic Cost Estimate (PCE), the Prime Contractor shall provide proof of payment of all Subcontractors and Suppliers whose work was included in the previous PCE. Proof of payment shall consist of a copy of a cancelled check or a certificate of payment signed by the Subcontractor or Supplier. The Commission may provide the Contractor with one or more forms to be filled out and returned to monitor and track payments. To track work by Subcontractors and Suppliers, the Prime Contractor shall submit copies of Gale Form 7 (contained in Attachment 3) for every approved Subcontractor and Supplier with each PCE, even if the Subcontractor or Supplier did not do any work on the project or supply any materials to the project during the period covered by the PCE.

If the Contractor is in violation of this prompt payment requirement, the Commission may withhold the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received. If the Contractor is in violation of this prompt payment requirement four (4) or more times, the Commission may terminate the Contract for cause and / or may require the Contractor to pay some or all of their Subcontractors or Suppliers and provide proof of payment before the Subcontractor's or Supplier's work can be included a PCE.

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

Prompt Payment Dispute Resolution

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

The RPR will maintain field notes of ongoing work and determine in the field if the unit of work has been satisfactorily completed. Any disputes regarding satisfactory completion of work may be brought to the attention of the designated RPR, and if necessary, to the DBELO. If necessary, the DBELO will hold a meeting either in person or via video call to discuss the details of the work in question and make a determination.

The Commission has established, as part of its DBE program, the following contract clause to ensure prompt payment:

The Owner may withhold the amount due to the Subcontractor or Supplier from future payments due to the Contractor until satisfactory proof of payment is received. If the Contractor is in violation of this prompt payment requirement four (4) or more times, the Owner may terminate the Contract for cause and / or may require the Contractor to pay some or all of their Subcontractors or Suppliers and provide proof of payment before the Subcontractor's or Supplier's work can be included on a PCE.

Prompt Payment Complaints

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

- The subcontractor should first submit their complaint in writing to the prime contractor.
- If filing a prompt payment complaint with the prime contractor does not result in timely and meaningful action, the subcontractor should forward their complaint to the DBELO. The DBELO will take necessary measures to resolve the complaint and notify the FAA accordingly through the Civil Rights Connect portal.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The Commission will provide appropriate means to enforce the requirements of §26.29 (Prompt Payment) by including contract provisions that require the contractor to provide proof of payment to subcontractors/suppliers with submission of each PCE, as well as provisions allowing for termination of the contract for cause if the contractor is in violation.

Monitoring Contracts and Work Sites

The Commission reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the consultant. Contracting records are reviewed by the consultant.

Section 26.39 Fostering small business participation

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

The small business element is incorporated as Attachment 9 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for the Commission to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

https://www.faa.gov/sites/faa.gov/files/2021-12/FAAGoalsDueChart%20New_Final.pdf

Airport Type	Region	Due	Period Covered	Next Goal Due
Non-Primary including GAs, Relievers, and State DOTs	New England, Northwest Mountain, and Southern	2023	2024/2025/2026	2026 (2027/2028/2029)

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

Step 1. Step 1. The first step is to determine the relative availability of DBEs in the market area. The Commission will compare Massachusetts SDO DBE Directory against Census Bureau Data to determine the base figure. The Commission 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 Commission 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 Commission market.

In establishing the overall goal, the Commission will provide for consultation. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or

organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the Commission to establish a level playing field for the participation of DBEs. The consultation will include outreach via email or telephone to schedule direct, interactive exchange (i.e. teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process. Consultation will occur before the Commission is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Commission engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

GROUPS:

- Greater New England Minority Supplier Development Council
- Women's Business Enterprise National Council
- Center for Women & Enterprise
- North Central Massachusetts Chamber of Commerce

The Commission will begin using its overall goal on October 1 of the reporting period, unless other instructions from DOT are received.

Project Goals

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

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

Prior Operating Administration Concurrence

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

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

Section 26.47 Failure to meet overall goals

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

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

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The Commission will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work,

- handle increasingly significant projects, and achieve eventual self-sufficiency;
- (6) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 - (7) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - (8) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

Contract Goals

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

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

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

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

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

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;

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

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

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 5 business days of being informed by the Commission that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Clayton Raymond, Commission Chairman
Fitchburg Airport Commission
567 Crawford Street
Fitchburg, MA 01420
Phone: (978) 345-9580
craymond07@gmail.com

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith

efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The Commission determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Commission 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 Commission has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

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

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

Section 26.55 Counting DBE Participation

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

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Commission is a non-certifying member of the MA Unified Certification Program (UCP). The MA UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying MA UCP members 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:

MassUCP/DBE Certification Office
State Transportation Building
10 Park Plaza, Suite 2600-B
Boston, MA 02116
Attention: Intake Specialist
(857) 368-8656

The Uniform Certification Application form and documentation requirements can be found at:
<https://www.mass.gov/how-to/apply-for-disadvantaged-business-enterprise-dbe-certification>.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Commission is the member of a Unified Certification Program (UCP) administered by the Massachusetts Supplier Diversity Office. The UCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Commission

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

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

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

The Freedom of Information Act (FOIA) is a federal law that establishes the public's right to obtain information from federal government agencies. Information regarding this legislation can be accessed through the following website: <https://www.foia.gov/>

The Massachusetts Public Records Law concerns access to public meetings and public records. Information regarding this legislation can be found in the Massachusetts General Laws, Chapter

66, Section 10. M.G.L., Chapter 66, Section 10, and can be accessed through the following website: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleX/Chapter66/Section10>

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

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

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

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Forms and Good Faith Efforts Forms
- Attachment 4 MA Supplier Diversity Office Directory of Certified Businesses
- Attachment 5 Overall Goal Calculations
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 DBE Certification Application Form
- Attachment 8 Small Business Element Program

ATTACHMENT 1

Regulations: 49 CFR Part 26

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

ATTACHMENT 2

Organizational Chart

Mayor/City Council



Airport Commission



Airport Manager (DBELO)

ATTACHMENT 3

Bidder's List Collection Forms and Good Faith Efforts Forms

FEDERAL AVIATION ADMINISTRATION

PROPOSED DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned Bidder/Offeror has made a good faith effort to make subcontracting and supplier opportunities available to all firms including, but not limited to, DBEs as defined in 49 CFR 26. As a result of these efforts:

The Bidder/Offeror is committed to a minimum of _____% **DBE** utilization on this Contract.

The DBE participation goal for this contract is ____%. If the Bidder/Offeror is unable to commit to achieving this goal, documentation of good faith efforts must be provided within 48 hours of the bid opening.

Name of Bidder/Offeror's firm: _____

AIP Number: _____

By: _____
Signature Title Date

DBE or Small Business Subcontractor / Supplier

Name of Firm: _____

Proposed Work: _____

Dollar Amount of Work: _____

Gale Form 6 attached (Required for each DBE/Small Business with submission of bid)

DBE or Small Business Subcontractor / Supplier

Name of Firm: _____

Proposed Work: _____

Dollar Amount of Work: _____

Gale Form 6 attached (Required for each DBE/Small Business with submission of bid)

(Attach additional sheets as needed for additional firms)

LETTER OF INTENT / SCHEDULE OF PARTICIPATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE)/SMALL BUSINESS PARTICIPATION (FOR FEDERALLY-SPONSORED PROJECTS)

AIRPORT: _____ AIP/ASMP NO.: _____

PROJECT TITLE: _____

Name of Prime Contractor

Name of DBE Contractor

Address

City _____ State _____ Zip Code _____ Phone _____

1. The Undersigned DBE firm intends to perform work in connection with the above referenced project as:

An Individual A Partnership A Corporation

A joint venture with: _____

Other: _____

2. The undersigned affirms that they are a duly authorized official representing the proposed DBE and affirms that its certification has not expired nor been revoked. (Attach a copy of the certification letter)

Check all that apply:

DBE Small Business

Certification Agency: _____ Certification Number: _____

States you are DBE Certified in:	(If not a DBE leave blank)	
Age of Firm:	_____ Years	
Ethnicity (Check One)	<input type="checkbox"/> Black American	<input type="checkbox"/> Asian-Pacific American
	<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American
	<input type="checkbox"/> Native American	<input type="checkbox"/> Non-Minority
Gender (Check One)	<input type="checkbox"/> Male	<input type="checkbox"/> Female
Certification*	<input type="checkbox"/> Attached	

***A copy of the firm's DBE certification is required as part of the bid package submission.**

The business identified on this form **must** be registered as a Disadvantaged Business Enterprise in the state where the work is to be performed and included in the National Certified Directory of DBE Businesses at www.faa.dbesystem.com.

3. If awarded the contract, the undersigned intends to enter into a subcontract to perform the work described on the following sheet for the prices indicated.

SCHEDULE OF PARTICIPATION

Contract Item No.	Description of Work to be Performed by DBE Contractor	Estimated Quantity	Unit Price	Item Amount

Total amount credited to DBE contractor (add item amounts): TOTAL \$ _____

Proposed total contract price: \$ _____

The total price to DBE contractor for work performed under this contract is _____ % of the proposed total contract price.

The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project pursuant to all conditions noted in attached documents, swearing and affirming under the pains and penalties of perjury, that the foregoing information and appropriate attachments are true and accurate to the best of their knowledge.

Name of DBE Contractor: _____

Authorized Signature: _____ Date: _____

Name and Title: _____

Name of Prime Contractor: _____

Authorized Signature: _____ Date: _____

Name and Title: _____

**SUBCONTRACTOR / SUPPLIER
DISADVANTAGED BUSINESS ENTERPRISE (DBE*)
EXPENDITURE REPORT**

(To be filled out by the Prime Contractor and the Subcontractor / Supplier and submitted with each Periodic Cost Estimate)

Project Name: _____

Airport: _____

AIP Number: _____

Prime Contractor

Company Name: _____

Subcontractor / Supplier Contractor

Company Name: _____

DBE Status:	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Certified DBE	(Check one)
-------------	----------------------------------	--	-------------

Contract Item No.	Description of Work to be Performed by Subcontractor / Supplier	Estimated Quantity	Unit Price	Item Subtotal
Total Amount requested by Subcontractor / Supplier this Invoice:				
Total amount previously requested by Subcontractor / Supplier:				
Total amount requested by Subcontractor / Supplier to date:				

(Attached additional sheets if needed)

*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in National Certified Directory of DBE businesses at www.faa.dbesystem.com.

**SUBCONTRACTOR / SUPPLIER
DISADVANTAGED BUSINESS ENTERPRISE (DBE*)
EXPENDITURE REPORT**

The undersigned certifies that the Subcontractor / Supplier has successfully completed the above referenced work associated with this project and further assures that the Subcontractor / Supplier will be paid in full for the amount indicated on page 1 for said services in accordance with the Contract Documents.

NAME OF SUBCONTRACTOR / SUPPLIER: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

NAME OF PRIME CONTRACTOR: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

Note: If the Prime Contractor is a DBE, the Prime Contractor should fill out and submit a copy of this form listing themselves as the Prime Contractor and the Subcontractor / Supplier.

*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in National Certified Directory of DBE businesses at www.faa.dbesystem.com.

PRIME CONTRACTOR DBE* ANNUAL REPORT FORM

(To be filled out by the Prime Contractor and submitted no later than November 1st of each calendar year or prior to the approval of final Periodic Cost Estimate.)

The reporting period is from October 1st of the previous year through September 30th of the current year.

Project Name: _____

Airport: _____

AIP Number: _____

Date: _____

Prime Contractor

Company Name: _____

Payments Made this Period (Ongoing Contracts)

PAYMENTS MADE ON ONGOING CONTRACTS	Total Number of Contracts**	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE Firms	Total Number of DBE Firms Paid

Payments Made this Period (Completed Contracts)

PAYMENTS ON CONTRACTS COMPLETED THIS PERIOD	Number of Contracts* Completed	Total Dollar Value of Prime Contracts Completed	Total DBE Participation (Dollars)

**For the purposes of this Form, a Contract refers to any agreement for services / supplies with a Subconsultant / Supplier, regardless of DBE status.

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

DATE: _____

*All businesses identified on this form **must** be registered as Disadvantaged Business Enterprises in the state where the work is to be performed and included in National Certified Directory of DBE businesses at www.faa.dbesystem.com.

ATTACHMENT 4

MA Supplier Diversity Office Directory of Certified Businesses

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: Fitchburg Airport Commission owner of Fitchburg Municipal Airport.

Goal Period: FY-2024-2025-2026 (October 1, 2023 through September 30, 2026)

DOT-assisted contract amount: FY-2024	\$	0.00
FY-2025	\$5,340,000.00	
<u>FY-2026</u>	<u>\$1,410,000.00</u>	
Total	\$6,750,000.00	

Overall Three-Year Goal: 9.48%, to be accomplished through 9.48% Race Neutral and 0% Race Conscious

Total dollar amount to be expended on DBEs: \$639,857.03

Describe the Number and Type of Contracts that the airport anticipates awarding:

FFY-2024 Projects

- 1) Permitting for Apron Construction – Ineligible (Less than \$250,000 in a single funding year)

FFY-2025 Projects

- 2) Main Apron Construction – \$3,640,000.00
- 3) Wildlife Fencing Construction – \$1,700,000.00

FFY-2026 Projects

- 4) Rehabilitate Taxiway and Taxilane – \$1,410,000.00

Market Area: The Commission defines its market area as the County of Worcester, Massachusetts and neighboring counties in Massachusetts, New Hampshire, Connecticut, and Rhode Island.

Step 1. 26.45(c) Actual relative availability of DBEs

Pursuant to 49CFR 26.45, the Commission has used the following methodology to determine the baseline figure for its 2021-2023 DBE goal. The Commission has used the most recent (2020) US Census data and the Supplier Diversity Office Directory of Certified Businesses to determine the number of ready, willing, and able DBEs in the market area.

For each area of work, the total number of DBEs within the market area (with adjustments for specific work categories) found in the SDO DBE Directory is divided by the total number of all firms found through analysis of the (2020) US Census data for the market area to arrive at the percentage of DBE firms that are ready, willing, and able to perform contract work.

In order to determine the expected DBE participation in dollars, the estimated contracting dollars for each area of work is multiplied by the percentage of firms that are ready, willing, and able to perform contract work. To establish the DBE project goal, the overall projected DBE participation (in dollars) is divided by the estimated total project costs. This is the base goal for each project.

To determine the overall base figure for more than one project, the sum of all the dollars expected to be spent on DBE participation is divided by the estimated total of all project costs. This number is the overall base goal for the Airport. A breakdown of all mathematical calculations is provided in the table at the end of this section.

Step 2. 26.45(d): Adjustments to Step 1 base figure.

No adjustment was made to the Step 1 base figure; therefore, the Commission is adopting the Step 1 base figure as its overall goal for this three-year goal period.

26.51(b) (1-9): Breakout of Estimated "Race and Gender Neutral" (Race Neutral) and "Race and Gender Conscious" (Race Conscious) Participation.

The Commission will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation., including but not limited to the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
- Relaying information regarding contracting procedures and specific contract opportunities;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Ensuring distribution of DBE directory, through electronic means, to the widest feasible universe of potential prime contractors;

The Commission will meet the maximum feasible portion of its overall goal by using Race Neutral means of facilitating DBE participation.

The Commission estimates that in meeting its overall goal of 9.48%. It will obtain 9.48% from Race Neutral participation and 0% through Race Conscious measures.

The Commission will adjust the estimated breakout of Race Neutral and Race Conscious DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report Race Neutral and Race Conscious participation separately. For reporting purposes, Race Neutral 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.

Consultation: Section 26.45(g)(1).

In establishing the overall goal, the Commission provided for consultation. This included consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Commission's efforts to establish a level playing field for the participation of DBEs. The consultation included outreach emails seeking to schedule, direct, interactive exchange via teleconference with as many interested stakeholders as possible focused on obtaining information relevant to the Commission's goal setting process, and it occurred before it was required to submit its goal methodology to the operating administration for review pursuant to paragraph (f) of this section.

Notwithstanding paragraph (f)(4) of this section, the Commission will not implement its proposed goal until it has complied with this requirement.

Before finalizing the overall goal, the Commission reached out to the Greater New England Minority Supplier Development Council, Women's Business Enterprise National Council, Center for Women & Enterprise, and the North Central Massachusetts Chamber of Commerce without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Commission's efforts to establish a level playing field for the participation of DBEs.

Any comments received will be published in this section prior to final submission to the FAA.

CONTRACT GOALS

The Commission will use contract goals to meet any portion of the overall goal that 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 Commission's overall goal that is not projected to be met through the use of Race Neutral means.

The Commission 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 DBEs to perform the particular type of work).

The Commission will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

STEP 1: CALCULATION OF GOAL

2024 Project Name: Permitting for Apron Construction

Eligible Project Costs
Not Included - Under \$250,000

DBE Participation	
in dollars	in percentage
\$0.00	0.00%

PROJECT DBE PARTICIPATION GOAL

2025 Project Name: Main Apron Reconstruction

Eligible Project Costs
\$3,640,000.00

DBE Participation	
in dollars	in percentage
\$444,887.86	12.22%

PROJECT DBE PARTICIPATION GOAL

2025 Project Name: Wildlife Fencing

Eligible Project Costs
\$1,700,000.00

DBE Participation	
in dollars	in percentage
\$83,985.94	4.94%

PROJECT DBE PARTICIPATION GOAL

2026 Project Name: Rehabilitate Taxiway and Taxilane

Eligible Project Costs
\$1,410,000.00

DBE Participation	
in dollars	in percentage
\$110,983.24	7.87%

PROJECT DBE PARTICIPATION GOAL

TOTAL FOR ALL FITCHBURG MUNICIPAL AIRPORT PROJECTS

Overall Project Costs
\$6,750,000.00

DBE Participation	
in dollars	in percentage
\$639,857.03	9.48%
	0.00%
\$639,857.03	9.48%

STEP 1: Calculation of Goal

STEP 2: Goal Adjustment

\$639,857.03	9.48%	FINAL OVERALL AIRPORT DBE PARTICIPATION GOAL
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2025 Project Name: Main Apron Reconstruction

Overall Project Cost: \$3,640,000.00
Eligible Project Costs: \$3,640,000.00

STEP 1: Calculation of Goal

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars
Professional/Consultant Contract							
X	Engineering Construction Phase Services	541330	1290	45	3.49%	\$250,000.00	\$8,720.93
X	Materials Testing (Soils Investigation) Subconsultant	541380	139	5	3.60%	\$60,000.00	\$2,158.27
						Subtotal	\$310,000.00
							\$10,879.204
							% DBE Participation 3.51%

Independent Fee Estimate Contract							
X	Engineering/Specialty Subconsultant - IFE	541330	1290	46	3.57%	\$5,000.00	\$178.29
						Subtotal	\$5,000.00
							\$178.29
							% DBE Participation 3.57%

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars
Construction							
X	Asphalt Paving	237310	154	28	18.18%	\$2,000,000.00	\$363,636.36
X	Drainage Subconsultant	237310	154	28	18.18%	\$230,000.00	\$41,818.18
X	Pavement and Pavement Markings (Painting) Subconsultant	237310	154	28	18.18%	\$50,000.00	\$9,090.91
X	Trucking (hauling of bulk materials, gravel, sand etc.)	484220	362	19	5.25%	\$170,000.00	\$8,922.65
X	Unclassified Excavation	238910	912	41	4.50%	\$200,000.00	\$8,991.23
X	Landscaping	561730	2954	15	0.5%	\$100,000.00	\$507.79
X	Sedimentation and Erosion Control (Landscaping)	561730	2954	15	0.51%	\$170,000.00	\$863.24
Construction Material Providers:							
X	* Asphalt	324121	34	0	0.00%	\$300,000.00	\$0.00
X	* Geotechnical Fabrics	313230	9	0	0.00%	\$100,000.00	\$0.00
5% Contingency		NA	NA	NA	0.00%		\$0.00
						Subtotal	\$3,320,000.00
							\$433,830.36
							% DBE Participation 13.07%

Non - Contributive Expenses							
X	Sponsor Admin Fee	N/A	N/A	N/A	0%	\$5,000.00	\$0.00
						Subtotal	\$5,000.00
							\$0.00
							% DBE Participation 0.00%

Overall Total	\$3,640,000.00	\$444,887.86
		% Overall DBE Participation 12.22%

STEP 2: Goal Adjustment

% Goal Adjustment 0%

FINAL PROJECT DBE PARTICIPATION GOAL 12.22%

2025 Project Name: Wildlife Fencing

Overall Project Cost: \$1,700,000.00
Eligible Project Costs: \$1,700,000.00

STEP 1: Calculation of Goal

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars	
Professional/Consultant Contract								
X	Engineering and Management Services	541330	1290	45	3.49%	\$240,000.00	\$8,372.09	
X	Engineering Construction Phase Services	541330	1290	45	3.49%	\$250,000.00	\$8,720.93	
X	Survey (Land) Subconsultant	541370	110	6	5.45%	\$10,000.00	\$545.45	
						Subtotal	\$500,000.00	\$17,638.48
							% DBE Participation	3.5%

Independent Fee Estimate Contract								
X	Engineering/Specialty Subconsultant - IFE	541330	1290	45	3.49%	\$5,000.00	\$174.42	
						Subtotal	\$5,000.00	\$174.42
							% DBE Participation	3.49%

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars					
Construction												
X	Specialty Contractor (Fence and Gate)	238990	642	36	5.61%	\$1,140,000.00	\$63,925.23					
X	Unclassified Excavation	238910	912	41	4.50%	\$50,000.00	\$2,247.81					
						5% Contingency	NA	NA	NA	0.0%		\$0.00
						Subtotal	\$1,190,000.00	\$66,173.04				
							% DBE Participation	5.6%				

Non - Contributive Expenses								
X	Sponsor Admin Fee	N/A	N/A	N/A	0%	\$5,000.00	\$0.00	
						Subtotal	\$5,000.00	\$0.00
							% DBE Participation	0.0%

Overall Total	\$1,700,000.00	\$83,985.94
	% Overall DBE Participation	4.94%

STEP 2: Goal Adjustment

% Goal Adjustment 0%

FINAL PROJECT DBE PARTICIPATION GOAL 4.94%

2026 Project Name: Rehabilitate Taxiway and Taxilane

Overall Project Cost: \$1,410,000.00
Eligible Project Costs: \$1,410,000.00

STEP 1: Calculation of Goal

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars	
Professional/Consultant Contract								
X	Engineering and Management Services	541330	1290	45	3.49%	\$200,000.00	\$6,976.74	
X	Engineering Construction Phase Services	541330	1290	45	3.49%	\$200,000.00	\$6,976.74	
X	Electrical Engineering Subconsultant	541330	1290	45	3.49%	\$15,000.00	\$523.26	
X	Environmental Engineering, Compliance and Permitting Subconsu	541620	224	19	8.48%	\$10,000.00	\$848.21	
X	Materials Testing (Soils Investigation) Subconsultant	541380	139	5	3.60%	\$25,000.00	\$899.28	
X	Reprographics Subconsultant	561439	96	1	1.04%	\$5,000.00	\$52.08	
X	Survey (Land) Subconsultant	541370	110	6	5.45%	\$10,000.00	\$545.45	
						Subtotal	\$465,000.00	\$16,821.78
							% DBE Participation	3.6%

Independent Fee Estimate Contract								
X	Engineering/Specialty Subconsultant - IFE	541330	1290	45	3.49%	\$5,000.00	\$174.42	
						Subtotal	\$5,000.00	\$174.42
							% DBE Participation	3.49%

Description of Services		NAICS Code	Available Businesses*	Available DBEs**	% of Available DBEs	Project Costs	DBE Participation in Dollars			
Construction										
X	Airport Runway Lighting Contractors/Electrical Contractors	238210	1969	17	0.86%	\$60,000.00	\$518.03			
X	Asphalt Paving	237310	154	28	18.18%	\$450,000.00	\$81,818.18			
X	Drainage Subconsultant	237310	154	28	18.18%	\$15,000.00	\$2,727.27			
X	Electrical Contractors (Electrical Installation)	238210	1969	17	0.86%	\$20,000.00	\$172.68			
X	Landscaping	561730	2954	15	0.51%	\$50,000.00	\$253.89			
X	Pavement and Pavement Markings (Painting) Subconsultant	237310	154	28	18.18%	\$10,000.00	\$1,818.18			
X	Sedimentation and Erosion Control (Landscaping)	561730	2954	15	0.51%	\$30,000.00	\$152.34			
X	Trucking (hauling of bulk materials, gravel, sand etc.)	484220	362	19	5.25%	\$30,000.00	\$1,574.59			
X	Unclassified Excavation	238910	912	41	4.50%	\$100,000.00	\$4,495.61			
Construction Material Providers:										
X	* Asphalt	324121	34	0	0.00%	\$110,000.00	\$0.00			
X	* Concrete	327320	36	0	0.00%	\$20,000.00	\$0.00			
X	* Electrical supplies	423610	263	6	2.28%	\$20,000.00	\$456.27			
X	* Geotechnical Fabrics	313230	9	0	0.00%	\$20,000.00	\$0.00			
5% Contingency						NA	NA	NA	0.00%	\$0.00
						Subtotal	\$935,000.00	\$93,987.04		
							% DBE Participation	10.1%		

Non - Contributive Expenses								
X	Sponsor Admin Fee	N/A	N/A	N/A	0%	\$5,000.00	\$0.00	
						Subtotal	\$5,000.00	\$0.00
							% DBE Participation	0.0%

Overall Total	\$1,410,000.00	\$110,983.24
% Overall DBE Participation		7.87%

STEP 2: Goal Adjustment

% Goal Adjustment 0%

FINAL PROJECT DBE PARTICIPATION GOAL 7.87%

ATTACHMENT 6

DBE Monitoring and Enforcement Mechanisms

The Commission 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 General Provisions of the contract.
2. Breach of contract action, pursuant to applicable Massachusetts General Law.

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 7

A copy of the USDOT DBE Uniform Certification Application can be downloaded from the following website:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>

ATTACHMENT 8

Small Business Element

The Commission 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. For clarification purposes, 49 CFR Part 26.5 states, “*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).” 13 CFR 121.402 defines “What size standards are applicable to Federal Government Contracting programs?”

In compliance with this policy, the Commission’s DBE Program in regard to §26.39 Fostering *Small Business Participation* may include, but is not limited to, the following strategies:

- 1) Requiring contractors to include information related to small business participation with the submission of all bids. This information is collected via the forms contained in Attachment 3 of this Program.
- 2) To meet the portion of the projected overall goal through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.