

CITY OF DAYTON, DAYTON INTERNATIONAL AIRPORT

DAYTON INTERNATIONAL AIRPORT DBE PROGRAM 2021-2022-2023

Implementation of 49 CFR Part 26

Chrisondra Goodwine

The City of Dayton 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 Dayton, Dayton International Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Dayton has signed an assurance that it will comply with 49 CFR Part 26.

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POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The City of Dayton 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 Dayton, Dayton International Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the city of Dayton has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Dayton 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. 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.

Chrisondra Goodwine, the Contract Compliance Officer for the City of Dayton Human Relations Council, is delegated as the DBE Liaison Officer. In that capacity, Chrisondra Goodwine implements 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 City of Dayton in its financial assistance agreements with the Department of Transportation.

City of Dayton, Dayton International Airport has disseminated this policy statement to the Dayton City Commission and all of the components of our organization. We distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The Contract Compliance Officer maintains the contact list for distribution and utilizes electronic and non-electronic contact data.

Signature of Dayton City Manager,
Shelley Dickstein

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

Section 26.5 Definitions

The City of Dayton, Dayton International Airport will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

Since the City of Dayton, Dayton International Airport will receive an annual grant during the reporting period of \$250,000 or more we will continue to carry out this program until all funds from DOT financial assistance are expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to DOT as follows:

We will transmit to FAA annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payments, at the intervals stated on the form.

(b) The City of Dayton, Dayton International Airport will continue to provide data about the DBE Program to the Department as directed by DOT operating administrations.

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 form, found in Appendix B. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor's Form.

Bidders List: 26.11(c)

The City of Dayton, Dayton International Airport will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidder's list will include the name, address, DBE and non-DBE status, the age of firm, and annual gross receipts of firms.

We will collect this information in the following ways:

1. At bid opening, we will collect the names of the firms who placed bids on airport projects
2. Using the Ohio Unified Certification Programs list of DBEs, we will pull information regarding 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
3. Contacting the certifying agent to determine what the firm's gross receipts

The City of Dayton, Dayton International Airport utilizes the Ohio Unified Certification Program list of certified DBEs as a directory identifying all firms eligible to participate as DBEs. The online 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. The state of Ohio revises the Directory on a continuous basis. We make the Directory available as follows: www.ohioucp.org.

Section 26.13 Federal Financial Assistance Agreement

City of Dayton, Dayton International Airport has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

City of Dayton, Dayton International Airport shall not discriminate on the basis of *race, color, religion, sex, sexual orientation, gender identity, disability, age, ancestry, marital status, place of birth or national origin* 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 recipient 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 Dayton, Dayton International Airport'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 constitute a violation of this agreement. Upon notification to the City of Dayton, Dayton International Airport 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 the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Dayton, Dayton International Airport will receive an annual grant for airport planning or development totaling \$250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding \$250,000 annually, during the reporting period.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Chrisondra Goodwine, Contract Compliance Officer
City of Dayton Human Relations Council
371 West Second Street Suite 100
Dayton, OH 45402
937.333.1405 Office, Chrisondra.Goodwine@daytonohio.gov

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

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

1. Gathering and reports statistical data and other information as required by DOT.
2. Reviewing third party contracts and purchase requisitions for compliance with this program.
3. Working with all departments to set overall annual goals.
4. Ensuring that bid notices and requests for proposals are available to DBEs promptly.
5. Identifying 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.
6. Analyzing the City of Dayton, Dayton International Airport's progress toward attainment and identifies ways to improve progress.
7. Participating in all pre-bid meetings related to this program.
8. Advising the City Manager and Dayton City Commission on DBE matters and achievement.
9. Referring DBEs to the Minority Business Assistance Center to gain information and assistance in preparing bids, obtaining bonding and insurance.
10. Plan and participate in DBE training seminars.
11. Certifies DBEs according to the criteria set by DOT and acts as a liaison to the Uniform Certification Process in the state of Ohio.
12. Provides outreach to DBEs and community organizations for advising them of opportunities.
13. Attends FAA-sponsored training, Airport Minority Advisor Council Training and American Contract Compliance Association training as needed to remain current on regulations.
14. Reports the program performance to the FAA.

15. Monitors the grant until all funds from DOT financial assistance have been expended.
16. Maintains the project file, participates in progress meetings and conducts project site visits for compliance.

Section 26.27 DBE Financial Institutions

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

The Financial and Insurance DBE's identified include:

Hollinger Financial

Pinkney-Perry Insurance Agency

Seep, LLC

Tinsley and Associates, LTD

This list of certified Financial and Insurance DBE's is made available to anyone seeking financial services from the City of Dayton Human Relations Council and the Minority Business Assistance Center. The list will be updated upon every individual request.

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR §26.29, the City of Dayton, Dayton International Airport established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from the City of Dayton, Dayton International Airport.

The City of Dayton, Dayton International Airport 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 ten days from the receipt of each payment the prime contractor receives from City of Dayton, Dayton International Airport. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of

Dayton, Dayton International Airport. This clause applies to both DBE and non-DBE subcontractors.

The City of Dayton, Dayton International Airport ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the City of Dayton, Dayton International Airport has selected the following method to comply with this requirement:

The City of Dayton, Dayton International Airport 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. To comply with this requirement, the City of Dayton, Dayton International Airport will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 10 days after your payment to the prime contractor.

To implement this measure, the City of Dayton, Dayton International Airport includes the following clause from FAA Advisory Circular 150/5370-10 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 Authority. The prime contractor agrees further to release retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors.

The Human Relations Council tracks all payments to subcontractors and rigorously investigates any claims of slow or no payment within the specified period. Each prime contractor is required to report payments to DBE subcontractors monthly. The Human Relations Council may recommend that no further payments are issued to the prime contractor if the prime contractor fails to make prompt payments.

Section 26.31 Directory

The City of Dayton, Dayton International Airport 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.

Also, 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 continuously. The Directory may be found at www.ohiouncp.org.

Section 26.33 Over-concentration

City of Dayton, Dayton International Airport has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

City of Dayton, Dayton International Airport has a business development program that will assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. The rationale for the program is the Dayton City Commission adoption of the findings and conclusions of the MGT of America; Inc. Final Report dated November 19, 2019, and entitled "A Third-Generation Disparity Study for the City of Dayton, Ohio" and by this reference incorporates in the City of Dayton Revised Code of General Ordinances the Third-Generation Disparity Study.

On the basis of the foregoing and upon full consideration of all relevant facts, the Commission finds that:

- (A) Minorities and women continue to show disparities in entry into self-employment, after controlling for age, wealth, and other variables.
- (B) Minorities and women that were self-employed earned significantly less than non-minority males, after controlling for other factors.
- (C) Past discrimination in the private sector and the city's overall contracting process has had the effect of significant underutilization of minority and women-owned business enterprises in contracts awarded by the city and have contributed to the underdevelopment of such businesses.
- (D) The present effects of such past discrimination continue to impede the development of businesses owned by minorities and women.
- (E) Certain issues, such as difficulties in the financing and bonding markets, and problems obtaining credit and insurance, impede the development of minority and women-owned businesses as well as certain nonminority small business enterprises.
- (F) The city has long recognized the importance of small business enterprises to its economic vitality and has adopted several measures and programs in support thereof including, but

not limited to, CityWide Development Corporation, the Office of Small Business Ombudsmen, the Small Business Advisory Council, the Minority Contractors Business Assistance Program, the Small business Retention Program and the Small Business Assistance Program.

(G) It is in the best interest of the city to continue to promote the equitable utilization of small business enterprises, minority business enterprises and women's businesses enterprises in city contracting in order to eradicate the lingering effects of past discrimination and improve the city's economic viability.

(H) The requirements of this division are necessary to overcome the present effects of past discrimination and are designed to achieve the goal of equitable utilization of small businesses and minority and women-owned businesses in contracting with the city.

The Greater Dayton Minority Business Assistance Center (MBAC) operates a comprehensive business development program aimed at enhancing the growth, development, and self-sufficiency of all DBE firms competing for DOT-assisted contracts and subcontracts.

The MBAC assists these firms in developing a comprehensive business plan, which:

- Provides an analysis of the participating DBE's market potential, the competitive environment, and other business analysis capable of estimating the prospects for profitable operation during the term of participation during and after the program;
- Provides an analysis of the firm's strengths and weaknesses, with particular attention to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts for work that historically has not been performed by DBEs;
- Sets specific targets, objectives, and goals for the business development of the participant DBE during their participation in the MBAC;
- Provides estimates of contract awards from the DBE Program and from other sources needed to meet the objectives and goals for the period covered by the MBAC; and
- Continuing professional networking opportunities that enhance the marketability of the companies.

All businesses are assessed using the same criteria when first engaged by the Dayton MBAC. The initial assessment is to ensure that all foundational elements are present with companies we assist. Some firms may have worked with other technical assistance providers or no one at all before working with the Dayton MBAC. Thus, it is critical to apply the same assessment or initial standards at the onset of the relationship to be sure no essential elements are overlooked. After the assessment, companies are assigned a counselor and placed into one of the development stages. A technical assistance plan is then created to be used as a guide for the counselor, as well as to set expectations for the clients.

Section 26.37 Monitoring Responsibilities

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

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

Monitoring Payments to DBEs and Non-DBEs

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

- *Posting prime contractor payments to the Citybots database, or other place accessible to subcontractors to alert them to the start of the 10-day clock for payment*

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

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

Prompt Payment Dispute Resolution

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

1. Facilitate meeting between the prime contractor and the subcontractor (individuals authorized to bind each interested party).
2. Reduce agreed terms into writing.
3. If parties are not able to resolve the payment issue, the City of Dayton, Dayton International Airport will launch an investigation into the matter. All information will be submitted to the FAA. If the prime contractor is found to be in fault, the City of Dayton,

Dayton International Airport will use enforcement authority to move forward payment. If the sub-contractor is found to be at fault, the City of Dayton, Dayton International Airport will work to assist the subcontractor with corrective steps.

The City of Dayton, Dayton International Airport has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage [*examples of mechanisms include the following*]:

(1) Alternative dispute resolution (ADR)

- Dispute between parties will be facilitated by the contract compliance team and the mediation center.

(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.

Prompt Payment Complaints

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

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

Enforcement Actions for Noncompliance of Participants

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

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract

- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
- Other penalties for failure to comply, up to and including contract termination:
 - Withholding payments to the contractor under the contract until the contractor complies; and/or
 - Cancellation, termination or suspension of the contract in whole or in part; and/or
 - Liquidated damages; and/or
 - Suspension or debarment of contractor from eligibility to contract with the Authority in the future or to receive bid packages or RFP/RFQ packages.

The City of Dayton, Dayton International Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City of Dayton, Dayton International Airport reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by *DBELO*. Contracting records are reviewed by *DBELO*. The City of Dayton, Dayton International Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

The City of Dayton, Dayton International Airport 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.

This element is included as [Attachment 12](#). As part of this program element, we will include the following strategies:

- (1) Establish race-neutral small business inclusion goals for prime contracts under a stated amount (*e.g.*, \$1 million or another amount.)

- (2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- (6) Provide technical assistance to small businesses seeking to participate on airport projects

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 Dayton, Dayton International Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

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 information about barriers to entry to past competitiveness of DBEs on projects.

In accordance with Section 26.45(f) the City of Dayton, Dayton International Airport will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, City of Dayton, Dayton International Airport regularly consults with minority, women 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 Dayton, Dayton International Airport's efforts to establish a level playing field for the participation of DBEs.

As a result of these consultations, we will 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 City of Dayton, Human Relations Council, 371 West Second Street, Suite 100, Dayton, Ohio 45402 for 30 days following the date of the notice, and informing the public that the City of Dayton, Dayton International Airport, and DOT 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 and women-focused media, trade publications, and websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall 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.

Project Goals

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

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

Section 26.47 Failure to Meet Overall Goals

If the City of Dayton, Dayton International Airport awards and commitments are less than the goal for that year, we will:

- (1) Analyze the reasons for difference
- (2) Establish specific steps and milestones to meet the goal for the new fiscal year fully
- (3) As an Operational Evolution Partnership (OEP) Plan or primary airport we will submit, within 90 days of the end of that fiscal year, the analysis and corrective actions developed, to the appropriate FAA DBE Team

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious

Participation

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in [Attachment 5](#) to this program. The City of Dayton, Dayton International Airport intends to use both race-conscious and race-neutral participation goals due to the findings of the 2008 Disparity Study. When the availability of DBEs is deemed sufficient to provide competitive bids for subcontracting on the project, the City of Dayton, Dayton International Airport may set a participation goal of 23.0%.

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

Section 26.51(d-g) Contract Goals

The City of Dayton, Dayton International Airport's 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 to 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 *total amount of a DOT-assisted contract*.

DBE percentage contract goals must be obtained on the base bid as well as all alternative bids.

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, located in [Attachment 6](#).

Chrisondra Goodwine, Contract Compliance Assistant 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))

City of Dayton, Dayton International Airport treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which there is an established contract goal 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 signed agreement between the Prime Contractor and each DBE subcontractor stating the price and scope of work to be performed on the contract;
3. A description of the work that each DBE will perform;
4. The dollar amount of the participation of each DBE firm participating;
5. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
6. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
7. If the bidder is unable to meet the DBE participation contract goal, the bidder must supply documented evidence that supports a notions that a good faith effort was made to secure DBE subcontractors.

Administrative reconsideration (Waiver Request) (26.53(d))

Within ten business days of being informed by the City of Dayton, Dayton International Airport 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: Executive Director, Human Relations Council, 371 West Second Street, #100, Dayton, Ohio 45402. 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))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 City of Dayton, Dayton International Airport. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if [Recipient] 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 under 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. 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 City of Dayton, Dayton International Airport a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City of Dayton, Dayton International Airport, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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

Each prime contract will include a provision stating:

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

The City of Dayton, Dayton International Airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the City of Dayton, Dayton International Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The City of Dayton, Dayton International Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

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 Dayton, Dayton International Airport to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract is conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of 23% percent has been established for this contract. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal as well as alternative bid goal of 23% for DBE participation in the performance of this contract.

The bidder/offers will be required to submit the following information:

- (1) the names and addresses of DBE firms that will participate in the contract;
- (2) A signed agreement between the Prime Contractor and each DBE subcontractor stating the price and scope of work to be performed on the contract;
- (3) A description of the work that each DBE firm will perform;
- (4) The dollar amount of the participation of each DBE firm participating;
- (5) Written documentation of the bidder/offers's commitment to using a DBE subcontractor whose participation it submits to meet the contract goal;
- (6) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (5); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Dayton, Dayton International Airport 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. The City of Dayton, Dayton International Airport makes all certification decisions based on the facts as a whole.

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

Chrisondra Goodwine
Contract Compliance Officer
City of Dayton Human Relations Council
371 West Second Street, Suite 100
Dayton, OH 45402
937.333.1405
Chrisondra.Goodwine@daytonohio.gov

The Uniform Certification Application form and documentation requirements are found in [Attachment 8](#)

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Dayton, Dayton International Airport is the member of a Unified Certification Program (UCP) administered by Ohio UCP. The UCP will meet all of the requirements of this section. See [Attachment 10](#) for the signed agreement page of the membership of the UCP.

Section 26.83 Procedures for Certification Decisions

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. The City of Dayton, Dayton International Airport will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of *The City of Dayton, Dayton International Airport* that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

“No Change” Affidavits and Notices of Change

The UCP requires all DBEs owners to provide a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with the DBE firm's original application for certification.

The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which [*name of DBE firm*] has provided written notice to the City of Dayton, Dayton International Airport pursuant to §26.83(i). [*Name of DBE firm*] meets Small Business Administration

(SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$23.98 million.

The UCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The UCP will notify all currently certified DBE firms of these obligations by U.S. Mail and by electronic mail eight weeks before the anniversary of the certification. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth, business size), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until 12 months have passed from such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. [Attachment 9](#) to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the UCP has determined that the City of Dayton Human Relations Council Executive Director or Designee will serve as the decision-maker in decertification proceedings. The UCP has established an administrative "firewall" to ensure that City of Dayton Human Relations Council Business and Technical Assistance Administrator will not have participated in any way in the decertification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification

The City of Dayton, Dayton International Airport will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), [*Recipient*] will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension **as long as the DBE is performing a commercially useful function under the existing contract.**

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the City of Dayton, Dayton International Airport information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of the City of Dayton, Dayton International Airport to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of the City of Dayton, Dayton International Airport in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a

letter to the U.S. DOT within 90 days of the date of the final decision of the City of Dayton, Dayton International Airport, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) the City of Dayton, Dayton International Airport failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Dayton, Dayton International Airport

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

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. Confidentiality includes applications for DBE certification and supporting information. However, we 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.

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

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 Dayton, Dayton International Airport 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.

The City of Dayton also requires Sub-Contractor Drawdowns to be submitted monthly to track payments to certified subcontractors. Reports should be submitted on the tenth day of each month to the Citybots system.

LIST OF ATTACHMENTS

Attachment 1	Regulations: 49 CFR Part 26 website link
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory website link
Attachment 5	Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race- Conscious Participation, Public Participation, and Contract Goal)
Attachment 6	DBE Participation Form and Waiver Request Form (for Demonstration of Good Faith Efforts)
Attachment 7	Monitoring and Enforcement Mechanisms
Attachment 8	Certification Application Form [http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx]
Attachment 9	Procedures for Removal of DBE's Eligibility or copy of the State's UCP
Attachment 10	Signed UCP Agreement Form (<i>signature page only- recipient signing with UCP</i>)
Attachment 11	Reporting Forms
Attachment 12	Small Business set-aside program
Attachment 13	CUF Review form

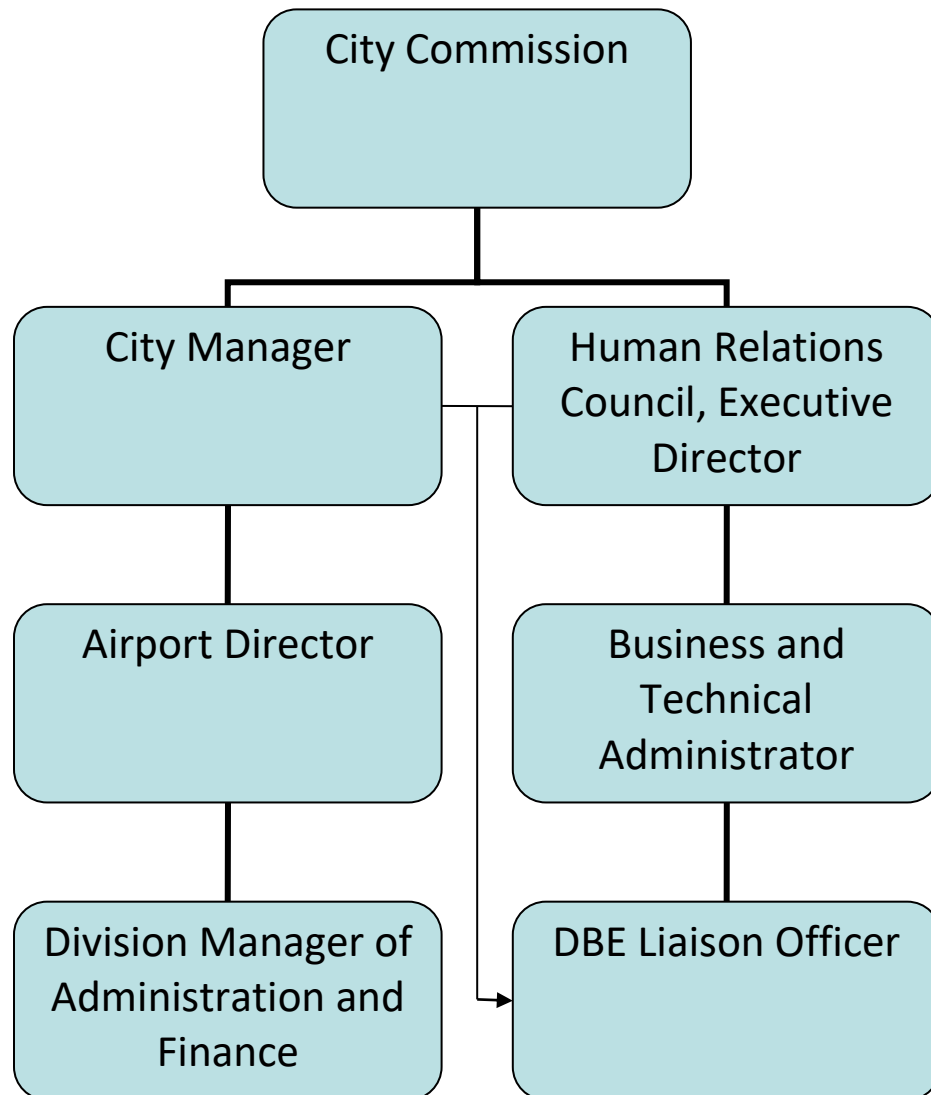
Attachment 1: 49 CFR Part 26

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

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

Attachment 2: Organizational Chart

City of Dayton DBE Program Organizational Chart



Should it prove necessary for the integrity of the DBE Program, the DBE Liaison Officer will contact the City Manager.

Attachment 3: Bidder's List Collection Form

The City of Dayton collects attendance cards at each Pre-bid meeting. The list of potential bidders is published at the City's web site:

<https://oh-dayton.civicplus.com/DocumentCenter/Index/101>

A sample cards is shown here.

Rf-32	DEPARTMENT OF PUBLIC WORKS PRE-BID CONFERENCE	
	DATE _____	
NAME OF COMPANY _____	PHONE _____	
EMAIL ADDRESS _____	FAX _____	
ADDRESS _____	(NUMBER) _____	(STREET) _____
(CITY) _____	(STATE) _____	(ZIP CODE) _____
REPRESENTED BY _____	(NAME) _____	(TITLE) _____
PROJECT NAME(S) _____		
AREA OF INTEREST _____	(PRIME-SUBCONTRACTOR-MATERIAL SUPPLIER-OTHER (SPECIFY)) _____	

Attachment 4: Link to DBE Directory

www.ohioucp.org/

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>

Attachment 5: Section 26.45: Overall Goal Calculation

Name of Recipient: City of Dayton, Dayton International Airport

Goal Period: FY-2021–2023 October 1, 2020, through September 30, 2023

Market Area: Montgomery, Butler, Clark, Greene, and Miami Counties.

Determination of Market Area: A majority (at least 50%) of the contractors and subcontractors come from this area, and

- a. Substantial majority (at least 80%) of the contracting dollars will be spent in this area.

Step 1. Base Figure: Used data from the City of Dayton contract compliance database, Citybots- City of Dayton Vendors and certified small, minority-owned, women-owned and local business enterprises in contracting for construction services and in the procurement of goods, services, and supplies with the City of Dayton.

1. There is currently 1,248 business that ready, willing, and able to conduct business as a City of Dayton Vendor.
2. There are currently 144 minority businesses that either is certified as a DBE or have the ability to be certified as a DBE.
3. $144/1248 = 11.5\%$ Rounded to a whole number equals 12%

PEP Certifications by Type and Category				
	MBE	WBE	SBE	DLSB
TOTAL	96	74	181	50
CONSTRUCTION	35	29	74	19
SERVICES	72	54	134	36
GOODS	20	18	37	9

Subcontractor Utilization and Availability

The tables below illustrate the City of Dayton's Procurement enhancement program of all certified firms that are ready, willing, and able to compete for DOT-assisted contracting in the City of Dayton:

	SBE	MBE	WBE	DLSB
2017	6,433,443 11.72%	4,165,861 7.59%	4,779,851 8.71%	1,445,718 2.63%
2018	\$3,632,001 11.03%	\$4,107,699 12.48%	\$220,539 0.67%	\$2,829,766 8.60%
2019	\$3,300,915 18.20%	\$2,535,526 11.64%	\$1,505,217 8.30%	\$1,849,915 10.20%

Step 2. Analysis: Adjustment to Step 1 base figure to make it more precise.

Two factors to consider in the adjustment of Step 1 base figure:

- a. First, the recipient addressed other factors by researching and contacting the following offices:
 1. Organizations serving or representing DBE's, minority-owned or women-owned businesses
 - i. ***The Minority Business Partnership (MBP)), a division of the Dayton Area Chamber of Commerce meets with minority-owned businesses each month. The City of Dayton sends a representative to this monthly meeting who serves on the Facilities Committee for the organization. The MBP collects MBE utilization reports from the public and private sector.***
 2. State or local offices of procurement
 - i. ***The City of Dayton works with the Minority Business Assistance Center to increase awareness of opportunities and provide technical assistance to minority-owned women-owned businesses and small businesses.***
 3. Federal offices responsible for enforcing Civil Rights laws
 - i. ***The City of Dayton Human Relations Council is a certifying agency for the Ohio Unified Certification Program and regularly conducts contract compliance site visits for federally funded projects.***

- b. Second, the recipient examined the historical overall DBE goals accomplishments at the airport in recent years, i.e., 3-4 years, specifically, the annual "Report of DBE Goal Accomplishments," Form 4630, Uniform Report of DBE Awards or Commitments and Payments supplemented by contractual closeout information, and summarized below:
1. According to the available data, the contract awards for FAA projects in 2015 were \$316,335. DBE companies were awarded \$65,800.46 or 27.77%.
 2. The contract awards for FAA projects in 2014 were \$ 16,059,970. DBE companies were awarded \$2,029,144 or 15.96%.
 3. The contract awards for FAA projects in 2013 were \$ 5,090,808. DBE companies were awarded \$1,001,955 or 24.50%.

Recipients Historic DBE Accomplishments for DOT-Assisted Contracts
(3-4 years analysis of similar or the same type of work)

Fiscal Year	Goal	Accomplishments	Type of Work
2017	25.00%	21.82%	Architecture & Engineering, Testing, Pavement, and Trucking
2018	23.00%	22.52%	Architecture & Engineering, Testing, Pavement, and Trucking
2019	-	No AIP Grants awarded during reporting period	-

The median percentage of accomplishments for all similar projects over recent years is 24.00%. When we compare this median with the proposed base figure for FY-2019 (22.17%), we determine that our adjusted overall goal is 22%.

22% base figure + 24.00% (historical median rounded up) = 46% divided by 2 = 23% adjusted race-conscious goal. Using the overall adjusted goal achieved by race-conscious means compared to the overachievement our adjusted race-neutral goal is 3%. The overall race conscious goal is 20% and the race-neutral goal is 3%.

Breakout of Estimated Race-Neutral (RN) and Race Conscious (RC) Participation.
26.51(b)(1-9)

The City of Dayton, Dayton International Airport will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
2. Referring DBEs for assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;
5. Participate in matchmaking sessions for Joint Ventures, Strategic Partnerships and Protégé Mentor Program.
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 DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
8. Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

The recipient estimates that in meeting its overall goal 23%, it will obtain 3% from RN participation and 20% through RC measures.

Summary of the basis for the RN and RC goals: There will be some projects for which no goal will be stated to provide prime contractors with the opportunity to seek a diverse list of subcontractors. All invitations to bid will contain the statement:

The City of Dayton, Dayton International Airport encourages all bidders to review the list of certified DBE companies in the Ohio Unified Certification Program at www.ohiouncp.org.

The City of Dayton, Dayton International Airport 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). In establishing the proposed goal, we consulted with minority, women's and general contractor groups, community organizations who can share information on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's and the City of Dayton, Dayton International Airport's efforts to establish a level playing field for the participation of DBE's.

The Minority Business Partnership (MBP), a division of the Dayton Area Chamber of Commerce meets with minority-owned businesses each month. The City of Dayton sends two representatives to this monthly meeting who serve on the Facilities Committee for the organization. The MBP collects MBE utilization reports from the public and private sector.

The Local Advisory Committee of The South Central Ohio Minority Supplier Diversity Council (SCOMSDC) meets regularly and is comprised of representatives from local government, the private sector, and supporting agencies. The City of Dayton attends these meetings to exchange ideas on strategies to develop a diversified supplier group.

The Dayton Hispanic Chamber hosts monthly Lunch and Learns for its members. The City of Dayton has presented procurement assistance to the attendees on a quarterly basis.

PUBLIC NOTICE

The City of Dayton, Dayton International Airport hereby affirms its fiscal year 2021 goal of 23% 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 City of Dayton Human Relations Council, 371 West Second Street, Suite 100, Dayton, OH 45402 by appointment.

Comments on the DBE goal will be accepted throughout the three-year period of this program and can be sent to the following:

Chrisondra Goodwine Contract Compliance Officer City of Dayton Human Relations Council 371 West Second Street, Suite 100 Dayton OH 45402 Chrisondra.Goodwine@daytonohio.gov	Or	FAA Office of Civil Rights 2300 E Devon Avenue Des Plaines, IL 60018
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Contract Goals

The City of Dayton, Dayton International Airport 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 Airport's overall goal that is not projected to be met through the use of RN means.

The City of Dayton, Dayton International Airport 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).

The City of Dayton, Dayton International Airport will express its contract goals as a percentage of the total contract award including *the Federal share of a DOT-assisted contract*.

Attachment 6: DBE Participation Form and Waiver Request Form (Demonstration of Good Faith Efforts)



FOR USE WITH CITY OF DAYTON DEPARTMENT OF AVIATION DBE PROJECTS ONLY
DEMONSTRATION OF GOOD FAITH EFFORTS FORM

Instructions for Bidders: Submit one executed copy of this form with your Bid, along with:

- *An executed DBE Participation Form (Letter of Intent) for each certified Disadvantaged Business Enterprise (DBE) firm whose participation you plan to count toward the project's DBE participation goal, and*
- *Documentation of your good faith efforts, if applicable.*

SECTION 1: BIDDER'S AFFIRMATION OF GOOD FAITH EFFORTS

The undersigned Bidder has satisfied the DBE participation requirements of the Bid Specification in the following manner:

(Check one of the following boxes, complete the appropriate spaces, and submit the required documents with your Bid.)

- ☐ The Bidder has secured enough DBE participation to meet or exceed the project's DBE participation goal.

The Bidder is committed to a minimum of _____ % DBE participation on this project, as described on the enclosed DBE Participation Form(s).

- ☐ The Bidder made good faith efforts to meet the project's DBE participation goal but was unable to do so.

However, the Bidder is committed to a minimum of _____ % DBE participation on this project, as described on the enclosed DBE Participation Form(s). The Bidder is also enclosing documentation of its good faith efforts with this Bid.

SECTION 2: BIDDER'S SIGNATURE

 (Signature of Bidder's Authorized Agent)

 (Date)

 (Printed Name of Bidder's Authorized Agent)

 (Title of Bidder's Authorized Agent)

 (Bidding Firm's Name)

**DBE PARTICIPATION FORM**

Instructions for Bidders / Proposers: Submit one executed copy of this form for each DBE Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. Complete separate form for alternative.

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: _____

Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ Email: _____

Primes Base Bid \$ _____

Name of Project: _____

SECTION 2: DBE-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of DBE-Certified Firm: _____

DBE-Certified Firm's Tax ID#: _____

Scope of Work to Be Performed by Certified Firm (Include NAICS Codes):

	Total Dollar Amount Towards Goal	Percentage Towards Goal	Amount to Be Paid to This DBE Firm for the Work Described:
Total Bid	\$ _____	% _____	\$ _____
Materials	\$ _____	% _____	\$ _____
Labor	\$ _____	% _____	\$ _____

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named DBE-Certified Firm and will utilize the above-named DBE-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

 (Signature of Bidder/Proposer's Authorized Agent)

 (Printed Name of Bidder/Proposer's Authorized Agent)

 (Title of Bidder/Proposer's Authorized Agent) (Date)

The above-named DBE-Certified Firm affirms, under penalty of perjury, that it has negotiated in good faith with the above-named Bidder / Proposer and that it will perform, and is certified to perform, the type(s) of work described above for the dollar amount(s) as stated above.

 (Signature of DBE-Certified Firm's Authorized Agent)

 (Printed Name of DBE-Certified Firm's Authorized Agent)

 (Title of DBE-Certified Firm's Authorized Agent) (Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.

Attachment 7: Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, under the terms of the contract;
2. Breach of contract action, under DBE regulations 49 CFR part 26
3. The City of Dayton, Dayton International Airport will enforce the following Penalties for noncompliance.

A contractor or subcontractor who fails to comply with any portion of this program, and whose failure to comply continues for a period of 30 calendar days after the contractor or subcontractor receives written notice of such noncompliance from the Human Relations Council, shall be subject to any or all of the following penalties:

- (A) Withholding of ten percent of all future payments for the eligible project until the Human Relations Council determines that the contractor or subcontractor is in compliance with this division.
- (B) Withholding of all future payments under the eligible project until it is determined that the contractor or subcontractor is in compliance with this program.
- (C) Complete Cancellation of the eligible project.
- (D) Refusal of all future contracts or subcontracts with the city for a minimum of one year and a maximum of five years from the date upon which this penalty is imposed.

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 Addendum A:**CITY OF DAYTON R.G.C.O. POWER AND DUTIES OF THE HUMAN RELATIONS COUNCIL****Sec. 32.16. - Powers and duties of Council.**

The Council shall have the power, and it shall be its duty:

- (A) To process any complaint, whether initiated by the Human Relations Council or by the filing of a complaint with it, of discrimination against any person because of race, color, religion, sex, national origin, ancestry, age, marital status, familial status, and disability in violation of any ordinance of the city or any laws of the state or of the United States, in accordance with the provisions of such ordinance or law.
- (B) To make such investigations and to hold such hearings as may be provided for by the ordinance or law under which the complaint provided for in subsection (A) above is made.
 - (1) In conducting any investigation or holding any hearing, the Human Relations Council, acting through its Chairman, Executive Director, or hearing examiner may compel the attendance of any person believed to have knowledge of the facts relevant to such investigation or hearing to appear before the person or persons conducting such investigation or such hearing, and may compel the production of books, papers, records, or other evidence relevant to such investigation or hearing by the issuance of a subpoena upon the request of the Executive Director of the Human Relations Council or any member thereof, or upon the request of any respondent in such an investigation or hearing, either personally or through his attorney, and upon showing that there is probable cause to the person having such knowledge or having custody or control of such books, papers, records, or other evidence before the person or persons conducting the investigation or hearing.
 - (2) The person or persons making such investigation or holding such hearings may administer oaths, take the testimony of any person under oath, make findings of fact and orders, and do all other things necessary or incidental of the carrying out of the intent and purpose of the ordinance or law under which the investigation is being conducted, or the hearing held.
- (C) Require or permit any person to keep any records which the Council deems necessary to accomplish the purposes of this chapter.
- (D) Investigate and study housing patterns and group relationships within the city and the extent of discrimination and segregation in employment, apprenticeship

programs, on-the-job training programs, housing and related fields such as real estate, mortgage lending, and insurance, and the effect of such discrimination in the areas mentioned above. The Human Relations Council from time to time makes recommendations to the Mayor and City Commission for the betterment of housing patterns and inter-group relations with the city.

- (E) Formulate and carry out a comprehensive educational program designed to prevent and eliminate discrimination in accordance with the provisions of this chapter.
- (F) Discover all practices and policies written, calculated to create conflicts and tensions and recommend ways and means for their elimination.
- (G) Report and recommend means of eliminating an unfair or unjust discrimination against any person or group, including persons of Spanish ancestry, and others which would be deemed detrimental to the best interest of the community.
- (H) Initiate and conduct voluntary surveys, assemble pertinent data, conduct public hearings and expedite the work of the Council by making investigations and surveys.
- (I) Advise the Executive Director and the professional staff, assisting such staff in planning, designing, and implementing the programs to carry out the policies established by the Commission.
- (J) Recommend to the Commission legislation to promote and ensure equal rights and opportunities for all persons regardless of their race, color, religion, sex, ancestry, national origin, place of birth, marital status, age, or handicap.
- (K) Adopt such rules and regulations as may be necessary to carry out the purpose and intent of this chapter.
- (L) Appoint qualified persons to act as hearing examiners to conduct public hearings held upon complaints filed with the Council or initiated by the Council, at such fees and upon such other terms and conditions as shall be agreed upon by the hearing examiner and the Council. The hearing examiner shall be an attorney at law admitted to practice in the state of Ohio. The hearing examiner shall conduct the hearing and rule on all questions of law and facts and admissibility of evidence and exhibits. At the conclusion of the hearing, the hearing examiner shall submit a report to the Council, which report shall contain findings of fact, conclusions of law, and recommendations.

Attachment 7 Addendum B: HUMAN RELATIONS COUNCIL ELEMENTS FOR CREATING OPPORTUNITIES FOR DBE PARTICIPATION

9.03 Bidding and RFP Policies and Procedures

A. CONSTRUCTION BIDDING POLICIES

- a. The City conducts public-bid construction projects, sub-recipient agreement projects, and special economic development projects by RFPs. The City of Dayton currently implements a centralized bidding process for all public construction projects, including projects from and for the Water Department, Aviation, Public Works, Housing Inspection, Planning and Community Development, and Economic Development. This centralized bidding for all City public bid construction projects is performed by the Department of Public Works.
- b. The Department of Public Works conducts a Pre-Bid meeting on Tuesdays at 11:00 AM and conducts Public Bid Openings on Thursdays at 12:00 noon.
- c. The HRC, at all Pre-bid meetings, discusses the project Goals, Responsive Bidder Approach, Affirmative Action Worker utilization, Good Faith Waiver Policies, and Policy on Counting Materials and Goods by MBE, WBE, and SBE subcontractors, and provides a current and updated listing of all certified PEP companies based on the nature or type of project inclusion goal.
- d. The bidding Department discusses the technical and engineering aspects of the project, answers questions, and issues any addendum and instructions for the bid. The Public Bid Opening is conducted by Public Works Department and HRC.

B. PUBLIC-BID CONSTRUCTION PROCESS

- a. Project Funding Secured by the Department.
- b. Department Engineer's Estimate and Scope of Work finalized; determines if the Project requires Pre-qualifications of Prime Contractors.
- c. Department Engineer's Estimate and Scope of Work Sent to HRC for setting inclusion Goals on a Project-By-Project Basis.
- d. The HRC provides to Department Engineer its recommended MBE, WBE or SBE goals within three (3) days of receiving the Department Engineer's Estimate and Scope of Work.
- e. The Department Manager forwards a Request for Bidding Services and all project documents to the Department of Public Works for centralized bidding and advertising. Department Manager creates the project folder in City Bots and notifies Public Works of same.

- f. Public Works prepares the Invitation to Bid, the Legal Notice and Instructions to Bidders, the S/M/W/BE Participation Forms, the Affirmative Action packages, and Worker Utilization Form and forwards them to the HRC for review and approval.
- g. The HRC approves the Invitation to Bid and the Legal Notice and forwards them to the Department of Public Works within three days for publication in a newspaper of general circulation. Public Works Department and the bidding Department complete the CityBOTS project folder and begin the process of notifying Plan Rooms, plan houses, its plan holders, and its customary bidders of the upcoming bid opportunity.
- h. The HRC notifies its Minority Business Assistance Center (MBAC) office, which in turn gives notice to MBEs, WBEs and SBEs of the upcoming bid opportunity. MBAC also provides cost estimating and other technical assistance to MBEs, WBEs and SBEs before the pre-bid and bid opening dates.
- i. Public Works also sends notice of invitation to workforce development agencies to attend the Pre-Bid meeting and to discuss their services to the pre-bid attendees.
- j. A mandatory Pre-bid meeting may be held, and the HRC discusses the projects Goals, Responsive Bidder Approach, Affirmative Action Worker utilization, Goals and Good Faith Waiver Policies, and Policy on Counting Materials and Goods by MBE, WBE, and SBE subcontractors.
- k. Bid Opening conducted by Public Works Department and HRC.
- l. HRC sends contract compliance communications to the Prime contractor and all MBE, WBE, and SBE subcontractors regarding the scope of work to be performed applies Responsive bidder approach to any issues in the inclusion goal and evaluates any Waiver/ Good Faith documentation.
- m. HRC conducts Contract Compliance Evaluation for Public bid Construction Projects / Bid Submission Requirements for Projects Subject to MBE, WBE, and SBE Goals.
 - i. After the Evaluation the Bid is awarded to Lowest and Best Bid.
 - 1. Responsive Bidder Approach on City-funded projects.
 - ii. Good Faith Efforts/ Recommendation from HRC.
 - 1. Documentation of Sufficient Commitments to Meet MBE/WBE/SBE Goals.
 - 2. Waiver Request Procedure/Form (Attached Appendix C).
 - 3. Good Faith Efforts Points and Grading System
 - 4. HRC Contract Compliance review of Project Bids and pending award of Goods and Professional Services Contracts.
 - iii. HRC Counting and Evaluation of SBE, MBE, WBE and DLSB Participation and Efforts.
 - 1. Responsive Bid Approach
 - 2. M/W/SBE as Material Suppliers
 - 3. Truckers [Sample Participation Counting and Evaluation]
 - 4. Joint Ventures and Others

- n. HRC and Department conduct a Pre-construction meeting with awarded Prime Contractor and inclusion subcontractors. HRC discusses SBE, MBE, and WBE goals, Manpower utilization goals and monthly reports, job site visits by HRC, subcontractor drawdown/payment forms, and other compliance issues.
 - o. HRC Monitoring and Reporting Requirements for Workforce, Prevailing Wages, Inclusion and Subcontracting Goals (by CityBOTS and Banner).
 - p. HRC and Public Works monitor the project until completion and resolve issues with MBE, WBE, and SBE performance, specifications, inspections, and workforce.
 - q. HRC intervenes on any complaint or issues relating to the performance and prompt payments to MBEs, WBEs and SBEs.
- C. Goods and Services – a similar element for 49 CFR Part 23 will be included in the City of Dayton, Dayton International Airport program for Airport Concessions.

Attachment 8: Certification Application Form link

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>

Attachment 9: Procedures for Removal

Removal of Existing Certification

If a certifying agency has reasonable cause to remove a DBE firm's eligibility, the DBE firm must be given notice of the intended removal and an opportunity for a hearing. A DBE firm receiving notice that its eligibility is going to be removed by a certifying agency may make a written request to appeal that decision to the Ohio UCP Certification Committee within thirty (30) days of the letter of removal.

Appeals should be sent to The Ohio UCP Certification Committee, ATTENTION: Division of Equal Opportunity, 1980 West Broad Street, Columbus, Ohio 43223.

The Ohio UCP Certification Committee shall consist of not fewer than three members of the Ohio UCP Executive Committee. The decertifying agency will not have a representative on the committee hearing the appeal. During the hearing, only the controlling owner may speak on behalf of the firm, respond to questions or otherwise make a presentation.

At the conclusion of the hearing, the UCP Certification Committee shall within thirty (30) days provide the firm with written notice of the committee's decision, including the grounds and reasoning for the decision. The notice will inform the firm of the consequences of the decision and of the availability of an appeal to the U. S. Department of Transportation within ninety (90) days of the date of the final decision at the following address: Department of Transportation, Office of Civil Rights, 400 75h Street, SW, Room 5414, Washington D.C 20590.

Instead of a hearing, the firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the denying agency bears the same burden of providing, by a preponderance of the evidence, that the firm does not meet the certification standards, as would be required during a hearing.

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice of decision from the Certifying Agency.

CONFIDENTIALITY

The certifying agencies shall safeguard from disclosure to unauthorized person(s) information that may responsibly be considered confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the certifying agencies shall not release personal financial information submitted in response to the personal net worth requirement to a third party (other than a state DOT) without written consent of the submitter.

(Revised November 29, 2010)

Attachment 10: Signed UCP Agreement Form

Signature page was not available. We have provided a letter describing the agreement in place.



OHIO DEPARTMENT OF TRANSPORTATION
1980 W. BROAD STREET, COLUMBUS, OHIO 43223
OFFICE OF CONTRACTS

April 20, 2006

Jerald L. Steed
Executive Director
Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402

Dear Mr. Steed:

The Ohio Department of Transportation (ODOT) is proposing a minor change be made to the Ohio Unified Certification Program (UCP) with regard to the certification appeals process. Currently the appeal is heard by a hearing officer with a court reporter and all costs are borne by ODOT.

We are proposing to have an internal hearing officer hear all appeals. All decisions would be written by the State of Ohio Assistant Attorney General who is assigned to ODOT. If the firm which has been denied wishes to appeal the decision of the hearing officer, their recourse would be to appeal to the U S Department of Transportation (USDOT).

As a result of this change, in most cases, the hearing officer would be Mark Kelsey, Esq., Deputy Director, Division of Contract Administration. Mr. Kelsey will hear all initial denial appeals for ODOT as well as the initial denials and the certification removals from all other certifying agencies. However, on a removal of certification, the regulations require there to be a separation of functions which would preclude Mr. Kelsey from acting as the hearing officer for any removal of certifications by ODOT. Therefore, I am requesting both The City of Dayton Human Relations Council and the Greater Cleveland Regional Transit Authority identify a hearing officer that can be utilized when a removal of certification appeal arises from and ODOT determination.

The reason for the change is one of economics. It would be more cost effective for ODOT with the changes we are proposing. There would be no need for an external hearing officer.

AN EQUAL OPPORTUNITY EMPLOYER

next page (Right Arrow)

Page 2
April 20, 2006
UCP Appeal Process

A copy of the Ohio UCP is attached. The proposed changes are highlighted in red. Please review the changes and if you are in agreement with the proposed changes, or if you have any comments regarding the proposed changes, please notify ODOT in writing no later than May 4, 2006.

The UCP Executive Committee worked on developing a UCP Charter to further define the roles and responsibilities of the Ohio UCP. A copy of the Ohio UCP Charter is also enclosed. Please review the document and provide any comments no later than May 4, 2006. At that time, a final document will be prepared and forwarded for your signature.

If you have any questions or would like to discuss either of these matters, I can be reached at 1-800-459-3778.

Respectfully,

Kerry Yoakum

Kerry Yoakum, Esq.
Administrator,
Office of Contracts

Attachments (2)

Attachment 11: Reporting Forms

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS										
Please refer to the Instructions sheet for directions on filling out this form										
1. Submitted to (check only one):		<input type="checkbox"/> FHWA		<input checked="" type="checkbox"/> FAA		<input type="checkbox"/> FTA--Vendor Number _____				
2. AIP Numbers (FAA Recipients Only):		3-39-0029-07								
3. Federal fiscal year in which reporting period falls:		FY 2011		4. Date This Report Submitted:						
5. Reporting Period		<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)				<input checked="" type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)				
6. Name of Recipient:										
7. Annual DBE Goal(s):		Race Conscious Goal 19 %		Race Neutral Goal		OVERALL Goal 21 %				
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)		A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs/Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentage of total dollars to DBEs
8. Prime contracts awarded this period		\$ 4,088,852.68	2	\$ -	0	0	0	0	0	0%
9. Subcontracts awarded/committed this period		\$ 1,001,954.89	4	\$ 1,001,954.89	4	\$ 1,001,954.89	4	0	0	25%
TOTAL										
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER		A Black American	B Hispanic American	C Native American	D Subcont. Asian American	E Asian-Pacific American	F Non-Minority Women	G Other (i.e. not of any other group listed here)	H TOTALS (for this reporting period only)	I Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)		\$ 199,244.50	-	\$ -	\$ -	\$ -	\$ 807,719.39	\$ -	\$ 1,006,963.89	\$ 1,006,963.89
11. Total Dollar Value		\$ 199,244.50	-	\$ -	\$ -	\$ -	\$ 807,719.39	\$ -	\$ 1,006,963.89	\$ 1,006,963.89
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD		A Number of Prime Contracts Completed	B Total Dollar Value of Prime Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percentage of Total DBE Participation				
12. Race Conscious		0	\$ -	\$ 858,859.06						
13. Race Neutral		0	\$ -							
14. Totals		0	\$ -							
15. Submitted by (Print Name of Authorized Representative)		Marci Wright			16. Signature of Authorized Representative <i>Marci Wright</i>					

DBE Payment Monitoring

Contract	Date	Goals	Prime Vendor	Commitment	Actual	Sub Vendor	Commitment	DBE	%	Actual	Date	DBE
CT182021	4/30/2018	DBE: 23.0%, \$2,394,988	The Great Lakes Construction Co BOTSIId: 129271 Certs: (none)	\$10,412,990	\$9,276,252	1st Advance Security and Investifations INC BOTSIId: 125558 Certs: SBE, MBE, DLSB, DBE, HUD	\$359,605	\$359,605	100.0%	\$249,498		\$249,498
										\$39,008	12/1/2019	\$39,008
										\$11,473	10/1/2019	\$11,473
										\$35,302	8/1/2019	\$35,302
										\$17,097	7/1/2019	\$17,097
										\$12,617	6/1/2019	\$12,617
										\$9,402	12/1/2018	\$9,402
										\$28,540	11/1/2018	\$28,540
										\$96,060	9/1/2018	\$96,060
						Cuyahoga Supply & Tool Inc.	\$193,057	\$193,057	100.0%	\$0		
						BOTSIId: 132256 Certs: DBE						
						DHDC Engineering Consulting Services INC	\$74,932	\$74,932	100.0%	\$40,622		\$40,622
										\$17,968	8/1/2019	\$17,968
						BOTSIId: 123858 Certs: SBE, MBE, DBE				\$11,959	1/1/2019	\$11,959
										\$10,695	12/1/2018	\$10,695
						Eaton Construction Co Inc	\$171,060	\$171,060	100.0%	\$91,226		\$91,226
										\$42,480	10/1/2019	\$42,480
						BOTSIId: 121556 Certs: DBE				\$24,547	8/1/2019	\$24,547
										\$24,199	6/1/2019	\$24,199
						Ebony Construction Company Inc	\$1,327,145	\$872,040	65.7%	\$1,072,672		\$704,745
										\$19,128	4/1/2020	\$12,567
						BOTSIId: 103523 Certs: SBE, MBE, WBE, DBE				\$433,755	12/1/2019	\$284,977
										\$301,314	8/1/2019	\$197,963
										\$63,996	1/1/2019	\$42,045
										\$93,620	12/1/2018	\$61,508
										\$160,859	11/1/2018	\$105,684
						JLM Trucking INC	\$60,166	\$60,166	100.0%	\$2,821		\$2,821
										\$2,821	4/1/2020	\$2,821
						BOTSIId: 125573 Security Fence Group Inc	\$68,670	\$68,670	100.0%	\$0		
						BOTSIId: 110357 Certs: SBE, WBE, DLSB, DBE						
							\$2,254,634	\$1,799,529		\$1,456,839		\$1,088,913
1			1				\$2,254,634	\$1,799,529		\$1,456,839		\$1,088,913

SUBCONTRACTOR PAYROLL AND DRAWDOWN FORMPROJECT NAME & Contract Number CT20-xxxx

PRIME CONTRACTOR'S NAME _____

TOTAL PRIME CONTRACT AWARDED (\$) _____

SUBCONTRACTOR'S NAME _____

AMOUNT OF THIS SUBCONTRACT (\$) _____

SUBCONTRACTOR TRADE AREA: _____

PAYMENT TO SUBCONTRACTOR THIS MONTH _____

TOTAL PAYMENTS TO SUBCONTRACTOR TO DATE (\$) _____

BALANCE DUE TO SUBCONTRACTOR _____

I hereby certify that the above payments are correct and that the work has been performed in accordance with the subcontract agreement.

For

For

Prime Contractor Signature_____
Subcontractor Signature_____
Printed Name for Prime_____
Printed Name for Sub_____
Date Signed by Prime_____
Date Signed by Sub

REPORT _____ OF _____ MONTH _____, 20____

RETURN TO: Human Relations Council
371 West Second Street, Suite 100, Dayton OH 45402
Telephone: (937) 333-1403

You may obtain original signatures, scan and e-mail this document to:

bta@daytonohio.gov

Attachment 12 – Fostering Small Business

Section 26.39

The City of Dayton, Dayton International Airport 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.

1. Objective/Strategies

As part of this program element, we will include the following strategies:

- (1) Establish a race-neutral small business set-aside for prime contracts under a stated amount \$1 million.
- (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- (3) On prime contracts not having DBE contract goals, we will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

The City of Dayton, Dayton International Airport actively implements these program elements to foster small business participation through its ongoing Procurement Enhancement Program administered by the City of Dayton Human Relations Council as described above as part of our approved DBE Program for 2018-2019-2020. Applying these principles is a requirement of good faith implementation of our DBE program.

Small Business Element

2. Definition

- *DBE firms should be identified in the Small Business element of the recipient's DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.*
- *Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*
- *Personal Net Worth standards should be consistent with 49 CFR Part 26 thresholds.*

3. Verification

The City of Dayton, Dayton International Airport must diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms. Verification does not necessarily involve creating a new certification category, though that is one option. Any verification procedure must allow for participation of all small businesses (relying exclusively on local/state M/WBE certification, SBA 8(a) certification, or other programs that include race/gender/geographical considerations as a condition of the certification is not an acceptable means of verifying eligibility, and is not compliant with the race-neutral requirements of §26.39).

4. Assurance

1. The program is authorized under state law;
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

CUF REVIEW FORM

HRC Staff: _____ Review Date: _____ Arrival Time: _____ Departure Time _____

Project Name: _____ CT Number: _____ Project Location: _____

Prime Contractor's Name: _____ Are Certified Firm's on Job Site? _____

Certified Firm Name	Observed (Y or N)	Name on Equipment (Y or N)	CUF Performed (Y or N)	Description of CUF

Certified Firm	Employee Name