



Metropolitan Airports Commission
6040 28th Avenue South
Minneapolis, Minnesota 55450

Disadvantaged Business Enterprise Plan for Construction

Revised: August 2025

DBE Plan

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INTRODUCTION

The Metropolitan Airports Commission (MAC) is committed to the development of Disadvantaged Business Enterprises (DBE). To accomplish that mission, MAC operates the DBE Program to facilitate participation in construction and concessions opportunities.

The MAC, as a recipient of U.S. Department of Transportation (DOT) funding for airport improvement projects (AIP), is required under 49 CFR §23 and §26 to develop and implement the Program. These regulations require the Program to provide DBEs the maximum opportunity to participate in the performance of construction contracts financed in whole or in part with federal funds. In accordance with this regulation, MAC and its contractors will take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform on contracts. MAC and its contractors will not discriminate based on race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

This document will be available on-line and when requested distributed to internal and external stakeholders by the MAC's Office of Civil Rights and Small Business Development. The document will be used in a variety of ways, including but not limited to, as tool for training new staff, educating, marketing and clarification of policy and procedures.

MAC is committed to building on its past success in achieving DBE construction and to expanding its base of DBE contractors, professional services providers, concessionaires and vendors.

This DBE Plan is designed to provide guidance to MAC staff regarding Federal Aviation Administration (FAA) requirements for MAC's DBE construction program, and to define the process and procedures being followed by MAC in bidding, proposing and selecting contractors, consultants to perform work for MAC. The Plan is intended to assist in conducting effective outreach, setting goals, and monitoring and reporting results to assess performance and achievement of its DBE goals.

MAC believes that careful planning, implementation and monitoring of its Plan for construction will not only meet the established DBE requirements of the FAA but will set MAC apart as a leader in the aviation industry, nationally, regionally and locally, producing significant benefits to MAC and the community.

The DBE Construction Plan will be updated as new policies and procedures are developed.

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

The Metropolitan Airports Commission (MAC), owner of Minneapolis-St. Paul International, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MAC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MAC has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

The Director of the Office of Civil Rights and Small Business Development has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Director of the Office of Civil Rights and Small Business Development is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MAC in its financial assistance agreements with the Department of Transportation.

MAC has disseminated this policy statement to the MAC's Commission and staff. We have distributed this statement to DBE, ACDBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting the Plan on metroairports.org.

DocuSigned by:



 Brian Ryks, Executive Director/CEO

08/18/25

 Date

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GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

MAC 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 MAC 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 Data Collection and Reporting Requirements

Reporting to DOT

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

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

The MAC will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. MAC will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

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Bidders List

The MAC will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

The MAC will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and sex information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

The MAC will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

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

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

The MAC will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the MAC will keep a complete application package for each certified firm and all declarations of eligibility, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the MAC financial assistance agreement. Other certification or compliance-related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

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Section 26.13 Assurances Recipients and Contractors Must Make

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

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

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

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

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

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

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ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The MAC is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Tekia S. Jefferson
6040 28th Avenue South
Minneapolis MN 5450
612-726-8196
tekia.jeffeson@mspmac.org

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) to assist in the administration of the program. The following duties and responsibilities have been assigned to the MAC's Small Business Program Manager and include the following:

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1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes The MAC's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advise the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the MAC 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 availability of such institutions will be investigated on an annual basis. Accordingly, MAC will conduct online research annually to identify financial institutions and document such research.

Section 26.29 Prompt Payment Mechanisms

The MAC 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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

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

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The MAC declines to hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors. To implement this measure, each DOT-assisted prime contract will include the following clause:

Retainage will not be withheld on this project. No retainage will be withheld by the Owner from progress payments due the prime Contractor. Retainage by the prime or subcontractors is prohibited, and no retainage will be held by the prime from progress due subcontractors.

Prompt Payment Monitoring for DBEs and Non-DBEs

The MAC clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the MAC undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- Collection of DBE Utilization and Payment Information Sheet for each pay application where a DBE subcontractor is paid.

MAC 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 MAC's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the MAC or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- MAC proactively reviews contract payments to subcontractors including DBEs monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the MAC by the prime contractor.

Prompt Payment Dispute Resolution

The MAC will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

1. Conduct independent conversations with the Prime and Subcontractor.
2. Request and review information related to payment.
3. Request and review communications between the prime and subcontractor.

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4. If there is an indication of a regulatory violation, conduct mediation with the Director of Civil Rights and Small Business Development to attempt to resolve the matter.

MAC has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

1. The MAC requires prime contractors to complete the DBE Utilization/Monitoring Information Sheet with each pay application. This form is used to track payments to DBE subcontractors.

Prompt Payment Complaints

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

1. Document the complaint by obtaining details regarding the complaint and any collect relevant documentation;
2. Request that the DBE attempt to address the complaint directly with the prime contractor;
3. If the DBE is uncomfortable contacting the prime contractor, the MAC's Project Manager and prime contractor will be contacted to address the complaint and attempt to resolve the matter;
4. If the matter is not resolved, the DBE may contact the responsible Operating Administration.

All complaints related to prompt payment will be reported to the FAA, including the nature and origin of the complaint and resolution.

If the affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate the complaint.

- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the MAC to resolve prompt payment disputes, the affected subcontractor may contact the FAA contact.

Enforcement Actions for Noncompliance of Participants

The MAC provides appropriate means to enforce the requirements of § 26.29. In the case of wilful and deliberate noncompliance, appropriate legal steps should be taken and sanctions imposed consistent with applicable contract law.

The appropriate penalties for noncompliance will be addressed at meetings with the prime contractor. The seriousness of the offense and the willingness of the contractor to remedy the alleged violation should be taken into consideration when determining which

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sanctions are appropriate. The sanctions enforced must be consistent with the original contract. Sanctions that may apply in cases of noncompliance include the following:

1. Withholding of payment to the contractor under the contract until compliance is achieved.
2. Cancellation, termination, or supervision of the contract in whole or in part.
3. Any other available legal remedy.

MAC will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The MAC is a certifying member of the Minnesota Unified Certification Program (MNUCP). The MNUCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE.
- The type of work a DBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

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

Section 26.33 Over-concentration

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

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Section 26.35 Business Development and Mentor-Protégé Programs

The MAC has established a Mentor-Protégé Program (MPP) as described by 49 CFR Part 26 to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The MAC is committed to strengthening its DBE program by encouraging businesses owned and controlled by socially and economically disadvantaged persons to increasingly participate in federally funded transportation-related contracts and concessionaire leases. To ensure the success of its DBE program, the MNUCP has established the Mentor/Protégé program.

The Mentor/Protégé Program is a voluntary, private sector-oriented mechanism aimed at developing DBEs by forging business relationships between larger firms and DBE firms. This is a voluntary endeavour rather than a requirement, which gives flexibility and attention to the needs of both parties and allows free will. This program is intended for long-term growth rather than short-term capital gain.

The Mentor/Protégé Program is designed to become the delivery system for the promotion and expansion of disadvantaged businesses in Minnesota. It is intended to increase the availability of qualified businesses. The program is one method that can be utilized to assist the majority firms in achieving qualified DBE participation in areas where participation has previously been difficult to obtain.

There are many challenges facing DBE firms during the next few years in concessions and construction. The Mentor/Protégé Program proposes to address these issues through mutual cooperation and joint business efforts between the larger community and the minority and women business communities.

The Mentor/Protégé Program provides safeguards that will not jeopardize the continued existence of the DBE firms already in business because it targets new development in non-traditional areas where DBEs are currently not involved. Yet, it provides growth opportunities for existing DBEs. This also expands and diversifies the market of available DBEs since it opens new opportunity areas available for meeting the DBE goal rather than continuing to allow traditional areas saturated with DBE firms to bear the burden of meeting the participation goal.

The Mentor/Protégé Program is aimed specifically at increasing DBE participation in MAC's contracts as required by 49 CFR §26.

The success of the Mentor/Protégé Program depends on public and private cooperation recognizing that our future economic development is a shared endeavour. The MNUCP seeks the assistance and cooperation of the business community in carrying out this important program.

Eligibility Standards

The MNUCP will approve a Mentor/Protégé relationship that meets the following criteria:

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Protégé:

1. Must be an eligible DBE under 49 CFR Part 26 or 23;
2. Must be in a business area approved by the MNUCP;
3. May be a new or existing DBE; and
4. Must be selected by a mentor.

Mentor:

1. An experienced company or individual provides assistance and training to a DBE (Protégé).; and
2. Must submit a request for recognition of the relationship.

Requirements

The following requirements must also be met for participation in the Mentor/Protégé program:

1. Only firms that are certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
2. Any mentor-protégé relationship shall be based on a written development plan, approved by the CAC, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, or FAA programs.
3. The mentor and protégé must be separate entities with the DBE firm responsible for the management of portions of the work and neither shall be treated as affiliates when both are participating under an approved mentor-protégé program.
4. DBE personnel involved must be identified in the lease or project and must be on the payroll and under the direct supervision of the DBE firm. Compensation to the DBE shall be relative to the amount of work accomplished rather than on an hourly basis.
5. In general, only one Mentor/Protégé arrangement will be allowed per mentor firm.
6. No DBE credit will be given to a non-DBE mentor firm for using its own protégé firm for more than one-half of its goal on any contract let by a MNUCP agency.
7. No DBE credit will be given to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

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8. The Mentor must submit for review to the DBELO a summary of historical and recent activities and accomplishments under MAC's DBE Program, as applicable including any outreach activity to DBEs.
9. The Mentor must submit a detailed listing with total dollar value of contract and subcontract awards received during the past two years showing prime and subcontracts separately.
10. The Mentor must submit a listing of subcontracts and total dollar value awarded to DBEs on federally funded contracts.
11. The Mentor must submit information on its ability to provide development assistance to DBEs.
12. The Mentor must conduct and present a preliminary assessment of the protégé's developmental needs.
13. Protégé firms will not be permitted to release or subcontract any portion of or assign its work to any other firm without the prior approval of MAC.
14. The Mentor/Protégé must prepare a three-year development plan and update it annually. The development plan shall state current status of the firm and goals for the next three years. The three-year period may be extended to five years on a case-by-case basis. The development plan shall contain, at a minimum, information on the background and experience of the owners; the number and types of personnel; the amount of capital; types and values of equipment; and the amount and types of projects or leases to be pursued.
15. The Mentor/Protégé shall provide monthly updates for short-term project specific mentor/protégé agreements and quarterly updates for long-term mentor/protégé agreements.
16. The Protégé will submit an annual update on progress to MAC; if project-specific at the end of the work.
17. The protégé firm shall maintain an attorney and accountant other than the mentor's attorney and accountant; and
18. The Mentor/Protégé relationship shall be limited to three years, with a possible extension to five years.

Section 26.37 Monitoring Responsibilities

MAC implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

The MAC actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained through spreadsheets by the Office of Civil Rights and Small Business Development, in collaboration with the MAC's Airport Development Department and Project Consultants by monitoring contractor's DBE

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accomplishments per project through the submission of regular DBE pay applications, the utilization of desk audits and when appropriate, projects site visits. This mechanism to maintain a running tally of overall goal attainment will be used to inform the MAC's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

The MAC actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained through spreadsheets by the Office of Civil Rights and Small Business Development that includes the data from submitted DBE Utilization and Monitoring forms for each project with a DBE goal. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

MAC 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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by the Office of Civil Rights and Small Business Development and MAC Consultants. Contracting records are reviewed by the Office of Civil Rights and Small Business Development. The MAC requires prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in subcontracts. MAC will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

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

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. MAC acknowledges that implementation of the small business element is

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required for us to be considered by DOT as implementing our DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

MAC does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

MAC 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), MAC will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by the FAA.

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

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

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry into past competitiveness of DBEs on contracts. MAC will examine all the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

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In establishing the overall goal, the MAC will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the MAC to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before MAC is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which MAC engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

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

Project Goals

If permitted or required by the FAA, 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 it must meet all the substantive and procedural requirements 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.

Prior Operating Administration Concurrence

The MAC understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by MAC for calculating goals is inadequate, the FAA may, after consulting with MAC, adjust the overall goal or require that the goal be adjusted by MAC. The adjusted overall goal is binding. In evaluating the adequacy or

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soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

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

Section 26.47 Failure to meet overall goals

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

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

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

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

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

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

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

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

Contract Goals

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

The Director of the Office of Civil Rights and Small Business Development or designee is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

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- c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) a-e of this section:
- a. No later than one (1) MAC business day after bid opening as a matter of responsibility.
- (4) If the contract goal is not met, the bidder/offeror will be required to present the information stipulated in paragraph (2) (f) of this section:
- a. No later than five (5) MAC business days after bid opening as a matter of responsibility.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the MAC. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

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

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In a design-build contracting situation, in which MAC solicits proposals to design and build a project with minimal project details at time of letting, the MAC may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, MAC will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. MAC and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

MAC will apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, MAC will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by MAC that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Kathy Megarry or designee
6040 28th Avenue S.
Minneapolis, MN 55450
612-726-8105
Kathy.Megarry@mspmact.org

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for

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finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

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

The MAC will require the awarded contractor 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.

The MAC will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless the MAC causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The MAC will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the MAC's Office of Civil Rights and Small Business Development's written consent as provided in § 26.53(f); and
- (2) Unless the MAC's Office of Civil Rights and Small Business Development's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The MAC's Office of Civil Rights and Small Business Development may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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

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prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- (6) MAC has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to MAC 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; and
- (10) Other documented good cause that the MAC determines compels the termination of the DBE subcontractor;

Before transmitting to the MAC the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to MAC sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising the MAC and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the MAC should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), MAC may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the MAC requests

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documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. The MAC shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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).

For FAA-funded projects, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

MAC is a certifying member of the Minnesota Unified Certification Program (MNUCP). MAC 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. MAC makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the Minnesota UCP agreement. The full UCP agreement can be found at:

<https://mnucp.org/about/about-the-mnucp/>

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

Jeffrey Weinhagen
Small Business Program Manager
6040 28th Avenue South

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Minneapolis, MN 55450

612-726-8193

Jeffrey.weinhagen@mspmac.org

<https://sbcp.mn.gov/>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Minnesota UCP agreement. The full UCP agreement can be found at: <https://mnucp.org/about/about-the-mnucp/>

Section 26.81 Unified Certification Programs

The MAC is a member of a Unified Certification Program (UCP). The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.83 Procedures for Certification Decisions

The MAC 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. In the case of a denial of certification, MAC will make an entry in DOCR's Online Portal within five (5) days of the denial. MAC will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

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 (*i.e.*, NAICS code removal), through the procedures of § 26.87.

MAC will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or any functionally equivalent requirement. However, a certification review of a certified DBE firm may be conducted at a reasonable time. The certification review may, at the MAC's discretion, include a new onsite review (OSR). The MAC may also make an unannounced visit to the DBE's offices and/or job site. The MAC may also rely on another certifier's report of its OSR of the DBE.

Notices of Change and Annual Declarations of Eligibility

The UCP requires all DBEs to submit every year, on the anniversary of the date they were certified in their Jurisdiction of Original Certification, a new Declaration of Eligibility (DOE) along with documentation verifying the gross receipts for its most recently

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completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the UCP will generally consider the following documents to be "safe harbors," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. The UCP will treat non-compliance, whether full or partial, as a § 26.109(c) failure to cooperate.

The UCP also requires all DBEs to provide written notice of any change in circumstances affecting their 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 DBEs' applications for certification. DBEs must provide the UCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice.

Section 26.85 Interstate Certification

MAC complies with certification procedures requirements of Subpart E of Part 26 in all matters related to interstate certification. Any procedures included here are highlights only. Detailed interstate certification procedures are enumerated in the full Minnesota UCP agreement.

When a DBE certified in any UCP applies to MAC for certification, MAC will accept the DBE's certification from its jurisdiction of original certification (JOC). To obtain interstate certification, the DBE must provide:

- (1) A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)
- (2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
- (3) A new DOE.

Within ten (10) business days of receiving the documents required above, MAC will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this section and MAC confirms the DBE's certification, MAC will certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

MAC will require DBEs to provide an annual DOE with documentation of gross receipts, under [§ 26.83\(j\)](#), on the anniversary date of the DBE's original certification by its JOC.

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If MAC has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), MAC will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain the MAC's reasons for believing the DBE's certification should be removed.

If MAC receives such a notification from another UCP, within 30 days of receiving the notice MAC will email the UCP contemplating decertification of a concurrence or non-concurrence with the proposed action. The MAC's responses may provide written arguments and evidence and may propose additional reasons to remove certification. MAC understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If MAC finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. MAC will email a copy of its decision to the other jurisdictions within 3 business days.

Section 26.86 Decision Letters

When MAC denies a firm's request for certification or decertifies the firm, MAC will provide the firm with a notice of decision (NOD) explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. MAC will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date the decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. MAC will inform the applicant of that right and specify the date the waiting period ends in its decision letter.

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 Decertification

MAC complies with all decertification procedures requirements of Subpart E of Part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Minnesota UCP agreement.

The MAC first step in any decertification proceeding will be to email a notice of intent (NOI) to the DBE. The NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both.

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The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, MAC will issue a notice of decision (NOD) decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

The MAC has determined that Demetria Williams, Attorney II or designee will serve as the hearing officer for informal hearings provided pursuant to §§ 26.87(c)-(e). The hearing is an informal proceeding with rules set by the hearing officer.

MAC will ensure that the decision in a decertification case is made by an individual who did not take part in actions leading to or seeking to implement the proposal to decertify the DBE and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. MAC implements this requirement for a separation of functions in the following manner:

- When the firm requesting an informal hearing is not a firm whose decertification was initiated by MAC, Demetria Williams, Attorney II or designee will serve as hearing officer.
- When the firm requests an informal hearing is a firm whose decertification was initiated by MAC, the hearing officer will Demetria Williams, Attorney II or designee.

MAC will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of § 26.87(g). MAC will make an entry in DOCR's Online Portal within 5 days of the action, entering the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until MAC issues a NOD.

Once a firm is decertified MAC will take appropriate actions related to contract and overall goals and DBE participation as described in § 26.87(j).

Section 26.88 Summary Suspension of Certification

MAC will follow procedures consistent with § 26.88 regarding the suspension of a DBE's certification.

MAC will mandatorily and immediately suspend a DBE's certification when MAC has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

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MAC may elect to suspend a DBE's certification when MAC has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that [§ 26.83\(j\)](#) requires.

MAC will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which MAC relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why MAC should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, MAC will follow all procedures required under §§ 26.88(d)(2)-(6).

Section 26.89 Appeals to the Department

Applicants and decertified firms may appeal adverse NODs to the Department. An ineligibility complainant or applicable Operating Administration (the latter by the terms of § 26.87(c)) may appeal to the Department if MAC does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

Appellants must email appeals as directed the MAC's NOD within 45 days of the date of NOD. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions MAC misapplied.

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).

Section 26.91 Actions Following DOT Certification Appeal Decisions

If the MAC is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

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SUBPART F – COMPLIANCE AND ENFORCEMENT**Section 26.101 Compliance Procedures Applicable to the MAC**

The MAC understands that if it fails to comply with any requirement of this part, MAC may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

The MAC understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) ***Noncompliance complaints.*** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) ***Compliance reviews.*** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (3) ***Reasonable cause notice.*** If it appears, from the investigation of a complaint or the results of a compliance review, that MAC is in noncompliance with part 26, the appropriate DOT office will promptly send MAC, return receipt requested, a written notice advising that there is reasonable cause to find MAC in noncompliance. The notice states the reasons for this finding and directs MAC to reply within 30 days concerning whether you wish to begin conciliation.

DBE Plan

(4) Conciliation.

- a. If MAC requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
- b. If MAC and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and MAC is regarded as complying. The conciliation agreement sets forth the measures MAC has taken or will take to ensure compliance. While a conciliation agreement is in effect, MAC remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If MAC fail to carry out the terms of a conciliation agreement, MAC is in noncompliance.
- d. If MAC does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

(5) Enforcement actions.

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.105 Enforcement Actions Applicable to FAA Programs

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

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

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

Section 26.107 Enforcement Actions Applicable to Participating Firms

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

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

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

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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

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

DBE Plan

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).

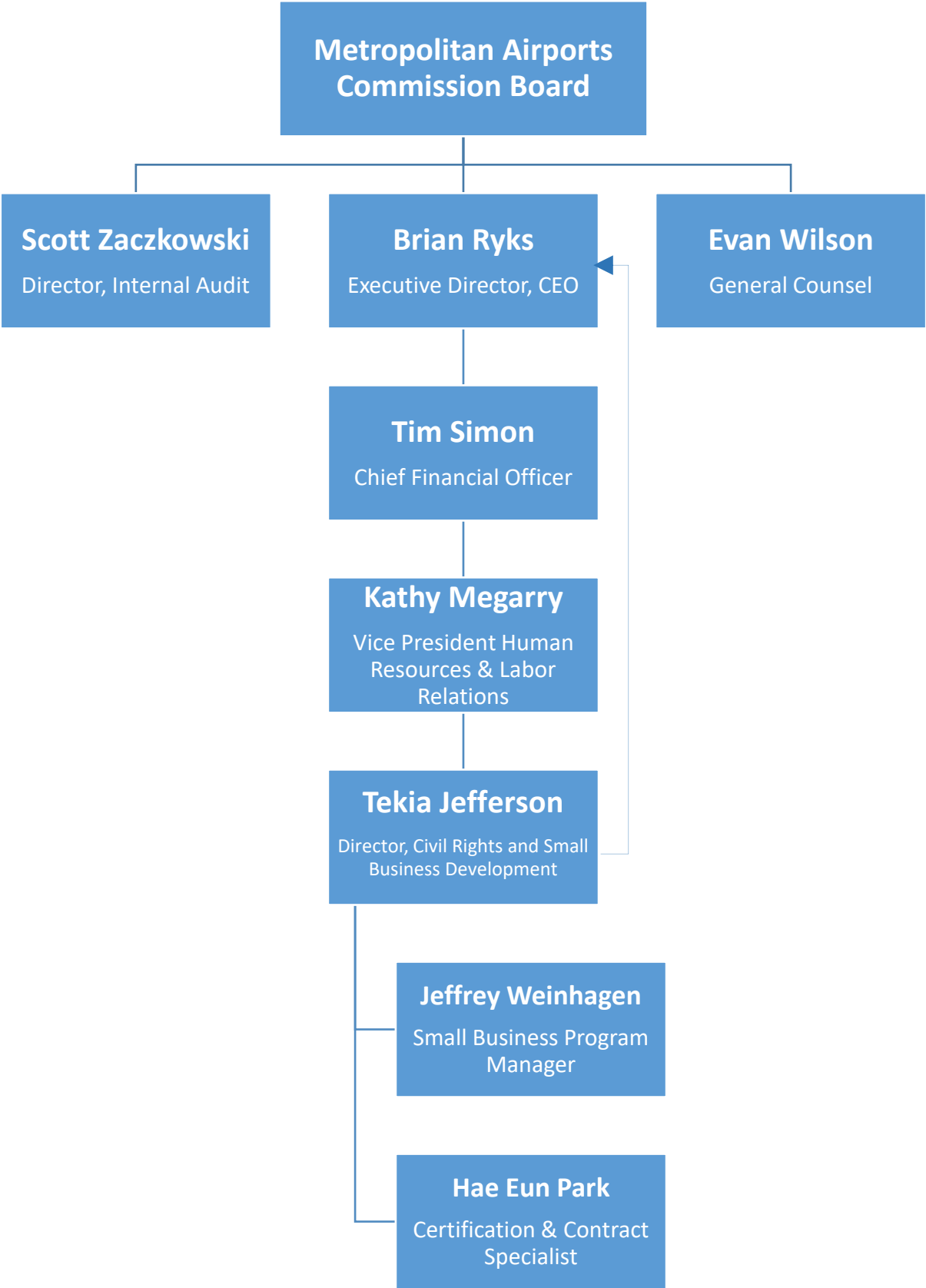
MAC, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or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

Attachment 1 – Regulations Link to 49 CFR Part 26 (eCFR)

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

Attachment 2

Organizational Chart



Attachment 3 – Bidders List Collection Form

Disadvantaged Business Enterprise (DBE) Subcontractor and Non-DBE Subcontractor Information Sheet

The Metropolitan Airports Commission (MAC) is required by federal regulations 49 CFR Part 26, Subpart A, Section 26.11 to collect the following information from each prime contractor and subcontractor submitting a quote, bid, or proposal to the bidder. As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a bid for this project. **Please include your company's information AND all tiers of subcontractors.**

Please note that the information requested below must be completed for each quote, bid, or proposal received by the bidder, regardless of DBE status. It is important to note that providing this information does not commit the bidder to using any of the listed subcontractors.

Provide the following information for both DBE subcontractor and non-DBE subcontractor bids and quotes submitted to the bidder for this project.

Bidder Company Name: _____ Date: _____

Contract No.: _____ Project Name: _____ DBE Goal for Project: _____

Prime and/or Subcontractor Information						
Firm Name	Firm Address, City, State, Zip Code, Phone No.	DBE or non-DBE	Majority Owner's Race and Sex	NAICS Code(s) for Scope of Work	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million

Firm Name	Firm Address, City, State, Zip Code, Phone No.	DBE or non-DBE	Majority Owner's Race and Sex	NAICS Code(s) for Scope of Work	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million
		<input type="checkbox"/> Non-DBE				
		<input type="checkbox"/> DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million
		<input type="checkbox"/> Non-DBE				
		<input type="checkbox"/> DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million
		<input type="checkbox"/> Non-DBE				
		<input type="checkbox"/> DBE	<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1 – 2 million <input type="checkbox"/> \$2 – 5 million <input type="checkbox"/> Greater than \$5 million
		<input type="checkbox"/> Non-DBE				

Please submit additional sheets if necessary.

Attachment 4 – Link to UCP Directory of Certified Firms

<https://mnucp.metc.state.mn.us/>

Attachment 5 – Overall DBE Goal Calculations

Attached Separately

**Attachment 6 – Demonstration of Good Faith Efforts Forms and Other
DBE Bid Forms**

Disadvantaged Business Enterprise (DBE) Good Faith Efforts Information Sheet
(Must be completed and submitted if the DBE goal is not met.)

Instructions:

- 1. If the Prime Contractor cannot commit to a DBE participation percentage at least equal to the DBE contract goal, this DBE Good Faith Efforts Information Sheet shall be completed in its entirety and submitted with support documentation.
- 2. This DBE Good Faith Effort Information Sheet shall be returned to MAC via email to the Office of Diversity, Equity, and Inclusion within one (1) MAC business day, as indicated in the Contract Documents.

PROJECT INFORMATION

Project Name	Project Number	Total Contract Amount	Overall DBE Goal

In order to remain a responsible bidder for this project the following information is provided by the Prime Contractor as a commitment of Good Faith Efforts to utilize DBEs:

PRIME CONTRACTOR INFORMATION

Name:

Mailing Address:

Contact Person for Project:

DBE Contact Person:

Phone Number:

Fax Number:

Email Address:

PRIME CONTRACTOR’S SIGNATURE

Prime Contractor’s Signature

Date

Name (please print)

Title

DBE GOOD FAITH EFFORT INFORMATION

Total DBE participation percentage from the DBE Commitment Form(s): _____ %

- 1. Document how the portions/sections of the work have been divided into smaller tasks or quantities to permit maximum participation of DBE businesses.

- 2. Why were you unable to attain the DBE contract goal?

- 3. Identification of publications in which announcements or notifications were placed and published, and dates of all announcements/notifications. Attach copies of proof for each announcement/notification.

4. Identification of DBE associations that received written notification and fates of all notifications. Provide name of person and date of follow-up call. If no follow-up calls made, explain why not. Attach copies of each letter as proof for each notification.

5. List all DBE firms to whom a letter of solicitation was sent and date of issuance. Include: (1) DBE company name, address, phone number and name of person to contact; (2) area of DBE work expertise or materials/equipment supplied; and (3) date of original solicitation, dates of follow-up contacts, and person spoken to. Attach copies of each solicitation letter and each follow-up letter.

6. List all DBE firms from which a quotation was received, and which will NOT be used in fulfilling the participation percentage goals for this project. Include: (1) DBE company name, address, phone number and name of person to contact; (2) description of work offered to be subcontracted to DBEs, (3) reason(s) for not using the DBE; and (4) non-DBE company name, address, phone number and name of person to contact that us proposed to do the portion/section of the work of the unsuccessful DBE. Attach copies of the description of work proposal upon which was issued to each DBE and non-DBE company/firm.

7. Document established delivery schedules which would encourage participation by DBE business.

8. Document efforts made to assist DBEs in obtaining bonding, lines of credit, and insurance coverage.

9. Document efforts made to assist DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

10. Other comments you wish the Metropolitan Airports Commission to consider.

Disadvantaged Business Enterprise (DBE) AND Non-DBE Subcontractor
Commitment Form

(Must be submitted 1-business day after bid submission. Please include all DBE and Non-DBE subcontractors being utilized for this project on this form)

Bidder Company Name:	
Contract Number:	DBE Goal:
Project Name:	DBE Participation Commitment:

Subcontractor Name	Description of Work	Participating As? <i>(Prime, Subcontractor, Broker, Supplier, Distributor, Trucker)</i>	Subcontract Value in Dollars (\$)	DBE? <i>(Y or N)</i>
Total \$				

I have read the DBE requirements in the Utilization of Disadvantaged Business Enterprise (DBE) section of the bid specifications. I further certify that the bidder has made appropriate efforts to comply with the DBE requirements for this bid by making Good Faith Efforts to meet the established DBE goal specified in the Utilization of Disadvantaged Business Enterprise (DBE) section of the bid specifications. I have included all DBE and non-DBE subcontractor commitments on this form and acknowledge it is a federal requirement to submit this information to be considered for award of this contract. I am authorized on behalf of the bidder to submit this certification to the Metropolitan Airports Commission. This certification is a representation of fact on which the Metropolitan Airports Commission may rely in awarding the contract.

Bidder Company Name: _____ Date: _____

Contact Name: _____ Phone: _____ Email: _____

Bidder Representative Signature: _____

Please submit additional sheets if necessary.

Disadvantaged Business Enterprise (DBE) Letter of Intent

(Must be completed and signed by each DBE listed on Commitment Form and submitted 1-business day after bid submission)

Bidder Company Name:	Contract Number:	Project Name:

DBE Name: Phone:

Address:

City: State: Zip Code:

Participating As: ☐Prime Contractor ☐Subcontractor ☐Broker ☐Supplier ☐Trucker ☐Distributor

Description of Work and NAICS Code(s)	Total DBE \$

- 1. This is a letter of intent between the bidder on this project and a DBE firm to perform work on this project.
- 2. By signing below, the bidder is committing to utilize the above-named DBE to perform the work described above.
- 3. By signing below, the above-named DBE is committing to perform the work described above.

Affirmation: The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate that DBE listed above without following procedures of 49 CFR Part 26.53.

Bidder Representative Name: Title:

Bidder Representative Signature: Date:

Affirmation: The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

DBE Representative Name: Title:

DBE Representative Signature: Date:

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

Received: _____ Date: _____

Project Name: _____

Contract No.: _____

Disadvantaged Business Enterprise (DBE) Program Requirements for Subcontracts

The Metropolitan Airports Commission (MAC) operates a federal Disadvantaged Business Enterprise (DBE) Program to ensure full and fair opportunities in MAC contracting for businesses owned by socially and economically disadvantaged individuals, which is governed by 49 CFR Part 26. This document sets forth DBE provisions that **must** be included in all contracts and subcontracts, regardless of tier, for the subject project as required by federal regulations. **A SIGNED COPY MUST BE (1) SUBMITTED TO THE MAC'S OFFICE OF DIVERSITY, EQUITY, AND INCLUSION AND (2) INCLUDED IN YOUR SUBCONTRACT AS AN EXHIBIT TO ANY UNDERLYING AGREEMENT FOR THE SUBJECT PROJECT.**

The undersigned parties agree and acknowledge that this document shall be deemed to form, be read and construed as, as if stated verbatim therein, part of any agreement between the parties related to the subject project. This document is an agreement wherein the parties accept, agree to, and incorporate federally mandated contractual provisions into any underlying agreement for the subject project as well as acknowledge applicable federal and local DBE rules and regulations. **THE TEXT CONTAINED IN THIS DOCUMENT CANNOT BE REVISED, ALTERED, OR OTHERWISE MODIFIED BY THE PARTIES. THIS IS A FINAL DOCUMENT.**

Any subcontract for the subject project shall be governed by regulations set forth in 49 CFR Part 26 and MAC DBE Program rules and regulations, including but not limited to the following:

1. **Assurance (49 CFR 26.13(b)):** 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 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.
2. **Prompt Payment (49 CFR 26.29):** The prime contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 15 days after the prime contractor's receipt of payment for that work from the MAC. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the MAC. When the MAC has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur for good cause and written approval of the MAC. Retainage will not be withheld on this project. No retainage will be withheld by the MAC from progress payments due the prime contractor. Retainage by the prime or subcontractors is prohibited. No retainage will be held by the prime from progress due subcontractors. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with the requirements set forth in this paragraph may result in the termination of the contract or any other remedy the MAC 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.
3. **Termination/Substitution (49 CFR 26.53):** The prime contractor must not terminate a DBE subcontractor listed on the Disadvantaged Business Enterprise (DBE) and Non-DBE Subcontractor Commitment Form without prior written consent of the MAC. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from the MAC. Unless the MAC's consent is provided, the prime contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE. The MAC may provide such written consent only if the MAC 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 circumstances listed in 49 CFR 26.53. Before transmitting to the MAC its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the MAC, of its intent to request to terminate and/or substitute, and the reason for the request. The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the MAC and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the MAC should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the MAC may provide a response period shorter than five days. In addition to post-award

Received: _____ Date: _____

Project Name: _____

Contract No.: _____

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

- 4. **Counting Participation:** DBE participation in a contract must be counted in accordance with 49 CFR 26.55 and applicable guidance.
- 5. **DBE Independence:** An independent business is one the viability of which does not depend on its relationship with another firm or firms. Determination of ownership and control of a DBE is governed by 49 CFR 26.71.
- 6. **DBE Liaison Officer (DBELO):** For DBE-related questions, issues, and disputes please contact the MAC’s DBELO. The current DBELO is Jeffrey Weinhagen, who may be reached at 612-726-8193 or jeffrey.weinhagen@mspmac.org.

This document shall control and supersede any inconsistency, conflict or ambiguity contained in any underlying agreement between the parties for the subject project as to the procedures, processes, or subject matter set forth in this document or otherwise governed by 49 CFR Part 26 and /or other applicable MAC DBE Program rules and regulations.

PRIME CONTRACTOR: _____

SUBCONTRACTOR: _____

SIGNATURE: _____

SIGNATURE: _____

TITLE: _____ DATE: _____

TITLE: _____ DATE: _____

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

Bidder Name:

Contract Name/Number:

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

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

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

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

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

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

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

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

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

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

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

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? ☐ YES² ☐ NO³

- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

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

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

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

Printed Name and Signature of DBE Owner/Authorized Representative:

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

Printed Name and Signature of Bidder's Authorized Representative:

Attachment 7 – DBE Monitoring and Enforcement Mechanism

DBE Utilization and Payment Information

(Please submit one sheet for each DBE used during this Application for Payment period.)

Application for Payment No.: _____ Application for Payment Date: _____

MAC Contract No.: _____ Project Name: _____

Prime Contractor Name: _____ Contact Email: _____

Prime Contractor Representative Signature: _____

The Metropolitan Airports Commission (MAC) is required by federal regulation 49 CFR Part 26.37 (c)(2) to collect payment information for all DBE subcontractors on federally funded projects. A separate DBE Utilization and Payment Sheet should be submitted for each DBE subcontractor utilized during this Application for Payment period.

The following DBE has been utilized for the description of work and dollar value indicated below during the period covered by the above Application for Payment.

DBE Subcontractor Firm Name	Description of Work	Amount Paid for this Application of Payment	Total Paid-to-Date

Original DBE subcontract amount at time of contract was execution: \$ _____

The DBE firm must sign and date this DBE utilization sheet in order for the MAC to process this Application for Payment

DBE Company Name: _____

DBE Representative Name: _____

Phone Number: _____

Email Address: _____

DBE Representative Signature: _____

Date: _____

Non-DBE Utilization and Payment Information

(Please submit one form and include all payments made to Non-DBEs during this Application for Payment period)

Application for Payment No.: _____ Application for Payment Date: _____

MAC Contract No.: _____ Project Name: _____

Prime Contractor Name: _____ Contact Email: _____

Prime Contractor Representative Signature: _____

The Metropolitan Airports Commission (MAC) is required by federal regulation 49 CFR Part 26.11(a) to collect payment information for all non-DBE subcontractors on federally funded projects.

The following non-DBE(s) have been utilized for the description of work and dollar value indicated below during the period covered by the above Application for Payment.

Subcontractor Firm Name	Description of Work	Amount Paid for this Application of Payment	Total Paid-to-Date

Please submit additional sheets if necessary.

**Attachment 8 – Link to Certification Application and Personal Net
Worth Statement**

<https://mnucp.org/db-forms/>

Attachment 9 – MNUCP Program Document Link

<https://mnucp.org/about/about-the-mnucp/>

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ATTACHMENT 10

Small Business Element

The Metropolitan Airports Commission (MAC) is committed to the development of small businesses in the airport industry. To accomplish the development of small businesses, the MAC has established and facilitates participation in the MAC Small Business Program.

The MAC, as a recipient of U.S. Department of Transportation (USDOT) funding for airport improvement projects (AIP), is required under 49 CFR §26.39 to develop and implement a small business element program. MAC is required to structure opportunities to facilitate competition by small business concerns and take all reasonable steps to eliminate obstacles to their participation. Further, MAC and its contractors will not discriminate based on race, color, national origin, or sex in the award and performance of concessions opportunities.

1. Objective/Strategies

- (1) Prime contracts under **175,000** will be set-aside for Emerging Small Business Enterprises (Tier 1). Only those firms meeting the definition of an Emerging Small Business, as described below, will be eligible for award of these contracts.
- (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract 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, requiring 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 and meet MAC’s Small Business program goals.
- (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 the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

For the purposes of the MAC’s Small Business Program, a small business eligible for this program is defined as:

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1. A business determined by MAC's Civil Rights and Small Business Development Office as either an Emerging Small Business or a Small Business Enterprise.
 - a. Emerging Small Business (Tier 1): is defined as a firm (including affiliates) whose average gross receipts over the firm's previous five fiscal years do not exceed \$5 million.
 - b. Small Business Enterprise: a firm (including affiliates) whose average gross receipts over the firm's previous five fiscal years do not exceed \$10 million.
2. A firm confirmed by MAC to be a small business within the last 12 months.

OR

3. A firm certified in the following small business programs: Targeted Group Business (TGB); Economically Disadvantaged (EV); Veterans Owned (VO); Disadvantaged Business Enterprises (DBE); or Central Certification Program (CERT).

A firm cannot be larger than the *Small Business Administration's size standards*.

Note all businesses meeting the criteria outlined in this program will be considered to be a small business without regard to race or gender.

3. Verification

The MAC's Civil Rights and Small Business Development Office will receive, review, and evaluate documents submitted by a firm to determine whether they qualify as a Small Business as defined above. The documents may include, but are not limited to:

- a. Certification letters.
- b. Certified documents from a Certified Public Accountant of the firm's annual gross receipts
- c. Corporate tax returns.
- d. Personal tax returns.
- e. Official Articles of Incorporation, signed by the State official.
- f. Personal Net Worth Form.
- g. Other corporate documents.

All documents relevant to MAC's Small Business Program will be maintained by and stored, electronically, in a secured shared folder within the MAC's Office Civil Right and Small Business Development's Shared Drive.

4. Monitoring/Record Keeping

The Small Business Program Manager or designee will have the overall responsibility of tracking participation in MAC's Small Business Program on all non-federally funded

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construction opportunities. This requires communication and cooperation with the contract initiating department, as well as the contractors.

The Small Business Program Manager or designee must ensure that all contractors have been advised of the reporting responsibilities during the performance of the contract, have received the reporting forms, and understand the quarterly reporting requirements. The Small Business Program Manager or designee must make sure that the contractor for a specific contract has submitted the appropriate reports on a quarterly basis.

In order to monitor the progress of MAC's Small Business Program, a recordkeeping system will be established to identify and assess contract obligations and progress. The following information concerning MAC's Small Business Program is collected and retained by the MAC's Office Civil Right and Small Business Development:

- a. The number of awarded contracts to confirmed small businesses on construction contracts.
- b. The number and identity of confirmed small businesses contacted and invited to bid or propose specific contracts;
- c. The quarterly reports from contractors reporting their progress in meeting contractual Small Business Program obligations;
- d. The number of MAC's Small Business Program companies utilized; and
- e. Correspondence and other documents related to communication and contact with confirmed Small Business companies.

Additionally, the MAC's Office Civil Right and Small Business Development shall submit reports to the MAC's Finance and Administration Committee.

These reports will include at a minimum:

- Total Small Business Dollars
- Total Small Business Element Companies Utilized

The MAC's Office Civil Right and Small Business Development will also comply with all reporting requirements of the FAA for the MAC's Small Business Program.

5. Assurance

- This small business element program is authorized under state law - Minnesota statute 16C.16 and relevant rules;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;

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- 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;
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified; and
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).