

## POLICY STATEMENT

### Section 26.1, 26.23 Objectives/Policy Statement

The **Burwell Airport Authority, Burwell, Nebraska**, Sponsor of the **Cram Field** has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The **Burwell Airport Authority** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the **Burwell Airport Authority** 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 **Burwell Airport Authority** 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 **Burwell's Airport Authority's** policy to engage in the following actions on a continuing basis:

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

**Don Nelson, Secretary/Treasurer, Burwell Airport Authority**, has been delegated as the DBE Liaison Officer. In that capacity, **Don Nelson, Secretary/Treasurer** 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 **Burwell Airport Authority** in its financial assistance agreements with the Department of Transportation.

The **Burwell Airport Authority** has disseminated this policy statement to the **Burwell Airport Authority's governing officials** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **Burwell Airport Authority** DOT-assisted contracts. The distribution was accomplished by **inclusion in bid specifications**.

Chairperson: \_\_\_\_\_

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

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

**The Burwell Airport Authority** will use terms in this program that have their meanings defined in Part 26, §26.5.

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

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

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

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

#### **Reporting to DOT**

**The Burwell Airport Authority** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to **Nebraska DOT, Aeronautics Division (NDOT-A)** as follows:

**The Burwell Airport Authority** will transmit to **NDOT-A** annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. **The Burwell Airport Authority** will

similarly report the required information about participating DBE firms. All reporting will be done through the **NDOT-A** official reporting system, or another format acceptable to **NDOT-A** as instructed thereby.

### Bidders List

The **Nebraska Department of Transportation - Aeronautics Division (NDOT-A)**, acting as agent for the **Burwell Airport Authority**, will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement may allow use of the bidder's list approach to calculate overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information by requesting that prime bidders report the names and addresses of all firms who quote to them on subcontracts. We will collect this information using forms included in **Attachment 3**.

### Records retention and reporting:

**The Burwell Airport Authority** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, **the Burwell Airport Authority** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of **the Burwell Airport Authority** 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.

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

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

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

The **Burwell Airport Authority** 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 **Burwell Airport Authority** 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 **Burwell Airport Authority's** DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this

program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **Burwell Airport Authority** 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: **The Burwell Airport Authority** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

## ADMINISTRATIVE REQUIREMENTS

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

**The Burwell Airport Authority** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. **The Burwell Airport Authority** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **the Burwell Airport Authority** is in compliance with it and Part 26. **The Burwell Airport Authority** will continue to carry out this program until all funds from DOT financial assistance have been expended. **The Burwell Airport Authority** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23      Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for **the Burwell Airport Authority**:

Name: Don Nelson, Secretary/Treasurer  
Address: P.O. Box 730  
City: Burwell, Nebraska 68823  
Telephone: 308-346-5565  
Email: dobsnelson@hotmail.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **Burwell Airport Authority** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Chairperson of the Burwell Airport Authority** 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. However, the **Burwell Airport Authority** does not have a dedicated civil rights department. The **Burwell Airport Authority** uses staff from DOT-A and the **Nebraska Department of Transportation (NDOT/DOT)** Civil Rights Office for guidance on matters concerning the DBE program and to assist in the administration of the program. The duties and responsibilities include the following:

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

## **NOTES**

**Item 9:** Given the very small size of the Sponsor organization, there is no defined DBE Advisory Committee. The DBELO does, however, advise the entire organization on DBE matters and achievements, per Item 8.

**Item 12:** Given the very small size of the Sponsor organization, the organization does not have the resources to plan and participate in DBE training seminars. For this duty or responsibility, the organization relies on the resources of the Nebraska DOT and their Civil Rights Office to provide appropriate training opportunities.

**Item 13:** Per Section 26.31 below, the Sponsor is a non-certifying member of the Nebraska Unified Certification Program (UCP). As a non-certifying, or Signatory, member, the Sponsor agrees to designate the NDOT Highway Civil Rights Office (HCRO) as the sole certifying agency of the NUCP.

**Item 15:** Per Sections 26.31, the **Burwell Airport Authority** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. This is the directory used by the Sponsor.

## **Section 26.27 DBE Financial Institutions**

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

Utilizing a list of Nebraska banks provided by the Nebraska Department of Banking and Finance, we determined that there are three (3) banks in Burwell as of June 21, 2021: Great Western Bank, Heartland Bank, and Pathway Bank. Following the process used by the Nebraska Department of Transportation, the **Burwell Airport Authority** investigated the availability of socially and economically disadvantaged financial institutions in Nebraska, including the 3 institutions noted above, using the following reports\lists:

- Federal Deposit Insurance Corporation 2019 report to Congress “Preservation and Promotion of Minority Depository Institutions” ( <https://www.fdic.gov/regulations/resources/minority/congress/report-2019/2-summary-profile.pdf> )
- Federal Deposit Insurance Corporation Minority Depository Institutions List ( <https://www.fdic.gov/regulations/resources/minority/mdi.html> )
- Federal Deposit Insurance Corporation Minority Depository Institutions MDI and CDFI Ban Locator ( <https://fdic-gis.maps.arcgis.com/apps/webappviewer/index.html?id=76c05acdf50f4e3db35cd042103e998e> )

- Office of the Comptroller of the Currency Minority and Women-Owned Depository List ( <https://www OCC.treas.gov/topics/consumers-and-communities/minority-outreach/locations-list-view-minority.html?category=ho&type=people> )

From this review, only one depository institution in the state, The First National Bank of Gordon, is noted on the Office of the Comptroller of the Currency's Minority and Women-Owned Depository list, as a Women Owned business. No other lists included the First National Bank of Gordon, or any other socially or economically disadvantaged financial institutions. None of the 4 local institutions noted above were listed on any minority list.

According to Part 26.27, the **Burwell Airport Authority** is required to "thoroughly investigate ... financial institutions ... in your community." Burwell is a city with a population of less than 1,500. It is located in an area with no suburbs. The city of Burwell constitutes **Burwell Airport Authority's** community. The **Burwell Airport Authority** has investigated all financial institutions within their community and thus met the requirements of Part 26.27.

The **Burwell Airport Authority's** community under 26.27 and the **Burwell Airport Authority's** market area under 26.45 are not the same areas. Due to the area's low population density, contractors typically travel hundreds of miles to participate on DOT-assisted contracts. Therefore, the **Burwell Airport Authority's** market area that was used to establish their overall DBE goal is discussed in **Attachment 5**. It would be impractical, infeasible and unreasonable for the **Burwell Airport Authority** to use a financial institution outside of their community.

## **Section 26.29 Prompt Payment Mechanisms**

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

In accordance with 49 CFR §26.29, the **Burwell Airport Authority** 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 **Burwell Airport Authority**.

**The Burwell Airport Authority** ensures prompt and full payment of retainage from the prime contractor to the subcontractor within no later than 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the **Burwell Airport Authority** has selected the following method to comply with this requirement:

(1) We will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay

all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

(a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the **Burwell Airport Authority**. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the **Burwell Airport Authority**. This clause applies to both DBE and non-DBE subcontractors.

(b) In the event of noncompliance with this provision, the **Burwell Airport Authority** may impose appropriate penalties in accordance with terms and conditions of this contract.

(c) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

### **Section 26.31      Directory**

**The Burwell Airport Authority** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The directory is available from:

Minority Business Coordinator  
Nebraska Department of Transportation  
P.O. Box 94759  
Lincoln, NE 68509  
402-479-3728  
<https://dot.nebraska.gov/business-center/civil-rights/>

The directory lists firms that have passed NDOT's certification process. The listing includes the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE. NDOT updates the directory at least quarterly.

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

**The Burwell Airport Authority** has not identified that over-concentration exists the types of work that DBEs perform and has not implemented a Business Development Program



## **Section 26.35 Business Development Programs**

**The Burwell Airport Authority** has not established a Business Development Program.

## **Section 26.37 Monitoring Responsibilities**

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

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

### Monitoring Payments to DBEs and Non-DBEs

**Burwell Airport Authority** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Entering into an agreement for construction observation services, which will include reviewing compliance with Labor and Civil Rights provisions in accordance with FAA AIP Sponsor Guide No. 1070.
- Keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

- **The Burwell Airport Authority** proactively reviews contract payments every quarter to subcontractors including DBEs. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **the Burwell Airport Authority** by the prime contractor.

### Prompt Payment Dispute Resolution

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

In the event of a dispute as to whether work has been satisfactorily completed or not, the DBELO shall schedule and attend a meeting between the **Burwell Airport Authority, Engineering Consultant, the project prime contractor and the DBE subcontractor**. Attendees for the prime contractor and DBE subcontractor shall have an appropriate authority to enter into decisions obligating their respective company.

**The Burwell Airport Authority** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed:

(a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

(b) In the event of noncompliance with this provision, the Sponsor may impose appropriate penalties in accordance with terms and conditions of this contract.

(c) Subject to the approval of the Sponsor, the prime contractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes that may arise.

(d) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

#### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by **the Burwell Airport Authority** to resolve prompt payment disputes, affected subcontractor may contact the responsible DOT-A contact.

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

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

In the event of non-compliance with the DBE regulation by a participant in our procurement activities, the **Burwell Airport Authority** has available several remedies to enforce the DBE requirements contained in its contract, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
  - 3-707 joint airport authority
  - 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26.
- Enforcement action pursuant to 49 CFR Part 31.
- Prosecution pursuant to 18 USC 1001.

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

#### Monitoring Contracts and Work Sites

**The Burwell Airport Authority** reviews contracting records and has engaged with a professional consultant to assist in actively monitoring work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the professional consultant. Contracting records are maintained by the professional consultant and reviewed by Don Nelson, Secretary/Treasurer. **The Burwell Airport Authority** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

## **Section 26.39 Fostering small business participation**

**The Burwell Airport Authority** 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. **Implementation of the small business element is required in order for the Burwell Airport Authority to be considered by DOT as implementing this DBE program in good faith.**

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

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

**The Burwell Airport Authority** does not use quotas in any way in the administration of this DBE program.

#### **Section 26.45 Overall Goals**

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

DOT:

<https://dot.nebraska.gov/business-center/civil-rights/>

FAA:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

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

will remain in effect and **the Burwell Airport Authority** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Method: The following is a summary of the method we used to calculate this goal: We consulted with DOT-A to establish the geographical area from which we could reasonably expect ready, willing and able prime contractors and subcontractors to be obtained. After identifying the geographical area, we search the US Census Bureau's data base to obtain the total number of businesses that correspond to the NAICS code related to the prime scope of work for the project. We review the DOT data base to identify the number of certified DBE's in the geographical area with work codes similar to the NAICS codes.

Step 1: The first step is to determine a base figure for the relative availability of DBEs in the market area. **The Burwell Airport Authority** will use a Bidders List, the goal of another DOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. The base figure was determined by dividing the number of DBE firms on this list by the total number of firms. See **Attachment 5:** "Step 1: Goal Setting Process for details". **The Burwell Airport Authority** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2: The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, and/or information about barriers to entry to past competitiveness of DBEs on contracts. **The Burwell Airport Authority** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

We have been unable to find evidence of past discrimination and have not identified any barriers in our local market area research. In addition, DOT is not aware of past discrimination and has not identified any barriers in our local market area research to adjust their base figure for over utilization or under-utilization to warrant adjustments to their base figure. Therefore, we have not adjusted our base figure due to discrimination.

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 **Burwell Airport Authority's** market.

Process: Before establishing the overall goal each year, the **Burwell Airport Authority** will consult with DOT to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **Burwell Airport Authority's** efforts to establish a level playing field for the participation of DBEs. The **Burwell Airport Authority** may also consult with United Minority Contractors Association of Nebraska and the Urban League of Nebraska to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and

the **Burwell Airport Authority's** efforts to establish a level playing field for the participation of DBEs.

Following this consultation, DOT-A, as agent for the **Burwell Airport Authority**, will post the airport DBE program and its overall goal on the DOT website and notify agencies and organizations, indicating that the **Burwell Airport Authority** is interested in obtaining relevant information regarding goal setting and goal methodology. The link to the airport's program and its overall goal online and the list of agencies and organizations selected are available in **Attachment 5**, under Public Participation. Each notice will contain an explicit invitation to meet with the DOT-A face-to-face or via conference call (i.e., a "scheduled, direct, interactive exchange") to discuss any questions or comments on DBE participation goal setting.

In establishing the overall goal, the **Burwell Airport Authority** 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 **Burwell Airport Authority** 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 the **Burwell Airport Authority** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the **Burwell Airport Authority** 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, the **Burwell Airport Authority** will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be published in the local newspaper, posted on NDOT's official internet web site and may be directly mailed to other local interested agencies. The list of potential agencies interested can be found in **Attachment 5**, under "Public Participation". If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the **Burwell Airport Authority**. The link to the proposed goal is found below:

<https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/>

This notice will provide that the **Burwell Airport Authority** and U.S. DOT will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed.

The Overall Three-Year DBE Goal submission to DOT will include a summary of information and comments received, if any, during this public participation process and the **Burwell Airport Authority's** responses.

The **Burwell Airport Authority** will establish its overall goal based on one or more projects. Our overall goal will be submitted to FAA at least 30 days prior to the first solicitation for a DOT-assisted contract for a project that contains a goal, including professional services, construction, or other contracts. Unless we have received other instructions from DOT, we will establish a goal on a project basis and begin using our overall goal by the time of the first solicitation for a contract that contains a goal.

**The Burwell Airport Authority** will begin using the overall goal on October 1 of the relevant period, unless other instructions from DOT have been received.

### Project Goals

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

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

### Prior Operating Administration Concurrence

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

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

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

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

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

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.
- (3) **The Burwell Airport Authority** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

## **Section 26.49      How are overall goals established for transit vehicle manufacturers?**

**The Burwell Airport Authority** will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

- (1) **The Burwell Airport Authority** affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
- (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
- (3) **The Burwell Airport Authority** is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).



- (4) **The Burwell Airport Authority** will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

## **Section 26.51 Means Recipients Use to Meet Overall Goals**

### Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

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

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

### Contract Goals

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

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

Contract goals will be expressed as a percentage of the Federal share 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 DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

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

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

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

### Administrative reconsideration

Within three days of being informed by the **Burwell Airport Authority** that it is not responsive 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:

Dale Crandall, Attorney  
P.O. Box 730  
Burwell, Nebraska 68823.

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

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

Good Faith Efforts procedural requirements (post-solicitation)

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

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The **Burwell Airport Authority** determined that the listed DBE subcontractor is not a responsible contractor;

- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the **Burwell Airport Authority** written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the **Burwell Airport Authority** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

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

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

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

## **Section 26.55      Counting DBE Participation**

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

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

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

## **SUBPART D – CERTIFICATION STANDARDS**

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

The **Burwell Airport Authority** is a non-certifying member of the Nebraska Unified Certification Program (UCP). Nebraska UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Nebraska UCP members make all certification decisions based on the facts as a whole.

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

Nebraska Department of Transportation  
Minority Business Coordinator  
P.O. Box 94759  
Lincoln, NE 68509-4759.

The Uniform Certification Application form and documentation requirements are found in **Attachment 8** to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The **Burwell Airport Authority** accepts the certification procedures adopted by the NUCP for DBE contractors. The NUCP uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. If a contractor is certified on NUCP's current list, that contractor will be acceptable to the **Burwell Airport Authority**.

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

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

The **Burwell Airport Authority** understands that if it fails to comply with any requirement of this part, the **Burwell Airport Authority** 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.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

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

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

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

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complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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



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## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

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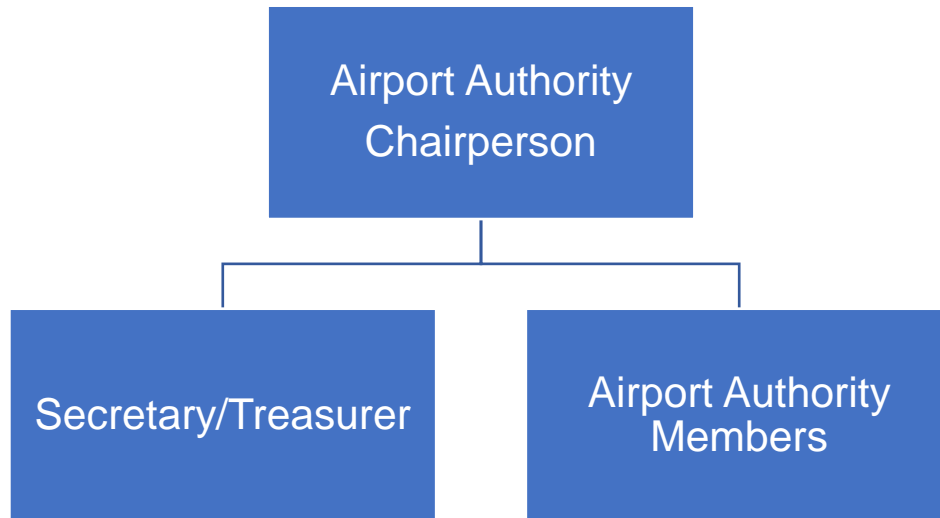
**ATTACHMENT 1**  
Regulations: 49 CFR Part 26

**Regulations: 49 CFR Part 26,**

The DOT published 49 CFR Part 26 is available at the following website:

<https://www.govinfo.gov/content/pkg/CFR-2010-title49-vol1/pdf/CFR-2010-title49-vol1-part26.pdf>

**ATTACHMENT 2**  
**Organizational Chart**



Don Nelson, Airport Secretary/Treasurer, is the designated Liaison Officer. Thus, Mr. Nelson, has frequent contact with the Chairperson, and direct, independent access to the Airport Authority Members.

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

The following form is to be completed with the Bid Proposal.

AIP Project: \_\_\_\_\_

Airport: \_\_\_\_\_

Location: \_\_\_\_\_

The Airport Sponsor is required to submit subcontract information about DBE and non-DBE subcontractors who perform work on their federally-assisted contracts. Therefore, the Airport Sponsor requires that the prime contractor submit the following information related to this project. The DBE rules described in the Information to Bidders and Special Provisions must be followed in regards to the firms listed on the DBE Participation Statement.

**PROPOSED SUBCONTRACTORS**

<b>SUBCONTRACTOR</b>	<b>WORK TO BE PERFORMED</b>	<b>ADDRESS (City, State)</b>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____

**SIGNED** \_\_\_\_\_

**COMPANY** \_\_\_\_\_

**BY** \_\_\_\_\_  
(Printed name)

**DATE** \_\_\_\_\_

**ATTACHMENT 4**

State of Nebraska DBE Directory.

**State of Nebraska DBE Directory,**

A directory of Nebraska DBE's is available at the following website:

<https://dot.nebraska.gov/business-center/civil-rights/>

**ATTACHMENT 5**

Overall DBE Three-Year Goal Methodology  
For FY 2022, 2023, 2024

**Airport:** Cram Field, Burwell, Nebraska  
**Sponsor:** Burwell Airport Authority

**Goal Period:** Fiscal Years 2022, 2023, 2024; October 1, 2021 through September 30, 2024

**Anticipated DOT-Assisted Contracts:**

	<b>Contract Amount</b>	<b>Project Name</b>	<b>Type of Work</b>
FY2022:	\$215,000	Corporate Hangar	Engineering
FY2022:	\$725,000	Corporate Hangar	Construction
<b>Subtotal FY2022</b>	<b>\$940,000</b>		
FY2023:	\$0	No Project	N/A
<b>Subtotal FY2023</b>	<b>\$0</b>		
FY2024:	\$0	No Project	N/A
<b>Subtotal FY2024</b>	<b>\$0</b>		
<b>TOTAL</b>	<b>\$940,000</b>		

**The Sponsor's overall 3-year DBE goal is: 1.68%**

On DOT assisted contracts, the goal is to expend 1.68% of the Federal financial assistance on DBE's. It is anticipated that our overall DBE goal will be achieved through 0% race-neutral participation and 1.68% being achieved through race-conscious participation.

**Total amount to be expended on DBE's: \$15,792**

The following is a summary of our DBE expenditures for each fiscal year by contract:

<b>Fiscal Year</b>	<b>Contract Type</b>	<b>Contract Amount</b>	<b>DBE Amount</b>	<b>Total DBE Participation</b>	<b>Race Neutral</b>	<b>Race Conscious</b>
2022	Engineering	\$215,000	\$0	0%	0%	0%
2022	Construction	\$725,000	\$15,792	2.18%	0%	2.18%
2023	No Contract	\$0	\$0	0%	0%	0%
2024	No Contract	\$0	\$0	0%	0%	0%
<b>FY2019, 2020 &amp; 2021 TOTALS</b>		<b>\$940,000</b>	<b>\$15,792</b>	<b>1.68%</b>	<b>0%</b>	<b>1.68%</b>

**Step 1: Goal Setting Process (26.45 c)**

The goal was calculated using the method described in our DBE program. We selected the following geographical areas (counties) that will be used to seek contractors for the projects during the various years. The specific geographical areas were selected based on information from Nebraska Department of Transportation Aeronautics Division. Specifically, we selected those contractors within the following Counties for the projects for the various years:

<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
Adams, Antelope, Blaine, Boone, Boyd, Brown, Buffalo, Cherry, Clay, Custer, Dawson, Fillmore, Frontier, Garfield, Gosper, Greeley, Hall, Hamilton, Holt, Howard, Kearney, Keya Paha, Know, Lincoln, Logan, Loup, Madison, Merrick, Nance, Phelps, Pierce, Platte, Polk, Rock, Sherman, Thomas, Valley, Wheeler, York	No Projects	No Projects

In addition to construction contracts, we anticipate contracts for consulting/engineering services. In establishing DBE participation by DBE consulting/engineering firms, we were unable to locate certified DBE's that provide consulting/engineering services. It should be noted that our engineering selection will be a qualification-based selection and we do not anticipate DBE consulting/engineering firms submitting qualifications during the selection process. Therefore, during this 3-year period, we anticipate no DBE participation on consulting/engineering services contracts. We will continually review/evaluate DBE participation by consulting/engineering firms and update as necessary.

## **FY2022**

We anticipate one engineering services contract, in the amount of \$215,000, for the design and construction of the proposed corporate hangar. We do not expect any DBE participation on engineering services contracts, as previously discussed. The DBE participation for engineering service contracts is calculated as follows:

**FY2022 Engineering Services – Corporate Hangar**  
(0 DBE Firms/ 6 total firms) = 0% DBE Participation for Consulting/Engineering Services  
0% x \$215,000 Contract Amount = \$0 DBE Participation for Consulting/Engineering Services

We also anticipate a single prime contract for the construction of the hangar. We identified 83 firms in our selected geographical area from the US Census Bureau that included NACIS code 2362-Non-Residential Building Construction. In addition, we identified 2 certified DBE's in our selected geographical area within NDOT category D8A-Building Construction. The DBE participation for this contract is calculated as follows:

**FY2022 Construction – Corporate Hangar**  
(2 DBE Firms/ 83 total firms) = 2.41% DBE Participation for Construction Contract  
2.41% x \$725,000 Contract Amount = \$17,470 DBE Participation for Construction Contract

Based on the above discussions, our overall FY2022 DBE goal is as follows:

**FY2022 Overall DBE Goal**  
\$17,470 Total DBE Participation / \$940,000 Total Contract Amount = 1.86% DBE Participation for FY2022

## **FY2023**

We are anticipating no projects or federal grants during FY2023; therefore, our DBE participation is zero (0).

**FY2023 No Projects**  
(0 DBE Firms/ 0 total firms) = 0% DBE Participation  
0% x \$0 Contract Amount = \$0 DBE Participation

**FY2023 Overall DBE Goal**  
\$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2023

## **FY2024**

We are anticipating no projects or federal grants during FY2024; therefore, our DBE participation is zero (0).

**FY2024 No Projects**  
(0 DBE Firms/ 0 total firms) = 0% DBE Participation  
0% x \$0 Contract Amount = \$0 DBE Participation

**FY2024 Overall DBE Goal**  
\$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2024

## Summary of FY2022, 2023 and 2024 DBE Participation

The following is a summary of our anticipated work with DBE participation by fiscal year:

Fiscal Year	Contract type	Contract Amount	DBE Amount
2022	Engineering	\$215,000	\$0
2022	Construction	\$725,000	\$17,470
2023	No Contract	\$0	\$0
2024	No Contract	\$0	\$0
<b>TOTALS</b>		<b>\$940,000</b>	<b>\$17,470</b>

The calculation for our 3-year base figure is as follows:

$$(\$17,470 \text{ Total DBE Contact Amount}) / (\$940,000 \text{ Total Contract Amount}) = 1.86\%$$

### Step 2: Adjustments to Base Figure (26.45(d))

Our historical data is summarized as follows:

FY	AIP Project	Description of Work	CONTRACT GOAL		CONTRACT ACHIEVE		GOAL		ACHEIVE Over/Under Achievement
			Race Neutral	Race Consc.	Race Neutral	Race Consc.	Overall Goal	Overall Achieve	
85	01	Asphalt Overlay/Paving	*	*	0%	0%	*	0%	0%
04	02	Airport Layout Plan	*	*	0%	0%	*	0%	0%
06	03	Apron & Twy Pavement	0%	1.8%	0%	1.8%	1.5%	1.5%	0%
07	-	No Project	-	-	-	-	-	-	-
08	-	No Project	-	-	-	-	-	-	-
09	-	No Project	-	-	-	-	-	-	-
10	-	No Project	-	-	-	-	-	-	-
11	04	Land Purchases	**	**	**	**	**	**	**
11	05	Pavement Rehabilitation	0%	2.5%	0%	2.5%	2.5%	2.5%	0%
12	-	No Project	-	-	-	-	-	-	-
13	-	No Project	-	-	-	-	-	-	-
14	-	No Project	-	-	-	-	-	-	-
15	06	T-hangar	0%	1.9%	0%	3.37%	1.9%	3.37%	+1.47%
16	-	No Project	-	-	-	-	-	-	-
17	-	No Project	-	-	-	-	-	-	-
18	07	100LL Fuel System	0%	0%	0.57%	0%	0%	0.57%	+0.57%
19	-	No Project	-	-	-	-	-	-	-
20	08	PAPI\REILs	0%	1.94%	0%	12.41%	1.94%	12.41%	+10.47%
20	09	No Project▲	-	-	-	-	-	-	-
21	10	No Project▲	-	-	-	-	-	-	-

\*Total contracts less than \$250,000; therefore, DBE goal not required

\*\*DBE goal not applicable

▲ COVID relief grant – No DBE required

Using data from the table above, the Step 1 figure was adjusted. An average of the Step 1 figure (1.86%) and the median of past participation (1.5%) was calculated. This defines our Step 1 base figure, adjusted for past participation, as **1.68%**.

### Step 3: Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51 a-c)

Referring again to the table above, the median 'Over\Under Achievement' is **0.0%**. This is the amount of participation we would expect in a race-neutral goal.

Ultimately, the Step 3 process leaves us with a **1.68%** adjusted program goal, with a **0.0%** race-neutral component.

## PUBLIC PARTICIPATION



**Consultation:**

In establishing the overall goal, Nebraska Department of Transportation Division of Aeronautics, as agent for the Sponsor, and The Sponsor will provide consultation/outreach services and publication. The consultation/outreach services included posting the airport's DBE program and its overall goal on the NDOT website at:

<https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/>

Besides that, Nebraska Department of Transportation Division of Aeronautics would mail letters to following agencies and organizations indicating that the Sponsor is interested in obtaining relevant information regarding goal setting and goal methodology. These organizations include 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 Sponsor efforts to establish a level playing field for the participation of DBEs.

South Omaha Business Association  
Associated General Contractors of America, Nebraska Chapter  
Nebraska Center for Rural Affairs  
Nebraska Hispanic Chamber of Commerce  
Greater Omaha Economic Development Partnership  
Nebraska Business Development Center  
Nebraska Concrete Paving Association  
City of Omaha – Department of Human Rights and Relations  
City of Lincoln – Commission on Human Rights  
Urban League of Nebraska  
Metro Omaha Women's Business Center  
Omaha Opportunities Industrialization Center

These agencies and organizations were selected because of the likelihood that they could provide information concerning the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and efforts to establish a level playing field for the participation of DBEs. Each letter contained an explicit invitation to meet with the NDOT Division of Aeronautics face-to-face or via conference call (i.e., a "scheduled, direct, interactive exchange") to discuss any questions or comments on DBE participation goal-setting.

If the proposed goal changes following review by FAA Civil Rights, the revised goal will be updated and a revised Public Notice will be issued.

Notwithstanding paragraph (f)(4) of §26.45, Sponsor's proposed goals will not be implemented until this requirement has been met.

## **PUBLIC NOTICE**

Below is the public notice which the Burwell Airport Authority will publish in the local newspapers and will be posted on the Nebraska Department of Transportation (NDOT) webpage:

### **Public Notice DBE Program**

The Burwell Airport Authority hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **1.68%** for Federal Aviation Administration (FAA) funded contracts/agreements. The proposed goal pertains to federal fiscal years 2022 through 2024.

The DBE goal and methodology is available for inspection until 30 days following the date of the notice. These items may be seen at the Burwell Airport Authority Office, 46650 Highway 96, Burwell, NE 68823, during regular office hours.

A meeting could be arranged with the Nebraska Department of Transportation Division of Aeronautics (NDOT) office for the purpose of obtaining information relevant to the goal-setting process through the phone number (402-471-2371). Comments will be accepted until 30 days following the date of the notice and can be sent to the followings:

**Burwell Airport Authority,**  
P.O. Box 730,  
Burwell, Nebraska 68823.

OR

**Compliance Specialist,  
Disadvantaged Business Enterprise Program,  
FAA Office of Civil Rights,  
777 S. Aviation Blvd, Suite #150,  
El Segundo, CA 90245.**

**ATTACHMENT 6**

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

**FORM 1: Disadvantaged Business Enterprise (DBE) Utilization**

UTILIZATION STATEMENT

*Disadvantaged Business Enterprise*

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner. *(Please mark the appropriate box)*

- The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.**
- The bidder/offeror, while unable to meet the DBE goal of \_\_\_\_\_%, hereby commits to a minimum of \_\_\_\_\_% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).**

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

\_\_\_\_\_  
Bidder's/Offeror's Firm Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DBE UTILIZATION SUMMARY**

<u>Percentage</u>	<u>Contract Amount</u>	<u>DBE Amount</u>	<u>Contract</u>
DBE Prime Contractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Supplier	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturer	\$ _____ x 1.00 =	\$ _____	_____ %
Total Amount DBE		\$ _____	_____ %
DBE Goal		\$ _____	_____ %

\* If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

**END FORM 1**

**FORM 2: Disadvantaged Business Enterprise (DBE) Letter of Intent**

LETTER OF INTENT

*Disadvantaged Business Enterprise*

**Bidder/Offer**

Name of Firm: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Contact person: Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

**DBE Firm**

Name of DBE Firm: \_\_\_\_\_  
 DBE Firm Address: \_\_\_\_\_  
 DBE contact person: Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
 DBE certification Agency: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.

Classification:  Prime Contractor  Subcontractor  Joint Venture  
 Manufacturer  Supplier  
 Category of DBE:  Native American  Hispanic  Asian Pacific  
 Black  Non-Minority Woman  Other

Work items to be performed by DBE	Description	Quantity	Total

The bidder/offer is committed to utilizing the above-named firm for the work described above. The estimated participation is as follows:

DBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION**

The above-named firm affirms that it will perform that portion of the contract for the estimated dollar value as stated herein above.

BY: \_\_\_\_\_  
 (Signature) (Title)

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

## ATTACHMENT 7

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

The Burwell Airport Authority has the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
  - 3-707 joint airport authority
  - 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 18 USC 101.

**ATTACHMENT 8**  
DBE Certification Application Form

**State of Nebraska DBE Certification Application**

The DBE Certification Application is available at the following website.

<https://dot.nebraska.gov/media/5821/c-users-royleach-desktop-it-umbraco-docs-dbe-cert-application.pdf>

**ATTACHMENT 9**  
State's UCP Agreement

**State of Nebraska DBE Unified Certification Program**

The DBE Unified Certification Program is available at the following website:

[https://dot.nebraska.gov/media/113234/nebraska\\_ucp.pdf](https://dot.nebraska.gov/media/113234/nebraska_ucp.pdf)

**ATTACHMENT 10**

## Small Business Element

### **A. Objective (49 CFR Part 26.39)**

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The Burwell Airport Authority is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary, the Burwell Airport Authority will meet its objectives using a combination of the following methods and strategies:

1. **Set asides:** Where feasible, the Burwell Airport Authority will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the Burwell Airport Authority and its prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.
2. **Unbundling:** The Burwell Airport Authority, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Burwell Airport Authority will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the Burwell Airport Authority will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

However, based on data from the Nebraska Department of Transportation (NDOT), current procedures utilized to structure contracting requirements not only facilitate competition by small business concerns, but have enabled small business concerns to be very successful in securing work both as prime contractors and subcontractors. Because of the high level of success small businesses have had in competing for and performing prime contracts, the sponsor does not feel it is necessary at this time to alter or restructure its contracting requirements in order to foster small business participation.

It has been determined that contractors (primes and sub) doing airport projects in Nebraska are included in NDOT contractor lists. The Nebraska Department of Transportation – Division of Aeronautics (NDOT-A) and airport sponsors will continue to monitor DBE and small business participation.

The Burwell Airport Authority, NDOT and NDOT-A will continue to ensure that prime contracts are available for small businesses. The assessment will be conducted by personnel from the NDOT-A. If an assessment shows that the level of participation by small businesses has decreased significantly, the Burwell Airport Authority and NDOT-A will promptly take all reasonable steps to increase the level of participation.



NDOT currently requires all firms (prime and subcontractors) that participate on NDOT projects to provide average annual gross receipts information. The NDOT requires firms to indicate if their average annual gross receipts exceed \$22.41 million to better verify that only eligible firms are identified as small businesses.

The Burwell Airport Authority will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

## **B. Definitions**

### **1. Small Business:**

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

## **C. Implementation Schedule**

The small business element was last reviewed on July 15, 2021 and will be reviewed concurrently to regular program updates.

## **D. Assurances**

The Burwell Airport Authority makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program, and;
5. Outreach to those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.