

DEPARTMENT OF TRANSPORTATION  
DBE PROGRAM – 49 CFR PART 26



## Hector International Airport (FAR)

Prepared for  
Municipal Airport Authority (MAA) of the City of Fargo  
Fargo, ND

Prepared by  
**Mead**  
& **Hunt**

June 25, 2021

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## **Preface**

The Municipal Airport Authority (MAA) of the City of Fargo, North Dakota governs and operates the Hector International Airport (FAR). MAA controls, operates, and manages all airport operations. It establishes policy to ensure that quality aviation related services are provided to the region. MAA has established the following Disadvantaged Business Enterprise (DBE) program for the Hector International Airport in accordance with Code of Federal Regulations (CFR) of the U. S. Department of Transportation (DOT), 49 CFR Part 26. All reference to Subparts and Section numbers throughout this DBE policy (i.e. Subpart A, 26.1, 26.3, etc.) are to the 49 CFR Part 26 regulations.

## POLICY STATEMENT

### **Section 26.1, 26.23 Objectives/Policy Statement**

MUNICIPAL AIRPORT AUTHORITY (MAA) OF THE CITY OF FARGO 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 MAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MAA 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 MAA to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also MAA 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.

Shawn A. Dobberstein, AAE; Executive Director, has been delegated as the DBE Liaison Officer. In that capacity, the Executive Director 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 MAA in its financial assistance agreements with the Department of Transportation.

MAA has disseminated this policy statement to all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the Hector International Airport (FAR) on DOT-assisted contracts. The Policy Statement is available for public access on the FAR website ([www.fargoairport.com](http://www.fargoairport.com)).

Shawn A. Dobberstein, AAE  
Shawn A. Dobberstein, AAE,; Executive Director

6/29/2021  
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**

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

### **Section 26.5 Definitions**

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

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

MAA 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, MAA 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**

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

DBE participation will be reported to Federal Aviation Administration as follows:

MAA will transmit to Federal Aviation Administration 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. MAA will similarly report the required information about participating DBE firms. All reporting will be done through the Federal Aviation Administration official reporting system, or another format acceptable to Federal Aviation Administration as instructed thereby.

### **Bidders List**

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

This information will be collected using the form in Attachment 3 which will be included in bidding documents. The information will be submitted by primes and subcontractors whether or not they were successful in be awarded a subcontract or the prime contract. MAA will provide this information in the public domain.

### **Records retention and reporting:**

MAA, as a member of the North Dakota UCP established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

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

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

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

***[Note: The following language is to be used verbatim, as stated in 26.13(a)]***

The MAA 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 MAA 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 MAA 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 MAA 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: MAA 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):

**[Note: The following language is to be used verbatim, as stated in 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 is not limited to:

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

MAA 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. MAA is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and MAA is in compliance with it and Part 26. MAA will continue to carry out this program until all funds from DOT financial assistance have been expended. MAA 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 MAA:

Shawn A. Dobberstein, A.A.E.  
Executive Director  
Hector International Airport  
2801 32<sup>nd</sup> Avenue NW (Physical Address)  
PO Box 2845 (Mailing Address)  
Fargo, ND 58102  
701/ 241-1501  
Shawn Dobberstein [Shawn@fargoairport.com](mailto:Shawn@fargoairport.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MAA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Municipal 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. The DBELO has a staff of up to three staff in addition to the Airport Consultant 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 MAA'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. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the MAA 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 MAA shall use the State of North Dakota, Department of General Services online directory <https://www.business.nd.gov/resources> to search for commercial banking, credit unions, and consumer lending businesses under NAICS code 522100. This will be done on an annual basis.

## **Section 26.29 Prompt Payment Mechanisms**

MAA 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 MAA 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 MAA.

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

MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO 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.

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

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

“a. From the total of the amount determined to be payable on a partial payment, 5% percent of such total amount will be deducted and retained by the Owner for protection of the Owner’s interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14 of the General Provisions. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08 of the General Provisions.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 7 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner’s discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.”

### **Section 26.31      Directory**

MAA is a non-certifying member of the North Dakota 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.

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

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

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

MAA has a DBE Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program. The MAA actively participates with professional associations, industry organizations, and chambers of commerce. Project contracting opportunities are listed on the Airport's website as well as other sites that can be found on the world wide web. Additionally, the MAA is a non-certifying member of the North Dakota Unified Certification Program which also provides opportunities for business development. Interested persons can find more information through the MAA website <https://www.fargoairport.com>.

### **Section 26.37      Monitoring Responsibilities**

MAA 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 MAA 's DBE program.

MAA 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**

MAA 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):

1. Announcing prime contractor payments at regularly scheduled progress meetings.

2. Posting payments to a website, database, or other place accessible to subcontractors.

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

- MAA proactively reviews contract payments to subcontractors including DBEs on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to MAA by the prime contractor.

#### Prompt Payment Dispute Resolution

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

Meetings will be conducted including MAA, prime, subconsultant, and the resident project representative (RPR) and/or project manager (PM) presence as appropriate. The purpose of meeting will be to discuss satisfactory completion requirements and dispute resolution.

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

(1) When the work on which the claim for payment and/or retainage release is based has been completed, the Subcontractor shall, within 10 calendar days after not being paid as per the prompt payment clause listed in the Contract, submit a written claim to the Resident Project Representative (RPR) or Project Manager (PM) who will present it to MAA for consideration in accordance with contract requirements or local laws / ordinances. The MAA will immediately contact the Prime and require their compliance with Contract specifications. The matter will be monitored until payment has been satisfied.

#### Prompt Payment Complaints

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

1. The affected contractor shall notify the Project Manager (PM) and/or Resident Representative (RPR) in writing within 10 days of non-payment. The PM or RPR shall contact the prime to inquire and resolve the issue.
2. If the affected contractor is not satisfied within 30 days of non-payment they shall notify the DBELO in writing clearly defining the issue including the dates of non-payment.
3. If the affected contractor is not satisfied within 90 days of the complaint, they shall notify the FAA Office of Civil Rights.

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

MAA will provide appropriate means to enforce the requirements of §26.29. These means include:

1. We will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
3. Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
4. Other penalties for failure to comply, up to and including contract termination.

MAA will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

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

MAA 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.

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

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

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

### **Section 26.45      Overall Goals**

MAA 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), MAA will submit its Overall Three-year DBE Goal to Federal Aviation Administration 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 Federal Aviation Administration **FAA**:

## **DBE and ACDBE Reporting Requirements For Airport Grant Recipients**

**49 CFR Part 26**

**All Airports -- 3-Year Overall DBE Goals**

**DUE: AUGUST 1**

<b>Airport Type</b>	<b>Region</b>	<b>Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
Small Hub Primary	All	2020	2021/2022/2023	2023 2024/2025/2026

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If MAA 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 MAA 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. MAA will use a Bidders List, a Disparity Study, DBE Directory information and Census Bureau Data, that complies with §26.45 as a method to determine the base figure. MAA understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

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

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

In establishing the overall goal, MAA 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 MAA 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 MAA 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 MAA 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, MAA will publish a notice announcing the proposed overall goal before submission to the Federal Aviation Administration on August 1st. The notice will be posted on MAA 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 Federal Aviation Administration, 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 principal office of MAA. This notice will provide that the MAA and Federal Aviation Administration 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 public comment period will not extend the August 1<sup>st</sup> deadline.**

The Overall Three-Year DBE Goal submission to Federal Aviation Administration will include a summary of information and comments received, if any, during this public participation process and MAA responses.

MAA will begin using the overall goal on October 1 of the relevant period, unless other instructions from Federal Aviation Administration have been received.

### Project Goals

If permitted or required by the Federal Aviation Administration 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

MAA understands that prior Federal Aviation Administration concurrence with the overall goal is not required. However, if the Federal Aviation Administration review suggests that the overall goal has not been correctly calculated or that the method



employed by MAA for calculating goals is inadequate, Federal Aviation Administration may, after consulting with MAA, adjust the overall goal or require that the goal be adjusted by MAA. 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**

MAA 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 MAA fails to administer its DBE program in good faith.

MAA 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.

MAA 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;

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

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

MAA 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 MAA 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 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 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.

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

MAA 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) *[Select either responsiveness OR responsibility option]*

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

#### Administrative reconsideration

Within 10 days of being informed by MAA 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:

Municipal Airport Authority of the City of Fargo  
PO Box 2845  
Fargo, ND 58108-2845  
701/241/1501

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. The reconsideration official is not someone who reports to the DBELO who made the original determination. The reconsideration official is well-acquainted with the requirements outlined in Appendix A of 49 CFR Part 26.

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 MAA. 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 MAA 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) MAA determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides MAA 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 MAA 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 MAA 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 MAA, 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 MAA and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of MAA 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.

MAA 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 MAA 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. MAA 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 MAA 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**

MAA is a non-certifying member of the North Dakota Unified Certification Program (UCP). North Dakota 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 North Dakota 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:

North Dakota Department of Transportation  
Civil Rights  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700  
701/ 328-2563  
<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>



Or

<https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/276536/dbe-state-certifying-agencies-list-8312017.pdf>

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**

MAA is the member of a Unified Certification Program (UCP) administered by the North Dakota Department of Transportation (NDDOT). The UCP will meet all of the requirements of this section. A copy of the signed agreement page of the membership of the UCP between the Recipient and the NDDOT UCP is included in Attachment 9.

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

### **Section 26.101 Compliance Procedures Applicable to MAA**

MAA understands that if it fails to comply with any requirement of this part, MAA 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 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).

MAA, 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. MAA understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection 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

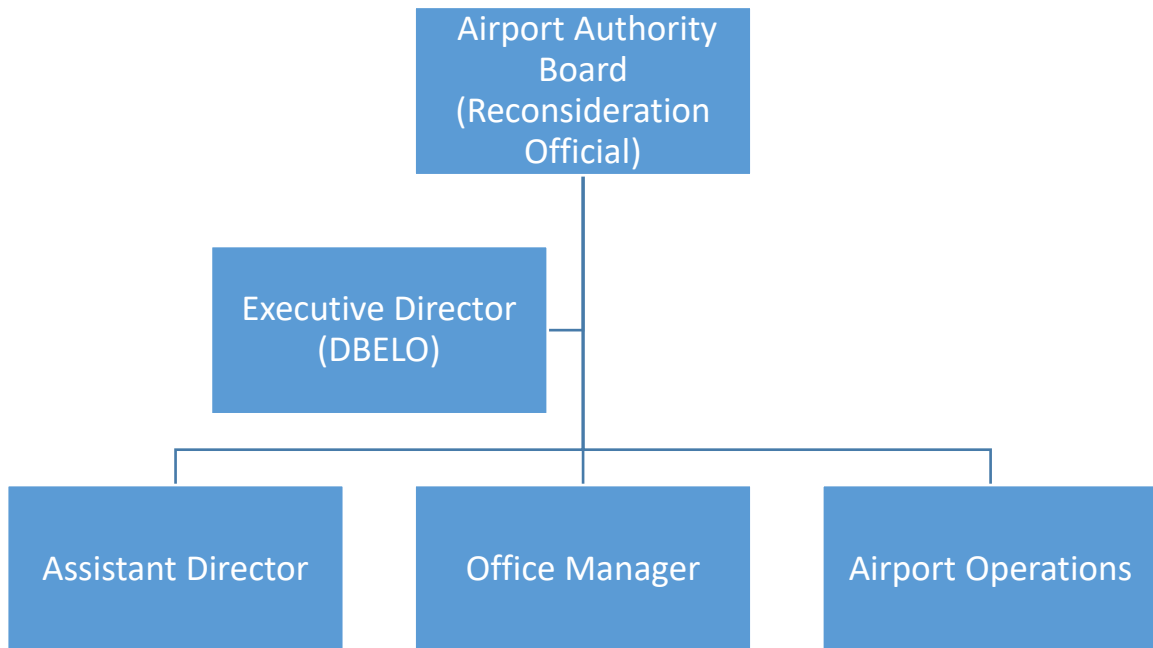
**ATTACHMENT 1**  
Regulations: 49 CFR Part 26

The regulations can be viewed at the following website:

<https://ecfr.io/Title-49/Part-26>

## ATTACHMENT 2

### MAA Organizational Chart



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

*(SAMPLE BIDDERS LIST COLLECTION FORM)*

**[Reminder: the information below must be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires recipients to collect information from all bidders and subcontractors, including unsuccessful ones.]**

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<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"/> 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"/> 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"/> 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"/> 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"/> 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

## **ATTACHMENT 4**

### **North Dakota DBE Directory**

The North Dakota Unified Certification Directory (CUCP) can be viewed at the following website:

<https://dotnd.diversitycompliance.com>

## **ATTACHMENT 5**

### Overall DBE Three-Year Goal Methodology

***THIS SECTION SUBMITTED SEPARATELY  
Last Approved on July 16, 2020***

## ATTACHMENT 6

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

These forms will be provided as part of the solicitation documents for purposes of assessing bidders'/offerors' good faith efforts

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

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

☐ Bidder/offeror has met the DBE contract goal

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

☐ Bidder/offeror has not met the DBE contract goal

The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## FORM 2: LETTER OF INTENT

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

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

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

Name & title of DBE firm's AR: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Dealer/Manufacturer**

*\*Percentage is to be used only in negotiated procurements, including design-build contracts*

*\*\*For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

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 the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

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

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.

\_\_\_\_\_  
Signature of DBE's Authorized Representative

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

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

**Submit this page for each DBE subcontractor.**

## **ATTACHMENT 7**

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

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to Title 9 of North Dakota Legislative Branch

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

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

**ATTACHMENT 8**  
DBE Certification Application Form

<https://dotnd.diversitycompliance.com>

**ATTACHMENT 9**  
State's UCP Agreement

UCP Agreement between North Dakota Department of Transportation and the Fargo Airport Authority, Hector International Airport is attached.

54171649

Unified Certification Program (UCP) Agreement  
For  
Disadvantaged Business Enterprise (DBE) and  
Airport Authority's Concession Disadvantaged Business Enterprise (ACDBE)

Between  
The North Dakota Department of Transportation (NDDOT)  
And  
Fargo Airport Authority  
Hector International Airport

**PURPOSE:**

To establish an agreement where the North Dakota Department of Transportation (NDDOT) will handle certification of all DBE/ACDBE firms seeking to perform work on Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA) projects funded by the United States Department of Transportation (USDOT).

**AUTHORITY:**

49 CFR 26.81 requires all USDOT recipients (FHWA, FAA, and FTA) to participate in a UCP. It further requires the UCP to follow all certification procedures and standards of 49 CFR 26 Subparts D and E, & Part 23.

**RESPONSIBILITIES AND PROCEDURES:**

**NDDOT agrees to:**

Make all certification decisions on behalf of FHWA, FAA, and FTA recipients in North Dakota with respect to participation in the USDOT DBE Program.

Certify DBE/ACDBE firms in accordance with procedures and standards of 49 CFR 26 & Part 23, and its approved DBE Program Plan.

Maintain and disseminate a unified directory of certified DBE/ACDBE firms.

Accept referrals of firms and individuals seeking DBE/ACDBE certification from FAA or FTA recipients.

Accept complaint referrals relative to DBE/ACDBE certification eligibility from FAA and FTA recipients and proceed in accordance with 49 CFR 26, and as specified in the Airport DBE Program Plan.

**Fargo Airport Authority agrees to:**

Use only firms certified and appearing on the current unified DBE/ACDBE director in counting participation toward DBE goal.

Refer all applicants seeking DBE/ACDBE certification in North Dakota to the NDDOT.

Abide by NDDOT certification and decertification decisions.

Monitor each DBE/ACDBE participation to ensure they perform a commercially useful function as specified in 49 CFR 26.55.

**LIMITATIONS:**

Nothing in the UCP between NDDOT and the Fargo Airport Authority shall be construed as limiting or expanding the statutory or regulatory responsibility of any involved individual in performing functions granted to them by law. Each and every provision of this UCP is subject to the laws and regulations of the state of North Dakota and the United States.

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may be in any manner result from or arise out of this agreement.

Nothing in this agreement shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party.

**EFFECTIVE DATE:**

This UCP shall become fully operational and effective upon signature of the Director of the NDDOT or his designee and the FAA/FTA recipient indication below.

**METHOD OF TERMINATION:**

This UCP shall remain in effect unless formally terminated by either party after ninety (90) days written notice to the other party.

**AMENDMENTS:**

Amendments to the UCP shall become effective upon mutual agreement and written approval by the NDDOT Director or his designee and the FAA/FTA recipient.

WITNESS:

Joan Stading  
NAME (Type or Print)

Joan Stading  
SIGNATURE

Fargo's Hector International Airport  
AIRPORT NAME

Shawn A. Dobberstein, AAE  
OFFICER'S NAME (Type or Print)

Shawn A. Dobberstein, AAE  
SIGNATURE

1/2/2018  
DATE

(STATE)

WITNESS:

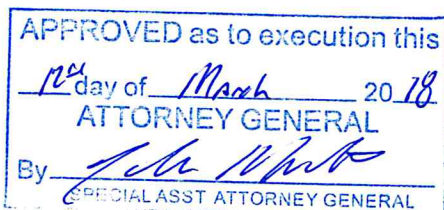
LAUREEN M. MARTIN  
NAME (Type of Print)

Laureen M. Martin  
SIGNATURE

for the RONALD J. HENKE  
DIRECTOR

RJH  
SIGNATURE

3/13/18  
DATE



Approved as to Substance:

Wayde L. Swenson  
OFFICE OF OPERATIONS DIRECTOR

Wayde Swenson  
SIGNATURE

3/9/18  
DATE



## Risk Management Appendix

### **Routine\* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**

**Parties:** **State** – State of North Dakota, its agencies, officers and employees

**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees

**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 5-09



## **ATTACHMENT 10**

### **Small Business Element**

The MAA will include this small business element into this DBE Program. This small business element is intended to facilitate competition by and expand opportunities for small businesses. We are committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as contractors or subcontractors. We will meet its objectives using a combination of the following methods and strategies:

#### **1. Objective/Strategies**

- (1) Some prime contracts anticipated to be under \$150,000 will be set-aside for small businesses. Those firms meeting the definition of a 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.
- (4) Structuring procurements to facilitate small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

#### **2. Definition**

The definitions provided shall be in accordance with 49 CFR Part §26.39.

(1) Small Business:

Defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

(2) Disadvantaged Business Enterprise:

At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

The management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.



For the purposes of the small business element of the MAA DBE Program, DBE's who are also defined as small businesses shall be in accordance with 49 CFR Part 26.

### **3. Verification**

The MAA will accept the following certifications for participation in this small business element of the DBE Program with applicable stipulations:

1. DBE Certification by the State of North Dakota – UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. Certification determinations are evidenced by inclusion in the listing of DBE's on the UCP DBE Directory.
2. State of North Dakota Small Business Development Programs (8(a) & SBA) as certified by the:  
Small Business Administration  
Fargo District Office  
657 2<sup>nd</sup> Avenue North Rm 360  
Fargo, ND  
701/239-5131

Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be encouraged to seek DBE certification in order to be counted as DBE participation.

### **4. Monitoring/Record Keeping**

1. Documentation regarding the small business element of this program will be organized in a designated directory and will be monitored and updated on an annual basis with the MAA administration.
2. This Small Business element will be monitored by reviewing project financial reporting documentation.

### **5. Assurance**

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