



## NEW RIVER VALLEY AIRPORT

Dublin, Virginia

## DBE PROGRAM PLAN

FY 2017-2019 DBE Goal Methodology

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**UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**DBE PROGRAM – 49 CFR PART 26**  
**NEW RIVER VALLEY AIRPORT COMMISSION**  
for the **New River Valley Airport**  
Dublin VA

**POLICY STATEMENT**

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

The New River Valley Airport Commission (hereafter 'the Airport Commission') has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. The Airport Commission has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, the Airport Commission has signed an assurance that it will comply with 49 CFR Part 26.

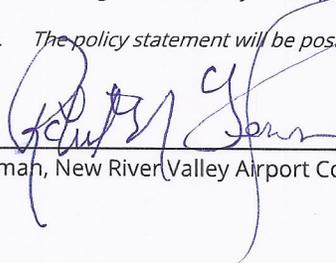
It is the policy of the Airport Commission to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy:

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

**Keith Holt, Airport Manager, New River Valley Airport, 5391 C.V. Jackson Rd., Bldg. 4, Dublin VA 24084, Phone: 540-674-4141; Email: [kpskmanager@gmail.com](mailto:kpskmanager@gmail.com)** has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Airport Manager 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 airport in their financial assistance agreements with the US Department of Transportation.

The Airport Commission has disseminated this policy statement to the Airport Commission members and will distribute this statement to DBE and non-DBE business communities that perform work for the Airport on USDOT-assisted contracts in the following manner:

1. *This policy statement will be prepared as a handout, and made available at pre-bid conferences, and/or outreach meetings conducted by the Airport Commission.*
2. *The policy statement will be posted to the airport's website.*

  
\_\_\_\_\_  
Chairman, New River Valley Airport Commission

3-28-19  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

The New River Valley Airport Commission is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The Airport Commission will adopt the definitions contained in Section 26.5 for this program.

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

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

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

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

#### Reporting to USDOT: 26.11(b)

The Airport Commission will report DBE participation to USDOT as follows:

The Airport will submit annually the *Uniform Reports of DBE Awards or Commitments and Payments*, as modified for use by FAA recipients, via FAA dbE-Connect (<https://faa.civilrightsconnect.com/>).

#### Bidders List: 26.11(c)

The Airport Commission will create and maintain a bidders' list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

The Airport Commission will collect this information in the following ways:

- a. Include a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.*

- b. Include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report the approved information directly to the DBELO for inclusion in the bidder's list.
- c. Request the above information from all potential bidders who contact the Airport seeking bid information, and/or who attend pre-bid meetings, conferences, etc., at the Airport.
- d. The Airport Commission may also consider the use of the Bidders List Data Collection form, as shown in **Attachment 10**.

**Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: 26.13(a)

*The New River Valley Airport Commission (hereafter 'the Airport Commission') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Airport Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The Airport Commission's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 Airport Commission of its failure to carry out its approved program, the Department may impose sanction 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.).*

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

Contract Assurance: 26.13b

The Airport Commission will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

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

### **Section 26.23 Policy Statement**

The policy statement is elaborated on the first page of this program.

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

The Airport Commission has designated the following individual as its DBE Liaison Officer:

**Keith Holt, Airport Manager**  
**New River Valley Airport**  
**5391 C.V. Jackson Rd. Bldg. 4**  
**Dublin VA 24084**  
**Phone: 540-674-4141**  
**[kpskmanager@gmail.com](mailto:kpskmanager@gmail.com)**

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO, along with his staff, will administer the program. The duties and responsibilities include the following:

- 1. Gathers and reports statistical data and other information as required by USDOT.*
- 2. Reviews third party contracts and purchase requisitions for compliance with this program.*
- 3. Works with all departments to set overall triennial 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 attainment and identifies ways to improve progress.*
- 6. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.*
- 7. Participates in pre-bid meetings.*

8. *Advises the Airport Commission on DBE matters and achievement.*
9. *Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.*
10. *Determines compliance of bidders/offerors with good faith efforts in bid submittals.*
11. *Provides outreach to DBEs and community organizations to advise them of opportunities.*

### **Section 26.27 DBE Financial Institutions**

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

In developing this DBE program, the Airport Commission's efforts did not identify any such institutions within its service area. The Airport Commission will conduct an evaluation on a yearly basis, and if any such institutions are established in the Airport's service area, the Airport Commission will consider the services offered by these institutions and refer them as noted above.

### **Section 26.29 Prompt Payment Mechanisms**

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

The Airport Commission has established, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment made to the prime contractor.

The Airport Commission will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. The Airport Commission 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 seven (7) days after payment to the prime contractor.

The Airport Commission will consider 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 Airport Commission. When the Airport Commission 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.

The Airport Commission will include the following clause in each USDOT-assisted prime contract:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contract receives from the New River Valley Airport. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) 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 New River Valley Airport Commission. This clause applies to both DBE and non-DBE subcontracts.*

#### Dispute Resolution: 26.29(e) (1-3)

The Airport Commission requires that prime contractors insert a contract provision in their subcontractor agreements that allows for a dispute resolution process. Pursuant to 49 CFR Part 26.29(e) (1-3), the following contract provisions will be reviewed and approved by the Airport Commission:

1. A contract clause that requires prime contractors to include in their subcontractors' agreements language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes; and disputes between the prime contractor and DBE subcontractor may also be subject to Virginia's Alternative Dispute Resolution process<sup>1</sup>.
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

#### **Section 26.31            Directory**

The primary Disadvantaged Business Enterprise Directory for the Airport Commission comes from the Virginia Department of Small Business and Supplier Diversity (SBSD) and contains listings of certified minority- and women-owned construction firms and material suppliers from throughout the Commonwealth.

SBSD maintains an active list of certified disadvantaged businesses located throughout the state. Therefore, all of the firms listed in the directory have been certified by this state and in accordance with USDOT criteria. It should be noted also that these listings and certifications are periodically updated with some firms being added, while others are removed.

The directory should enable prime contractors for projects at the Airport to proceed more easily in their attempts to comply with overall goals regarding Disadvantaged Business Enterprises.

The Airport Commission will refer potential bidders to the SBSBD directory that is available online. The link for the directory can be found in Attachment 2 to this program.

#### **Section 26.33            Overconcentration**

The Airport Commission has not identified that overconcentration exists in the types of work that DBEs perform. However, the DBELO will continue to monitor the various categories every three years to ensure that non-DBE firms are not unduly burdened.

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<sup>1</sup> <http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/home.html>

## **Section 26.35 Business Development Programs**

The Airport Commission has not established a business development program. The DBELO will re-evaluate the need for such a program every three years.

## **Section 26.37 Monitoring and Enforcement Mechanisms**

### Monitoring Payments to DBEs and Non-DBEs

The Airport Commission will provide ongoing monitoring of prime contractor payments to subcontractors over the course of any covered contract. The Airport Commission will require prime contractors to report documentation of payments to subcontractors monthly. The DBELO will review and verify that payments have been made and retainage has been returned to subcontractors in accordance to section 26.29.

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

The Airport Commission uses a number of DBE forms, which can be found in Attachment 3, to collect DBE information for initial project setup and for ongoing monitoring of DBE participation:

- DBE Project Compliance Review Checklist
- Listing of DBE Subcontractors
- DBE Monthly Report
- DBE Commercially Useful Function Report

The DBELO or the Airport Commission's representative will conduct onsite compliance reviews of FAA-funded projects. The DBELO will review all DBE subcontracts and payments. The DBELO will also evaluate any DBE firms working on the project during the date of the visit. The DBELO will conduct a commercially useful function (CUF) review at least once during the project for all DBEs. The DBELO will also review monthly progress reports submitted by prime contractors to determine if they are on track to meet the DBE goal. Written certification will be documented by the DBELO on the DBE Project Compliance Review Checklist form.

### Prompt Payment Dispute Resolution

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

A meeting will be scheduled with the prime contractor, subcontractor, the DBELO, and other appropriate Airport Commission representative(s). Any meeting for the purpose of dispute resolution will include Airport Commission representative(s) authorized to bind each interested party, including representative(s) with authorization to take enforcement action.

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

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.

*If the prime contractor has not paid subcontractors in accordance with 26.29, the Airport Commission will not reimburse the prime contractor for work performed by subcontractors until the prime contractor is in compliance with 26.29.*

#### Prompt Payment Complaints

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

1. The affected subcontractor shall file a complaint with the prime contractor directly regarding payment.
2. If filing a complaint with the prime contractor does not result in timely and meaningful action by the prime contractor to resolve the prompt payment dispute, the affected subcontractor may contact the Airport Commission's DBELO.
3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport Commission to resolve prompt payment disputes, the affected subcontractor may contact the FAA Office of Civil Rights.

#### Enforcement Actions for Noncompliance of Participants

The Airport Commission will provide appropriate means to enforce the requirements of §26.29. These means may include:

- *Assessing liquidated damages, in accordance with the contract, against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor*
- *Advising 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*
- *Paying subcontractors directly and deducting this amount from the retainage owed to the prime contractor*
- *Issuing 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.*

The Airport Commission will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The Airport Commission will review contracting records and will engage 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 will be performed by the DBELO with assistance from the resident project

representative. The contracting records will be reviewed by the DBELO. The Airport Commission 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 Airport Commission has created an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The program element is included as [Attachment 4](#). The Airport Commission will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of the DBE program.

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

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

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>Alaskan, Eastern, &amp; Great Lakes</b>	<b>August 1, 2016 (2017/2018/2019)</b>	<b>August 1, 2019 (2020/2021/2022)</b>

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

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

In establishing the overall goal, the Airport will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations that 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 Airport's efforts 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 Airport's goal setting process, and it will occur before submitting the goal methodology to the FAA for review pursuant to paragraph (f) of this section. The Airport will document in the goal submission the consultation process that was utilized. Notwithstanding paragraph (f)(4) of this section, the Airport will not implement the proposed goal until this requirement is fulfilled.

In addition, the Airport Commission will post a notice announcing the proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on the Airport Commission's official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on the official internet web site. The Airport Commission will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at the DBELO's office, and that the Airport Commission 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 Airport Commission's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

The Airport Commission will begin using the overall goal on October 1 of each year, unless it has received other instructions from USDOT. If the Airport Commission establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a USDOT-assisted contract for the project.

#### Section 26.45 (e) - Project Goals

If permitted or required by the FAA Administrator, the Airport Commission will express its overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should 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 your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated. If the Airport Commission establishes a goal on a project basis, the Airport Commission will begin using its goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### Section 26.45(f) - Prior Operating Administration Concurrence

The Airport Commission understands that it is not required to obtain prior operating administration concurrence with the overall goal. However, if the operating administration's review suggests that the

overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with the Airport Commission, adjust the overall goal or require that the Airport Commission do so. 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.

#### **Section 26.47                    Goal Setting and Accountability**

If the awards and commitments shown on the Airport Commission's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, the Airport will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. 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. The Airport Commission will retain a copy of the analysis and corrective actions in its records for a minimum of three years. The Airport Commission will make it available to the FAA upon request.

#### **Section 26.49                    Transit Vehicle Manufacturers Goals**

N/A

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

The breakout of estimated race-neutral and race-conscious participation can be found in [Attachment 6](#) to this program. This section of the program will be updated when the goal calculation is updated.

#### **Section 26.51(d-g)           Contract Goals**

The Airport Commission will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The Airport Commission will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Airport Commission does not need to establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

The Airport Commission will express its contract goals as a percentage of the federal share of a USDOT-assisted contract.

## **Section 26.53                    Good Faith Efforts Procedures**

### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder is to make good faith efforts to meet the DBE goal. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

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

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

### Information to be submitted (26.53(b))

In its solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, the Airport Commission will require the following:

- (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 Airport Commission, at the time provided in paragraph (b)(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 (see Appendix A of 49 CFR 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 Airport Commission will require that the bidder/offeror present the information required by paragraph (b)(2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

This information will be collected using the forms found in Attachment 7.

### Administrative reconsideration (26.53(d))

Within seven calendar (7) days of being informed by the Airport Commission that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official:

**Robert N. Glenn**  
**New River Valley Airport Commission**  
**5391 C.V Jackson Rd. Bldg. 4**  
**Dublin VA 24084**

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

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the Airport Commission's administrative reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The Airport Commission will send the bidder 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 US Department of Transportation.

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

The Airport Commission will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Airport Commission's written consent as provided in this paragraph 26.53(f); and

That, unless the Airport Commission's consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Airport Commission will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The Airport Commission requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without the Airport Commission's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

In those instances where "good cause" exists to terminate a DBE's contract, the Airport Commission will require the prime 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, to the extent needed to meet the contract goal. The Airport Commission will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the Airport Commission will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The Airport will provide such written consent only if the Airport agrees, for reasons stated in a 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 Airport has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the Airport 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 its request to the Airport 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 Airport, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the Airport and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Airport should not approve the prime contractor's action. If required

in a particular case as a matter of public necessity (e.g., safety), the Airport may provide a response period shorter than five days.

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 to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the New River Valley Airport Commission as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.*

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

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the New River Valley Airport Commission, as owner of the New River Valley Airport, to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder will be required to submit the following information:

- (1) The names and addresses of DBE firms that will participate in the contract;
- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4);
- (6) If the contract goal is not met, evidence of good faith efforts.

## **Section 26.55                    Counting DBE Participation**

The Airport Commission will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

### **SUBPART D – CERTIFICATION STANDARDS**

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

The Airport Commission will refer all matters pertaining to certification to the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with the Commonwealth's UCP program. The UCP program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP will 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:

Virginia Department of Small Business and Supplier Diversity  
101 N. 14th Street, 11th Floor  
Richmond, Virginia 23219  
Phone: (804) 786-6585  
<http://sbsd.virginia.gov/business-certifications-2/dbe/>

Metropolitan Washington Airports Authority  
Equal Opportunity Programs Department  
1 Aviation Circle  
Washington, DC 20001  
Phone: (703) 417-8625  
<http://www.mwaa.com/business/department-supplier-diversity-dsd-2>

A link to the certification application forms and documentation requirements is found in Attachment 8 to this program.

## **SUBPART E - CERTIFICATION PROCEDURES**

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

SBSD currently manages the Unified Certification Program (UCP) for the Commonwealth of Virginia, and the New River Valley Airport Commission is a non-certifying participant. The Airport Commission will use and count for DBE credit only those DBE firms certified by SBSD or the Metropolitan Washington Airports Authority, the other certifying agency in the Commonwealth's UCP.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

The Airport Commission will safeguard, from disclose to third-parties, information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any provision of federal or state law, the Airport Commission will not release any information that may reasonably be construed as confidential business information to any third-party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the Airport Commission will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

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

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

#### **Monitoring Payments to DBEs**

The Airport Commission will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Airport Commission or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The Airport Commission will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

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## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Fostering Small Business Participation Plan
Attachment 5	Overall Goal Calculation
Attachment 6	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	Regulations: 49 CFR Part 26
Attachment 10	Bidders List Data Form

Attachment 1

# Organizational Chart

# New River Valley Airport Commission

New River Valley Airport  
Dublin, Virginia

## Organizational Chart

```
graph TD; A[Airport Commission] --- B[Airport Manager DBELO];
```

Airport  
Commission

Airport Manager  
**DBELO**

Attachment 2  
DBE Directory

The DBE Directory for the  
Commonwealth of Virginia may be  
found at

<https://www.sbsd.virginia.gov/directory/>.

Attachment 3

Monitoring and Enforcement  
Mechanisms

## **New River Valley Airport Commission – New River Valley Airport**

1. All participants are hereby notified that pursuant to Title 49 Code of Federal Regulations, United States Department of Transportation, Part 26 and the Disadvantaged Business Enterprise Participation Program for the New River Valley Airport Commission, they must affirmatively ensure that, in any contract entered into with the New River Valley Airport, DBEs will be afforded *equal* opportunity to participate in subcontracting activities. It is the policy of the Airport Commission to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is further the policy of the Airport Commission to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
2. All contracts between the Airport Commission and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the Airport Commission's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Under authority granted by Virginia law, the Airport Commission may impose liquidated damages, contract suspension, or even contract termination.
3. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the Airport Commission's DBE Liaison Officer.
4. Should a DBE firm not certified by the Virginia Unified Certification Program be proposed by a potential contractor as a part of his/her DBE plan efforts, the inclusion of said firm will not be considered a demonstration of making good faith efforts towards meeting the DBE goal.
5. In contracts with DBE contract goals, bids submitted which do not meet the DBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered non-responsive bids, and bidders will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Official (49 CFR 26.53). The bidder will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Official will make the determination on the sufficiency of the good faith efforts.
6. The Airport Commission reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsive and responsible bidder. A bid will not be considered responsive unless the bidder complies with Title 49 Code of the Federal Regulations, Part 26, and the Disadvantaged Business Enterprise Program for the New River Valley Airport Commission.
7. The Airport Commission shall require contractors to make good faith efforts to replace a DBE subcontractor that is terminated, or fails to complete its work on the contract for any reason, with another DBE subcontractor. If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must notify the Airport immediately. 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 established contract goal. The Airport Commission shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBEs.

Additional information on the Airport Commission's Disadvantaged Business Enterprise Program can be obtained from the DBE Liaison Officer, **Keith Holt, Airport Manager, New River Valley Airport, 5391 C.V. Jackson Rd., Bldg. 4, Dublin VA 24084, Phone: 540-674-4141; Email: [kpskmanager@gmail.com](mailto:kpskmanager@gmail.com).**

8. The Airport Commission will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
  - a. *Reviewing bid package documentation thoroughly, obtaining clarification, if necessary.*
  - b. *Reviewing monthly reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
  - c. *Monitoring progress of payments to DBEs through monthly reports from prime contractors.*
  - d. *Monitoring progress of DBEs work through on-site visits and communication with DBEs. The Airport Commission will implement a monitoring and enforcement mechanism that will include written certification that the Airport Commission has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during routine project site visits on a monthly basis. The DBELO will sign off on the written certifications.*
9. The Airport Commission will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
10. The Airport Commission also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. In addition, the Airport Commission will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.
11. In its reports of DBE participation to the USDOT, the Airport Commission will show both commitments and attainments, as required by the USDOT reporting form.

Attachment 9 contains a weblink to 49 CFR Part 26, which describes federal regulations, provisions, and contract remedies available to the Airport Commission in the event of non-compliance by a participant.

## DBE Project Compliance Review Checklist

Project:	
AIP Grant Number:	
Prime Contractor:	

### Pre-Bid Checklist

- Review project to determine if a DBE contract goal is needed.
- Attend pre-bid meeting to inform bidders of DBE requirements.

### Pre-Award Project Checklist

- Collect the Listing of DBE Subcontractors form.
- Collect letters of intent for all committed DBEs.
- If prime contractor is unable to meet the DBE goal, collect documentation of its good faith effort.

### Post Award (Pre-Construction/Design) Project Checklist

- Collect fully executed (signed) subcontracts for all DBE firms.
- Review DBE subcontract(s) to ensure scope of work is consistent with what has been committed.
- Review contracts to verify that all required contract clauses are included.
- Ensure dollar value of DBE subcontract(s) is/are equal to or greater than the amount committed.

### During Construction and/or Design Checklist

- Complete form DBE Commercially Useful Function Report, to verify that the DBEs are performing a commercially useful function.
- Verify that business names on equipment and vehicles are not covered with paint or magnetic signs (visual inspection of vehicles on site).
- Verify who employs the workers on site (visually inspect badges/IDs; establish reporting relationships of workers on site/review certified payrolls).
- Review supplier invoices and cancelled checks to verify what firm orders and pays for the necessary supplies being used by the DBE subcontractor.
- Ensure all DBE firms are paid promptly (within 10 days of payment to prime contractor) by collecting and reviewing the DBE monthly report form.
- Document and file any correspondence related to terminations, substitutions, or deletions of DBE firms.
- If terminations, substitutions, or deletions were approved, collect documentation of prime contractor's good faith effort to find a replacement firm

### Post Construction/Design Checklist

- Ensure DBE goal has been achieved by collecting and reviewing the final DBE report.
- If a shortfall exists, collect Good Faith Effort documentation from prime contractor explaining reasons shortfall took place.

### Certification:

I, \_\_\_\_\_ hereby certify that the contracting records for the federally funded project have been reviewed and the work site has been visited/monitored.

Signature: \_\_\_\_\_

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

## DBE Commercially Useful Function Report

Project:	
AIP Number:	
Prime Contractor:	
DBE Firm:	
DBE Start/Complete	
CUF Review Date:	

### **GENERAL**

	Yes	No	N/A
1. Does the DBE have its own employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE own the equipment being utilized to perform its work? If No, attach equipment list, ownership documents, and rental/lease agreements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the DBE self-performing the subcontract defined task for a specific item of work (distinct element) on the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **HAULING FIRMS**

	Yes	No	N/A
1. Does the DBE hauling firm own and/or lease their trucks? (review ownership/vehicle registration and/or lease documents to verify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement/purchase order.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS**

	Yes	No	N/A
1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the DBE provide documentation showing that the funds used to pay a supplier in fact came from the DBE's own funds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the DBE had any materials drop shipped to the project site, was the invoice addressed to the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the DBE deliver materials to the site with their own and/or leased trucks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **SUPERVISION**

	Yes	No	N/A
1. Is the DBE self-performing work without assistance from the prime or another subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the DBE providing supervision of its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the supervisor a full-time employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Completed by:
Date:

**DBE Monthly Report**

<b>Contractor:</b>
<b>Project:</b>
<b>AIP Number:</b>
<b>Date:</b>

<b>DBE Subcontractor/Supplier</b>	<b>Committed Award</b>	<b>Total Prior Payments</b>	<b>Current Payment</b>	<b>Total</b>	<b>Date Paid to Vendor / Sub this Invoice</b>	<b>Percent</b>
<b>Totals</b>						

<b>Contractor Name:</b>	<b>Signature:</b>	<b>Title:</b>	<b>Date:</b>

**Listing of DBE Subcontractors  
(to be submitted with bid)**

**Project:** \_\_\_\_\_

The Bidder hereby proposes the following DBE participation:

<b>DBE Subcontractor/Supplier</b>	<b>Work to be performed</b>	<b>NAICS Code</b>	<b>Subcontract Amount</b>	<b>Amount Applicable to Goal (suppliers = * .60)</b>
Total DBE Participation				
Base Bid Amount				
DBE Participation Proposed (%)				
DBE Participation Goal (%)				

<b>Bidder (Firm Name)</b>	<b>Signature</b>	<b>Date</b>

Attachment 4

Fostering Small Business Participation  
Plan

## Section 26.39 – Fostering Small Business Participation

### A. Purpose and Objective of this Element

This element, 49 CFR Part 26.39, is included as an amendment to the DBE program plan for the New River Valley Airport Commission (“the Airport Commission”), on behalf of the New River Valley Airport (“the Airport”) and is herein referenced as the Small Business Participation Plan (SBPP). This new part calls for the inclusion of an element to

“structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.”

The Airport Commission hereby sets forth its plan to implement these requirements. The Airport Commission’s SBPP is also regarded as a substantial effort toward fulfilling the overall intent of 49 CFR Part 26.51, which is to meet the maximum feasible portion of its overall goal by using race-neutral means to obtain DBE participation. Therefore, implementation of the Airport Commission’s SBPP will be based on the standard of business size, without regard to race or gender of the business owner.

This element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors.

Further, the Airport Commission perceives the objectives of this section to be consistent with its DBE Program policy statement, which says in part:

*“- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.  
- To help remove barriers to the participation of DBEs in DOT assisted contracts...  
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.”*

The Airport Commission’s policy statement and this small business element (SBPP) are consistent with the Airport Commission’s mission of creating and encouraging business opportunities at all levels.

### B. SBPP Strategy

The Airport Commission intends to carry out the objectives of this part by employing the following strategies and supporting activities:

#### 1. Establishment of a Race-neutral “Subcontracting Goal”

The Airport Commission proposes, where feasible, on certain prime contracts that do not have a DBE contract goal, that prime contractors will be required to provide subcontracting opportunities to qualified small business concerns (SBCs), as defined herein, without regards to race or gender of the business owner. Verified business size and subcontracting opportunities will be the basis of this subcontracting goal. The opportunities must be of a size that SBCs, including some which may also happen to be DBEs, can reasonably perform. The Airport, through its consultants, will assess the feasibility for race-neutral subcontracting goals on projects. The Airport will assist the

potential primes by reviewing the project(s), in advance of the solicitation, and by suggesting potential subcontracting opportunities in the solicitation documents. This will help to establish a reasonable race-neutral subcontracting goal.

## 2. Consideration of “Unbundling” of Large Contracts

The Airport Commission has given consideration to “unbundling” as a small business strategy. However, because the Airport is a general aviation airport, the Airport Commission believes that, at this time, such a strategy will not be suitable for the airport. Because of the limited number and size of contracts each year, the increased total number of bid solicitations with “unbundling” could significantly increase both administrative and project costs per bid. This will reduce the necessary “economy of scale” for general aviation airports. The Airport will evaluate projects on a yearly basis to determine if there is feasibility in “unbundling” contracts in the future.

## C. Definitions for this Element

### 1. Small Business

For purposes of this program element, which is part of the Airport Commission’s approved DBE program, “small business” shall have the same definition as “small business concerns” contained in 49 CFR 26.5:

*“Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).”*

For additional clarification, it is useful to include here some excerpts from the SBA regulations, 13 CFR, 121.105:

*(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...”and,*  
*(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.*

Small business concerns must meet the business size standards, as defined by the SBA. The business size standards are based upon the average annual revenues, and they vary according to the type of business. More information can be found at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

### 2. Disadvantaged Business Enterprise

Disadvantaged Business Enterprise (DBE) means a for-profit small business concern (defined by SBA rules, above) that meets the standards of 49 CFR Part 26, i.e.

- *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;*

- *Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. (The current PNW cap is \$1.32 million.)*
- *Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;*
- *Has been certified as a DBE by a certifying member of the Virginia Unified Certification Program in accordance with the full requirements of 49 CFR 26.*

It is understood that in the implementation of this element, all of the “small business concerns” may not necessarily be DBE firms. However, small businesses that are also owned and controlled by individuals who meet the DBE standard will certainly be encouraged to seek DBE certification. Only DBE certified firms who participate as small business concerns, pursuant to this element, will be counted towards DBE race-neutral participation on FAA-assisted contracts in this program.

#### **D. Verification Standards and Procedures**

For purposes of this small business element, the Airport Commission will require the following verification and/or certification:

1. **Virginia Unified Certification Program DBE Certification** – DBE certification by a certifying member of the Virginia UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a certifying member of the Virginia UCP. It should be noted that the Airport is a non-certifying member of the Virginia UCP and relies on certification decisions of the Virginia Department of Small Business and Supplier Diversity (SBSD), or the Metropolitan Washington Airports Authority (MWAA), who are the certifying members of the UCP. The UCP certification staff applies the standards and procedures for DBE certification applicants contained in Subparts D and E of 49 CFR 26.61 – 26.91.
2. **Small business status** - A non-DBE certified potential small business concern may have to complete a simplified application and/or provide the following information at time of response to a solicitation or a bid submittal, as evidence of the small business status:
  - a. Evidence of SBA 8(a) or SBD Certification (as described in 13 CFR Parts 121 and 124);
  - b. A copy of the business tax returns for the most recent three-year period indicating the gross receipts; and/or
  - c. A notarized statement from a Certified Public Accountant indicating the firm’s average gross receipts for the past three years.

A small business may also register with SBSD’s Small, Women and Minority (SWaM) program as a Small Business Enterprise (SBE). The Airport will accept the certification of a registered SBE. More information can be found at <https://www.sbsd.virginia.gov/certification-division/swam/>.

3. **Use of Personal Net Worth:** The Airport Commission, in addition to the standards for small business concerns described above, plans to utilize the current personal net worth standards of the DBE program (49 CFR Part 26.67), presently at \$1.32 million.

## **E. Supportive Services**

The Airport Commission is a non-certifying member of the Virginia UCP. The Airport Commission does not conduct DBE certifications, but relies on certifications of SBSD and MWAA. While the Airport Commission also does not provide direct supportive services or business development programs to DBEs or small businesses, the Airport Commission is aware of several valuable resources in the surrounding area. The Airport Commission will coordinate and make referrals to potential and qualifying small business concerns to these services. Some of the resources are listed below:

Economic Development Loan Fund  
Virginia Department of Business Assistance  
1220 Bank Street  
3rd Floor South  
Richmond, VA 23219  
Phone: (804) 371-8200  
<http://vdba.virginia.gov/>

Entrepreneur Training and Microenterprise Loan Programs – Business Seed Capital, Inc  
Total Action for Progress  
302 2nd Street SW  
Roanoke, VA 24011  
Phone: (540) 777-4673  
<https://tapintohope.org/program/business-seed/>

Roanoke Regional SBDC  
210 S. Jefferson Street  
Roanoke, VA 24011-1702  
Phone: (540) 983-0717  
<http://www.roanokesmallbusiness.org>

Pulaski County Chamber of Commerce  
4440 Cleburne Boulevard  
Dublin VA 24084  
Phone: (540) 674-1991  
<https://www.pulaskichamber.info/>

## **F. Implementation Plan and Timetable**

The Airport Commission proposes to have its SBPP fully implemented within 120 days of the FAA's final approval of the plan. The Airport Commission will utilize the timeframe to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

1. Reviewing, in coordination with the Airport Manager's office, all upcoming projects to determine which, if any, will be conducive for application of the selected SBPP strategy described in Section B, above.
2. Reviewing, in coordination with the Airport Manager's office and with legal input, the necessary revisions and modifications to bid solicitation language, etc., prior to implementation.
3. Coordinating properly with the Virginia UCP to initiate discussions as to whether any changes/modifications are implicated in the UCP stakeholder agreement, due to verification of small business concerns.
4. Coordinating with other entities currently providing relevant supportive services and/or business development for referrals to their programs, appropriate for the small business concerns that may contact the Airport Commission to increase their competitive opportunities at the Airport.
5. Seeking consultation, during the pre-implementation period, with the representative small business community.

#### **G. Assurances**

To insure the successful implementation of the Small Business Participation Plan (SBPP), the Airport Commission, by way of review, will accept the following assurances:

1. *A detailed description of the small business program, its objectives, and how it is designed to operate.*
  - a. The details of the proposed SBPP are described in sections A through G of this part.
2. *Assurance that the program is authorized under state law.*
  - a. The Airport Commission's SBPP will adhere to all applicable local and state laws and regulations.
3. *Assurance that certified DBEs that meet the size criteria established under the program are **presumptively** eligible to participate in the program;*
  - a. As stated in D. 4 of this section, certified DBE firms that meet the size criteria established under the program are presumptively eligible to participate in the small business program.
4. *Assurance that there **are no geographic preferences** or limitations imposed on any federally assisted procurement included in the program.*
  - a. The Airport Commission will assure that there will be no geographic preferences or limitations imposed on any federally-assisted procurement included in the Airport Commission's DBE program.

5. *Assurance that there **are no limits** on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.*
  - a. The Airport Commission will assure that it will not limit the number of contracts awarded to firms that are participating in the small business program. The Airport Commission further assures that it will make a concerted effort to avoid creating barriers to the use of new, emerging, or untried businesses.
6. *Assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
  - a. The Airport Commission recognizes that, while some firms encountering its SBPP program may be small-business eligible, they may not be eligible to be certified as DBE firms. If, in the verification process, such firms appear to be DBE-eligible as well, they will be referred to the state UCP and encouraged to become DBE-certified. The Airport Commission will also inform the firms of additional potential business opportunities if they become certified as DBEs.
7. *Assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*
  - a. The assurance stated in item 4, above, is also applicable to specifically to the airport's SBPP program as well.

#### **H. Principal Responsible Person**

The principal person who is responsible for overseeing and implementing the Airport Commission's SBPP will be the currently designated Disadvantaged Business Enterprise Liaison Officer (DBELO). The DBELO for the Airport is **Keith Holt, Airport Manager**.

Attachment 5

Overall Goal Calculation

Attachment 6

Breakout of Estimated Race-Neutral &  
Race-Conscious Participation

Attachment 7

Form 1 & 2 for Demonstration of  
Good Faith Efforts

# NEW RIVER VALLEY AIRPORT COMMISSION

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

The undersigned bidder has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

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

\_\_\_\_ The bidder (if unable to meet the DBE goal of \_\_\_\_%) is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

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

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

# NEW RIVER VALLEY AIRPORT COMMISSION

## FORM 2: LETTER OF INTENT

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

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

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

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

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

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

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

### Affirmation

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

By \_\_\_\_\_  
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Attachment 8

Certification Application Forms

The DBE certification application for the Commonwealth of Virginia may be found at

<https://www.sbsd.virginia.gov/certification-division/dbe/>.

Attachment 9

Regulations: 49 CFR Part 26

The federal regulations, Title 49 Code of Federal Regulations Part 26, can be found at [www.ecfr.gov](http://www.ecfr.gov).

Attachment 10

Bidders List Data Form

## BIDDERS LIST DATA FORM

Firm Name	Firm Address and Phone No.	DBE or Non-DBE Status <i>(verify via SBSDBE Directory)</i>	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<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 - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M