

**Genesee County
Genesee County Airport
Batavia, NY**



**Disadvantaged Business Enterprise
(DBE) Program
49 CFR Part 26**

Updated: May 2025

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

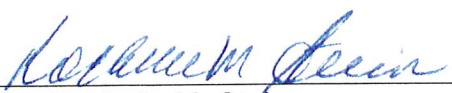
Genesee County, owner of Genesee County Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Genesee County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Genesee County 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 Genesee County to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Genesee County policy to engage in the following actions on a continuing basis:

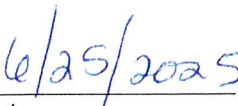
1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully 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.

Laura Wadhams, P.E., Commissioner of Public Works, has been delegated as the DBE Liaison Officer. In that capacity, Laura Wadhams 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 Genesee County in its financial assistance agreements with the Department of Transportation.

Genesee County has disseminated this policy statement to the Genesee County Legislature and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Genesee County DOT-assisted contracts. The distribution was accomplished by posting on the County's website at www.geneseeny.gov and available upon request at the office of the County Commissioner of Public Works.



Mrs. Rochelle M. Stein
Chair, Genesee County Legislature



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

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

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

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

Genesee County will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Part 26. Genesee County will similarly report the

required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

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

Genesee County will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts (see attachment 3):

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

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

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

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

Genesee County will maintain records documenting a firm's compliance with the requirements of this part. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

Genesee County 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. Genesee County shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Genesee County's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Genesee County 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: Genesee County will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Genesee County 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.

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Laura A. Wadhams, P. E.
Commissioner of Public Works
153 Cedar Street
Batavia, NY 14020
(585) 344-8508 x3712
Laura.Wadhams@geneseeny.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Genesee County complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Genesee County Legislature 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 that includes the County Attorney, County Treasurer, Purchasing Director, County Manager, Airport Manager, Assistant County Engineer and other administrative personnel within the Public Works Department 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 Genesee County's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Chair of the County Legislature on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of Genesee County to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. The availability of such institutions will be investigated on an annual basis.

As part of this DBE Program, Genesee County has investigated services offered by banks owned and controlled by socially and economically disadvantaged individuals in the local area by contacting the U.S. Treasury Department and reviewing its October 8, 2024, listing of Minority Bank Deposit Program. Based on this search, there no banks defined by the Treasury located in the Upstate New York area.

As of June 30, 2024, depository institutions that participate in the Federal Deposit Insurance Corporation's (FDIC) Minority Depository Institutions Program have been added to the Treasury's Minority Bank Deposit Program. By researching the Federal Reserve System and reviewing its listing of minority-owned depository institutions, DBE banks located in the market area can be identified. Based on this search, there are no minority-owned depository institutions located in the Upstate New York area.

The bank participants in the Minority Bank Deposit Program and Minority Depository Institutions Program do change periodically and updates can be found at the following website locations, respectively:

<https://www.fiscal.treasury.gov/mbdp/participants.html>
<https://www.fdic.gov/regulations/resources/minority/mdi.html>

Section 26.29 Prompt Payment Mechanisms

Genesee County requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the Genesee County established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from the Genesee County.

Genesee County ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, Genesee County has selected the following method to comply with this requirement:

Genesee County 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 7 days after Genesee County payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, Genesee County includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

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

- Prime Contractors are required to complete the Monthly Payment Report found in Attachment 11. The report is required to be submitted monthly, separate from the payment applications. The report confirms payments are being made to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the prime contractor's DBE Letter of Intent Form submitted at the beginning of the project.

- Prime Contractors are required to have each subcontractor, DBE and non-DBE firms, complete the Subcontractor's Prompt Payment Certification found in Attachment 12. The form is required monthly and is part of the monthly payment process. Any delay in the submitting the required certification will cause a delay in payments being processed.
- Prime Contractors must complete and have each DBE firm sign the Disadvantaged Business Enterprise (DBE) Participation Summary Form upon completion of the project, found in Attachment 13. The intent of this form is to confirm total payments made to DBE firms. A signature is required by each DBE firm.

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

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

Prompt Payment Dispute Resolution

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

Upon either parties' written request to the DBELO, Project Manager, and Project Engineer for mediation, the parties shall participate voluntary mediation by selecting a mediator within 10 days of request. Within 30 days of the request, the mediation shall be completed, with or without legal counsel, pursuant to NYS law.

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

(1) Alternative dispute resolution (ADR)

If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the subcontractor should contact the DBELO to initiate a complaint.

If the subcontractor is not satisfied with the results from filling a prompt payment complaint with the Airport's DBELO, the subcontractor may contact the reconsideration official: L. Matthew Landers,

County Manager, Old Courthouse, 7 Main Street, Batavia, NY
14020, (585) 344-2550.

(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.

The prime contractor will not receive reimbursement for work performed by subcontractors unless the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment of the prime contract. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.

Prompt Payment Complaints

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

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

Enforcement Actions for Noncompliance of Participants

Genesee County provides appropriate means to enforce the requirements of § 26.29. These means include:

- Progress Payment withholding
- Delayed Final Payment
- Stop-work Order
- Bonding Claim
- Mandatory mediation or dispute resolution.

Genesee County will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

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

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

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

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

Genesee County has not established a Business Development Program, or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

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

Genesee County actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by utilizing an excel spreadsheet and monthly payment reports collected from all Primes. This mechanism to maintain a running tally of overall goal attainment will be used to inform Genesee County's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Genesee County actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by utilizing an excel spreadsheet and monthly payment reports collected from all Primes. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

Genesee County reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by the DBELO or designee. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by the DBELO or designee. Genesee County will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent.

Genesee County will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

Genesee County 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. Genesee County acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Genesee County 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 Genesee County 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. Genesee County will use a Bidders List, a Disparity Study, the goal of another DOT Recipient, DBE Directory information and Census Bureau Data, or other

alternative method that complies with §26.45 as a method to determine the base figure. Genesee County 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. Genesee County 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 Genesee County market.

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

Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect

changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

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

Genesee County 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 Genesee County fails to administer its DBE program in good faith.

Genesee County 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.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;

(3) Genesee County will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain a copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

Genesee County 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.
- (2) Carrying out information and communications programs on contracting procedures and specific contract opportunities
- (3) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (4) Consider unbundling large contracts to make them more accessible to small businesses when possible;
- (5) Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
- (6) Discuss the DBE goal and DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

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

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

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will

not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

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

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

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

Demonstration of good faith efforts (pre-award)

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

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

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

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

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

In a design-build contracting situation, in which Genesee County solicits proposals to design and build a project with minimal project details at time of letting, Genesee County may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer

will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, Genesee County will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Genesee County and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

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

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by Genesee County that it is not responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: L. Matthew Landers, 7 Main Street, Batavia, NY 14020, 585-344-2550 x2284, matt.land@geneseeny.gov reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

Genesee County 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 Genesee County deems appropriate if the prime contractor fails to comply with the requirements of this section.

Genesee County will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or

agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

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

Genesee County will include in each prime contract a provision stating that:

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

Genesee County may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- (6) Genesee County 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 Genesee County written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- (10) Other documented good cause that Genesee County determines compels the termination of the DBE subcontractor;

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

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

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

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If Genesee County requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. Genesee County shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

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

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the

execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in § 26.87(j).

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

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Genesee County is a non-certifying member of the New York Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. New York 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 New York 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:

New York State Department of Transportation
Contract Audit Bureau
DBE Certification
50 Wolf Road, 6th Floor
Albany, NY 12232
Telephone Number: (518) 417-6631
dbecert@dot.ny.gov

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

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full New York State UCP agreement. The full UCP agreement can be found at: <https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/NYSUCP%20SOP%20-%20Revised%20June%202013.pdf>

Section 26.81 Unified Certification Programs

Genesee County is a member of a Unified Certification Program (UCP) administered by New York State Department of Transportation. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Genesee County

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

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

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs.

Compliance reviews. The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105 Enforcement Actions Applicable to FAA Programs

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

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

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

Section 26.107 Enforcement Actions Applicable to Participating Firms

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

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

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

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

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

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

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

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

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

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

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program
- Attachment 11 Monthly Payment Report
- Attachment 12 Prompt Payment Report
- Attachment 13 Final DBE Participation Summary

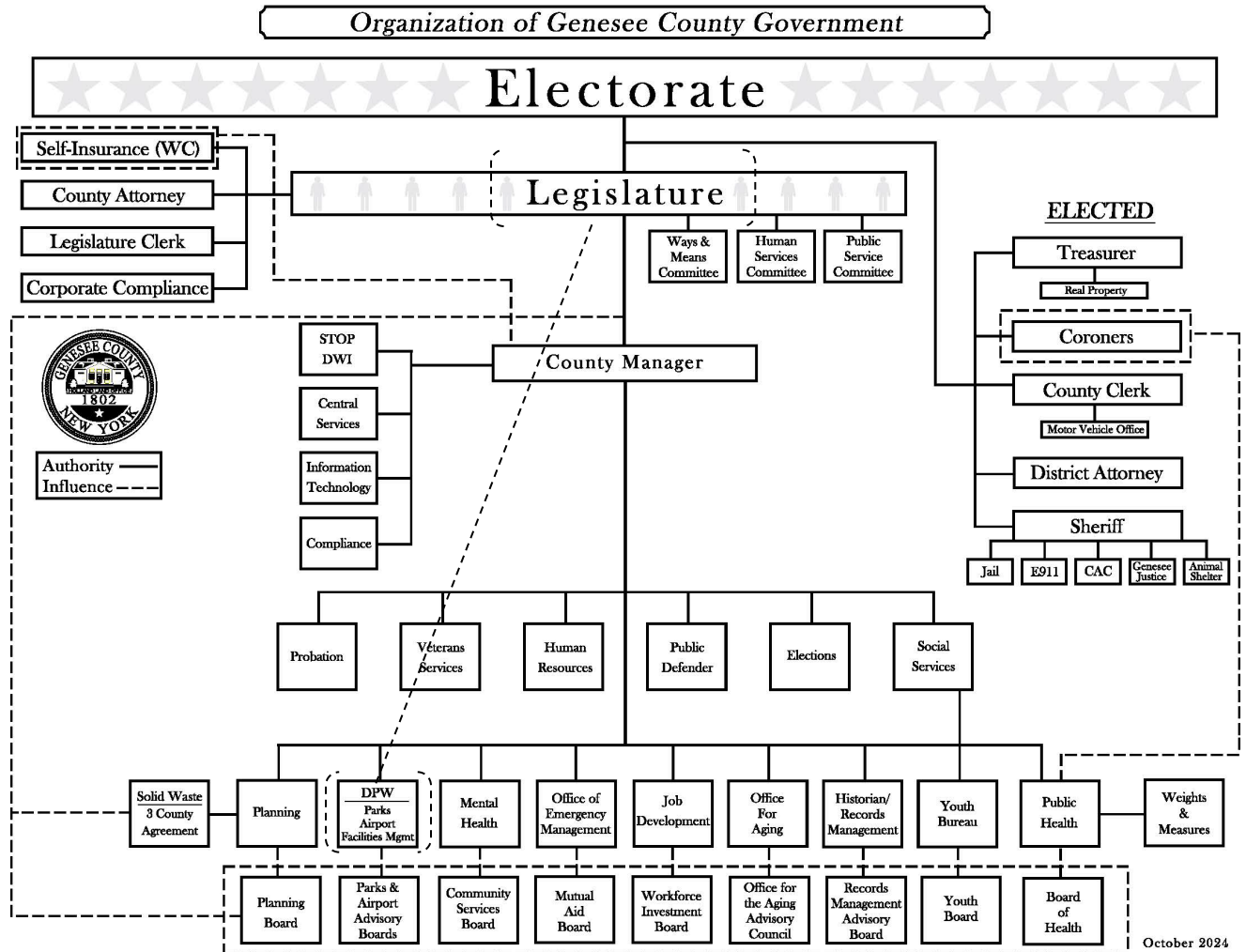
ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

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

ATTACHMENT 2

ORGANIZATIONAL CHART



ATTACHMENT 3

Bidder's List Collection Form

The sponsor is required by CFR Title 49, Subtitle A, Part 26, subpart A, § 26.11(c) to collect bidders list information from all bidders at the time of bid submittal. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not).

As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a proposal for this project. The sponsor will consider incomplete information to be an irregular proposal.

Airport Name: _____ **Bid Date:** _____

Project Name: _____

Bidders and potential subcontractors / suppliers Information:

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Sex of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

			<div><div><input type="checkbox"/> Black American</div><div><input type="checkbox"/> Hispanic American</div><div><input type="checkbox"/> Asian-Pacific American</div><div><input type="checkbox"/> Subcontinent Asian American</div><div><input type="checkbox"/> Native American</div><div><input type="checkbox"/> Non-minority Woman</div><div><input type="checkbox"/> Other</div><div>Sex:</div><div><input type="checkbox"/> Female</div><div><input type="checkbox"/> Male</div></div>	<div><div><input type="checkbox"/> Less than 1 year</div><div><input type="checkbox"/> 3 years</div><div><input type="checkbox"/> 4-7 years</div><div><input type="checkbox"/> 8-10 years</div><div><input type="checkbox"/> More than 10 years</div></div>	<div><div><input type="checkbox"/> Less than \$1 million</div><div><input type="checkbox"/> \$1-3 million</div><div><input type="checkbox"/> \$3-6 million</div><div><input type="checkbox"/> \$6-10 million</div><div><input type="checkbox"/> Over \$10 million</div></div>
			<div><div><input type="checkbox"/> Black American</div><div><input type="checkbox"/> Hispanic American</div><div><input type="checkbox"/> Asian-Pacific American</div><div><input type="checkbox"/> Subcontinent Asian American</div><div><input type="checkbox"/> Native American</div><div><input type="checkbox"/> Non-minority Woman</div><div><input type="checkbox"/> Other</div><div>Sex:</div><div><input type="checkbox"/> Female</div><div><input type="checkbox"/> Male</div></div>	<div><div><input type="checkbox"/> Less than 1 year</div><div><input type="checkbox"/> 3 years</div><div><input type="checkbox"/> 4-7 years</div><div><input type="checkbox"/> 8-10 years</div><div><input type="checkbox"/> More than 10 years</div></div>	<div><div><input type="checkbox"/> Less than \$1 million</div><div><input type="checkbox"/> \$1-3 million</div><div><input type="checkbox"/> \$3-6 million</div><div><input type="checkbox"/> \$6-10 million</div><div><input type="checkbox"/> Over \$10 million</div></div>
			<div><div><input type="checkbox"/> Black American</div><div><input type="checkbox"/> Hispanic American</div><div><input type="checkbox"/> Asian-Pacific American</div><div><input type="checkbox"/> Subcontinent Asian American</div><div><input type="checkbox"/> Native American</div><div><input type="checkbox"/> Non-minority Woman</div><div><input type="checkbox"/> Other</div><div>Sex:</div><div><input type="checkbox"/> Female</div><div><input type="checkbox"/> Male</div></div>	<div><div><input type="checkbox"/> Less than 1 year</div><div><input type="checkbox"/> 3 years</div><div><input type="checkbox"/> 4-7 years</div><div><input type="checkbox"/> 8-10 years</div><div><input type="checkbox"/> More than 10 years</div></div>	<div><div><input type="checkbox"/> Less than \$1 million</div><div><input type="checkbox"/> \$1-3 million</div><div><input type="checkbox"/> \$3-6 million</div><div><input type="checkbox"/> \$6-10 million</div><div><input type="checkbox"/> Over \$10 million</div></div>
			<div><div><input type="checkbox"/> Black American</div><div><input type="checkbox"/> Hispanic American</div><div><input type="checkbox"/> Asian-Pacific American</div><div><input type="checkbox"/> Subcontinent Asian American</div><div><input type="checkbox"/> Native American</div><div><input type="checkbox"/> Non-minority Woman</div><div><input type="checkbox"/> Other</div><div>Sex:</div><div><input type="checkbox"/> Female</div><div><input type="checkbox"/> Male</div></div>	<div><div><input type="checkbox"/> Less than 1 year</div><div><input type="checkbox"/> 3 years</div><div><input type="checkbox"/> 4-7 years</div><div><input type="checkbox"/> 8-10 years</div><div><input type="checkbox"/> More than 10 years</div></div>	<div><div><input type="checkbox"/> Less than \$1 million</div><div><input type="checkbox"/> \$1-3 million</div><div><input type="checkbox"/> \$3-6 million</div><div><input type="checkbox"/> \$6-10 million</div><div><input type="checkbox"/> Over \$10 million</div></div>

ATTACHMENT 4

New York State's UCP Directory may be found here:

[NYSUCP DBE Directory and Application Portal](#)

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: Genesee County
Genesee County Airport

Goal Period: FY-2023-2024-2025 – October 1, 2022 through September 30, 2025

DOT-assisted contract amount:	FY-2023	\$1,706,402
	FY-2024	\$ 252,000
	FY-2025	\$ N/A
	Total	\$1,958,402

Overall Three-Year Goal: 4.0%, to be accomplished through 4.0% RC and 0% RN

Total dollar amount to be expended on DBEs: \$78,274

Describe the Number and Type of Contracts that the airport anticipates awarding:

Contracts Fiscal Year #1 (2023)

- | | |
|---|-----------|
| 1. APMS | \$ 76,500 |
| 2. Purchase Rotary Plow | \$765,000 |
| 3. Replace Runway 28 PAPI (D&C) | \$112,500 |
| 4. Replace Runway Edge Lighting & Signage (C) | \$752,402 |

Contracts Fiscal Year #2 (2024)

- | | |
|--------------------------------------|-----------|
| 1. Rehabilitate Runway 10 End (D) | \$175,500 |
| 2. Replace TW Lighting & Signage (D) | \$ 76,500 |

Contracts Fiscal Year #3

No projects awarded over \$250,000

Market Area: *The market area is be identified as the area in which the substantial majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located and the area in which the Airport spends the substantial majority of its contracting dollars; this must be clearly specified. The market area consists of Onondaga, Erie, Monroe and Oneida counties.*

Step 1. Actual relative availability of DBEs

The base figure for the relative availability was calculated as follows:

Method: Use DBE Directories [NYSUCP \(newnycontracts.com\)](https://newnycontracts.com) and Census Bureau Data from <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

Fiscal Year #1

For FY—2023, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract #1 APMS	Engineering Services	Engineering Services	541330	\$76,500	425	16	3.8%	\$2,880
Total Contract				\$76,500			3.8%	\$2,880
Contract #2 Purchase Rotary Plow	Rotary Plow	Snow Removal Equipment	423810	\$765,000	32	0	0.0%	\$0
Total Contract				\$765,000			0.0%	\$0
Contract #3 Replace Runway 28 PAPI (D&C) (BIL)	Engineering, Inspection,	Engineering Services	541330	\$54,000	425	16	3.8%	\$2,033
	Mobilization, Airfield Safety and Traffic Control & Signage	Highway, Street, and Bridge Construction	237310	\$2,340	78	15	19.2%	\$450
	Demolition	Site Preparation Contractors	238910	\$3,510	219	12	5.5%	\$192
	Electrical	Electrical Contractors	238210	\$46,800	440	4	0.9%	\$425
	Material Suppliers	Material Suppliers	423320	\$5,850	22	3	13.6%	\$798
Total Contract				\$112,500			3.5%	\$3,898
Contract #4 Replace RW Edge Lighting & Signage	Engineering / Admin	Engineering Services	541330	\$130,500	425	16	3.8%	\$4,913
	Mobilization, Traffic Control & Signage	Highway, Street, and Bridge Construction	237310	\$55,971	78	15	19.2%	\$10,764
	Demolition	Site Preparation Contractors	238910	\$37,314	219	12	5.5%	\$2,045
	Material Suppliers	Material Suppliers	423320	\$62,190	22	3	13.6%	\$8,480
	Fuel Suppliers	Petroleum Merchant	424720	\$15,548	9	0	0.0%	\$0
	Trucking Services	General Freight Trucking, Local	484110	\$15,548	155	12	7.7%	\$1,204
	Administrative & General Construction Mgmt.	Administrative Mgmt. & General Mgmt. Consulting Services	541611	\$31,095	377	2	0.5%	\$165

	Electrical	Electrical Contractors	238210	\$388,688	440	40	9.1%	\$35,335
	Seeding, Mulching	Landscaping Services	561730	\$15,548	975	0	0.0%	\$0
Total Contract				\$752,402			8.4%	\$62,906
Total FY-2023				\$1,706,402			4.1%	\$69,684

Fiscal Year #2

For FY-2024, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	DBE Directory	DBE (%)	DBE (\$)
Contract #1 Rehab RW 10 End (D)	Engineering	Engineering Services	541330	\$146,700	425	16	3.8%	\$5,523
	Geotechnical Testing	Testing Laboratories	541380	\$13,500	72	1	1.4%	\$188
	Compliance with Pollution/Erosion	Landscaping Services	561730	\$15,300	975	0	0.0%	\$0
Total Contract				\$175,500			3.3%	\$5,710
Contract #5 Replace TW Lighting & Signage (Design)	Engineering	Engineering Services	541330	\$76,500	425	16	3.8%	\$2,880
Total Contract				\$76,500			3.8%	\$2,880
Total FY-2024				\$252,000			3.4%	\$8,590

Fiscal Year #3

For FY-2025, award of the following is anticipated:

We don't anticipate any projects awarded over \$250,000.

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$78,274
- Total for All Trades: \$1,958,402

Dividing the weighted DBE totals by the total estimate for all trades gives a base DBE availability figure for the projects anticipated during the goal-setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Base of DBE Goal: 4.0%

Step 2: Adjustments to Step 1 base figure

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, Genesee County is adopting the Step 1 base figure as the overall goal for this three-year goal period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

Breakout of Estimated “Race and Sex Neutral” (RN) and “Race and Sex Conscious” (RC) Participation.

Genesee County will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

- (7) 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.
- (8) Carrying out information and communications programs on contracting procedures and specific contract opportunities
- (9) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (10) Consider unbundling large contracts to make them more accessible to small businesses when possible;
- (11) Provide instructions and clarification on bid specifications, general bidding requirements, and procurement policies and procedures; and
- (12) Discuss the DBE goal and DBE requirements at Pre-bid meetings to encourage prime contractors to solicit DBE firms in subcontracting opportunities.

Genesee County estimates that in meeting the established overall goal of 4.0% it will obtain 0.0% from RN participation and 4.0% through RC measures.

This breakout is based on:

The Recipient does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 4.8% is to be obtained through race-conscious participation.

Genesee County will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, Genesee County provided for consultation and publication. This process included invitations sent to Airport Minority Advisory Council, The National Minority Business Council, Associated General Contractors of NYS and prime contractors. An open invitation was posted on the airport's official website. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was *video conference*, which was held on July 12, 2022 at 3:00 p.m.

The following comments were received during the course of the consultation:
No comments were received.

A notice of the proposed goal was published on the Genesee County official before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on Genesee County official website.

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

PUBLIC NOTICE

Genesee County hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 4.0% for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2023 through 2025. A video conference will be held on July 12, 2022 at 3:00 pm for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. If you would like to participate please contact lhoward@cscos.com for login credentials.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Timothy J. Hens, P. E.
County Commissioner of Public Works 153 Cedar Street
Batavia, NY 14020
(585) 344-8508
tim.hens@geneseeny.gov

AND

Diane L. Gillam
DBE/ACDBE Compliance Specialist, Eastern Region
Office of Civil Rights – ACR-4
Federal Aviation Administration
305-716-1232
Diane.L.gillam@faa.gov

ATTACHMENT 6

Good Faith Effort Forms

Form 1: DBE Utilization Summary

DBE UTILIZATION PLAN

(Submit this form and attach one DBE Letter of Intent Form for each DBE Subcontractor, Supplier or manufacturer.)

Airport Name: _____

Project Name: _____

Name of Bidder's Firm _____

Street Address _____

City: _____ State: _____ Zip: _____

Printed Name of Signer: _____

Email Address: _____

Total Bid Amount: _____ DBE CONTRACT GOAL: _____

DBE UTILIZATION SUMMARY

DBE Contract Amount			DBE Value	DBE %
DBE Prime Contractor		x 1.00 =		
DBE Subcontractors		x 1.00 =		
* DBE Suppliers:				
Dealer		x 0.60 =		
Distributor		x 0.40 =		
DBE Manufacturers		x 1.00 =		
**Total Proposed DBE Participation				

* DBE Suppliers must complete the USDOT Dealer / Distributor classification form. This form must be included with the submission of the DBE plan.

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

Affirmation:

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior approval from the Airport.

By: _____

Signature of Bidder's Representative

Title

Form 2: DBE Letter of Intent

DBE LETTER OF INTENT FORM (Submit one form for each DBE subcontractor, supplier or manufacturer.)

Project Name/Location: _____
 Name of Bidder's Firm: _____
 Street Address: _____
 City: _____ State: _____ Zip: _____
 Name of DBE firm: _____
 Street Address: _____
 City: _____ State: _____ Zip: _____
 Contact Person: _____ Email: _____
 Certifying Agency: _____

(DBE firm shall submit evidence, such as a photocopy, of their certification status)

Classification: ☐ Prime Contractor ☐ Subcontractor ☐ Joint Venture
☐ Supplier / Dealer ☐ Supplier / Distributor ☐ Manufacturer

Disadvantaged Group (check one):

Black American <input type="checkbox"/>	Hispanic American <input type="checkbox"/>	Native American <input type="checkbox"/>	Subcont. Asian American <input type="checkbox"/>
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>
Asian Pacific American <input type="checkbox"/>	Non-Minority <input type="checkbox"/>	Other (not of any group listed here) <input type="checkbox"/>	
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	

SUMMARY OF WORK ITEMS

NAICS	Description of Work Item	Dollar amount	Manufacturer/Regular Dealer / Distributor / Broker**

*Percentage is to be used only in negotiated procurements

**For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included

The undersigned bidder/offeree 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/offeree understands that if it is awarded the contract/agreement resulting from this procurement, it must enter a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeree understands that upon submitting this form with its bid/offer, it may not substitute for or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient

 Signature of Bidder/Offeree'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/offeree does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void.
Submit this page for each DBE subcontractor/DBE Supplier.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

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

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Authorized DBE Representative (Name and Title):

Total Subcontract/Purchase Order Amount:

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

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

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

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory? ☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

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

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? ☐ YES ☐ NO¹

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

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

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

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

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

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

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

Printed Name and Signature of DBE Owner/Authorized Representative:

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

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

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

New York State Constitution: Article 1, Section 11, of the NYS Constitution prohibits discrimination against anyone because of race, color, creed, or religion by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision thereof. NY Executive Law Section 296 (see below) substantially extends to employment relationships the equal protection clause (Art.1, Sec.11) of the Constitution.

New York General Municipal Law: Article 5-A, Sections 103-a and 103-b, allows a municipal corporation or any public department, agency, or official to cancel or terminate any contract made with a contractor who refuses to appear before a grand jury, head of a state department, temporary state commission, or other state agency that is empowered to compel the attendance of witnesses.

New York Labor Law: Article 8, Section 220-e, provides that every contract for or on behalf of the state or a municipality for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies shall contain provisions by which a contractor with the state or municipality agrees, among other things, that it will not discriminate in the hiring of employees (Subparagraph (a)), that there may be deducted from any amount payable to the contractor by the state or municipality under the contract a penalty of \$50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of this contractual provision (Subparagraph (c)), and that moneys due or to become due under the contract may be forfeited for a second or any subsequent violation.

New York State Finance Law: Article 9, Sections 139-a Grounds for cancellation of contract by state and 139-b Disqualification to contract with state.

New York Transportation Law: The authority for the New York State Department of Transportation to establish a Disadvantaged Business Enterprise (DBE) Program is in the Surface Transportation Assistance Act of 1983, section 105(f); The Surface Transportation and Uniform Relocation and Assistance Act of 1987, section 106(c); the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; title 49 of the Code of Federal Regulations, part 26; New York Highway Law, section 85; and such other laws, rules, regulations and orders as may apply. (17 NYCRR 35.1).

Further, the policy of the NYSDOT is expressed in 17 New York Code of Rules and Regulations (NYCRR) Part 35, Section 35.2, to afford the opportunity for full participation in the free enterprise system to socially and economically disadvantaged persons for encouraging utilization of disadvantaged business enterprises in NYSDOT construction projects. Part 35, Section 35.3, adopts by reference the federal DBE regulations found in 49 Code of Federal Regulations (CFR) Part 26 (reference is made to Volume 64, Number 21 of the Federal Register, issued February 2, 1999).

New York Executive Law: Section 296 details the types of discrimination that are unlawful in New York. Sections 297 and 298 contain the review and enforcement procedures available through the Human Rights Division or the courts.

New York Highway Law: Section 85 states that the Commissioner of Transportation is authorized, empowered, and directed to perform and do such other and further acts as may be necessary to comply with federal highway aid requirements and transportation acts.

New York Civil Practice Law and Rules: These laws and rules govern the enforcement of a party's rights and obligations in state courts.

In addition, each contract for work that includes federal funding sets forth the federally required Airport Aid Contract Provisions that contain non-discrimination requirements, sanctions for non-compliance and DBE assurances. In addition, where state funding is involved, there are New York State standard provisions which include non-discrimination requirements and a restatement of the remedies available under New York Labor Law, as set forth previously in this document.

The Airport has a number of Contract remedies available to enforce DBE requirements.

- Contract Assurance 26.13b – discrimination by a contractor is considered a material breach of contract and may result in termination of the contract; withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.
- Breach of Contract – Any violation or breach of terms of the contract may result in the suspension or termination of a contract, the withholding of payments until such time the contractor corrects the breach of contract.
- Sanctions for Noncompliance - In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancelling, terminating, or suspending a contract, in whole or in part.

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 and Personal Net Worth Statement:

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

ATTACHMENT 9

New York State UCP Agreement can be found here:

<https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/NYSUCP%20SOP%20-%20Revised%20June%202013.pdf>

ATTACHMENT 10

Small Business Element

1. Objective/Strategies

DBE program regulations, CFR § 26.39, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, including DBEs, taking reasonable steps to eliminate obstacles to their participation.

In compliance with this policy, Genesee County's DBE program in regard to §26.39 Fostering Small Business Participation may include, but is not limited to, the following strategies:

- (1) Prime contracts under \$100,000 will be set-aside for small businesses. Only 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) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- (6) Arranging quantities, specifications, and delivery schedules to facilitate small business participation.
- (7) Establish small business quotas for the project
- (8) Taking reasonable steps to eliminate obstacles for their participation

2. Definition / Verification

For the purpose of Genesee County's Small Business Element, a small business is defined as: **A company and/or firm whose annual revenue does not exceed the cap on average annual gross receipts specified in 49 CFR Part §26.25(b).** To be seen as a small business, a firm must meet SBA size criteria and have average annual gross receipts not to exceed the current SBA limits. All businesses meeting this criterion will be considered to be small businesses, without regard to race or sex. Genesee County will presume that a business is a "small business" or

“small business concern” for purposes of this Program if the business is a for-profit enterprise that is either:

- All Certified DBE and ACDBE are qualified;
- New York State Minority and/or Women-Owned Business Enterprise (MWBE) Certification;
- An eligible participants of federal Small Business Administration (SBA) programs, which may include businesses certified as disadvantaged, minority-owned, women-owned, or emerging small businesses, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. The SBA maintains an online listing of eligible, participating small businesses; or
- Certified by a public agency other than those listed above and meets a size standard that is no greater than the SBA size standard, which standard must be a criterion for certification or participation in that public agency program.

3. Monitoring/Record Keeping

Genesee County will actively monitor small business participation utilizing the same mechanisms as listed in the DBE Program. This will be done by utilizing a Monthly Payment Report, Subcontractor Prompt Payment Certification, and through maintaining a running tally. These measures help evaluate small business involvement and facilitate necessary adjustments to meet program objectives.

4. Assurances

- The program is permitted under state law;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- 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
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

Fostering Small Business Participation

SPONSOR's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

Small Business Firms to be Utilized (Name, Address, Phone)	<i>Work to be Performed</i>	Total Estimated Cost of Work										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr> <td>Is the firm a Certified DBE?</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr> <td>Is the firm a Certified DBE?</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 15%;">Name</td><td></td></tr> <tr><td>Address</td><td></td></tr> <tr><td>City, St, Zip</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> <tr> <td>Is the firm a Certified DBE?</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Name		Address		City, St, Zip		Telephone		Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name												
Address												
City, St, Zip												
Telephone												
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No											

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(Duplicate form as necessary.)

The following notation is for the Sponsor's Use Only:

Accepted by: _____ **Date:** _____

ATTACHMENT 11

Monthly Payment Report

MONTHLY PAYMENT REPORT

Name of Contractor's Firm:

Project Name/Location:

FAA AIP Project No.:

Subcontractor or DBE Supplier Name* and Description of Svcs	DBE Y/N	Supplier Y/N	Subcontractor Contract Amount	Pay App #	Payment Period Date (From-To)	Amount Invoiced This Period	Total Amount Invoiced	Current Retainage Amount	Total Retainage	Payment	Payment Date	Total Paid to Date	Total Due Sub/DBE Supplier

*ALL Subcontractors Must Be Listed – ONLY DBE Suppliers Must Be Listed

Signature of Contractor's Representative

Print Contractor's Representative

Date

To be submitted to the Airport DBELO or designee by the 10th of each month.

ATTACHMENT 12

Prompt Payment Report

SUBCONTRACTOR'S PROMPT PAYMENT CERTIFICATION

NOTE: Each Contractor shall provide a copy of this form to each of their Subcontractors (DBE and non-DBE) that are working on or has worked on this project. This certification applies to all tier Subcontractors. A completed copy of this form shall be submitted the Prime Contractor you are working for at least 7 days prior to an application for payment. Any Subcontractor failing to submit a copy of this form shall be cause for the Sponsor's representative to delay the payment application.

Should a Subcontractor indicate that they have not received payment for work they performed in which their Contractor has received payment, the Sponsor shall withhold the delinquent amount indicated unless the Contractor received written approval from the Sponsor of the Contractor's written request justifying withholding payment from the Subcontractor.

Project Title: _____

Airport Name: _____

AIP No.: _____

Company Name: _____

Company Address: _____

_____ Contact Phone No. _____

Contractor's Name you subcontract to: _____

1. What dates have you performed work on this project? _____
2. Has the work performed been completed and accepted by the Engineer? Yes ☐ No ☐ Not sure ☐
3. Please provide the following information on invoices you have sent the Prime Contractor:

Date of Invoice	Invoice Number	Invoice Amount	Has the invoice been paid?	Date payment received

5. Have you completed all work that you are required to perform on this contract? Yes ☐ No ☐

6. Total Amount owing on for work performed on this project \$ _____

Written Name of Subcontractor's Rep. _____

Signature: _____ Date: _____

ATTACHMENT 13

Final DBE Participation Summary

DISADVANTAGE BUSINESS ENTERPRISE
FINAL PARTICIPATION SUMMARY
(Submit one form for each DBE firm)

Project Name: _____ AIP No. _____
Contractor: _____
Address: _____
City _____ State _____ Zip: _____
Contact Name: _____
Email: _____ Phone: _____
DBE Firm: _____
Address: _____
City _____ State _____ Zip: _____
Contact Person: _____
Email: _____ Phone: _____

Each DBE Firm shall submit evidence of their certification status.

Classification: Prime Contractor Subcontractor Supplier - Dealer Broker
Manufacturer Joint Venture Supplier - Distributor Other

Disadvantaged Group (check one):

Black American Hispanic American Native American
Asian Pacific American Subcont. Asian American Non-Minority Female
Other (Please specify) _____

Summary of work performed:

Description of work	NAICS Code	Total Amount Paid

Contractors Affirmation:

The Contractor utilized the above-named DBE Firm for the work items described above.

Initial Contract Amount: _____ Difference: _____

Explanation of difference: (Additional documentation may be requested)

Contractors Signature _____ Title _____ Date _____

DBE Firm's Affirmation:

The above named DBE Firm affirms that it has performed the work it was contracted to perform, as listed above and was paid in full as stated above.

DBE Firm's Signature _____ Title _____ Date _____