



City of Philadelphia

Disadvantaged Business Enterprise Program for the *Philadelphia International Airport* and the *Northeast Philadelphia Airport*

Philadelphia, Pennsylvania

August 2022



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**UNITED STATES DEPARTMENT OF TRANSPORTATION
DBE PROGRAM - 49 CFR PART 26
CITY OF PHILADELPHIA**

for the **Philadelphia International Airport and the Northeast Philadelphia Airport**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City (hereafter 'the City'), through its Division of Aviation, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. The City has received federal financial assistance from USDOT, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26.

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

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

Deatrice Isaac, PHL Deputy of Airport Procurement, City of Philadelphia, Philadelphia International Airport Executive Offices, Terminals D & E 3rd Floor, Philadelphia, PA 19153 (215) 937-5470, Deatrice.isaac@phl.org has been designated as the DBE Liaison Officer (DBELO). In that capacity, she is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the airport in their financial assistance agreements with the USDOT.

This policy statement will be placed under the 'Business with PHL' section of the Airport's website making the City's policy available throughout the internal organization and to the DBE and non-

DocuSigned by: communities that perform work on our DOT-assisted contracts.

Keith Brune

7/26/2022

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Keith Brune, Interim CEO Philadelphia International Airport

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Philadelphia is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to USDOT: 26.11 (b)

The City will report DBE participation to USDOT as follows:

The City will submit annually the Uniform Reports of DBE Awards or Commitments and Payments, as modified for use by FAA recipients, via FAA Civil Rights-Connect (<https://faa.civilrightsconnect.com>). The City will report DBE participation to the FAA annually, no later than December 1. The City will also report the DBE contractor firms' contact information either on the FAA DBE Contractor's Form or other similar format.

Bidders List: 26.11(c)

The City will create and maintain a bidders' list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on USDOT-assisted contracts. Another purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidders' list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of the firms.

The City will collect this information by inclusion of a Bidders List data collection form (as shown in **Attachment 2**). This form is to be included in FAA-funded solicitations and bidders/proposers are to return completed forms with their bids/proposals.

What records do recipients keep and report: 26.11(d) & (e)

As a certifying agency, the Philadelphia International Airport will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Airport will keep a complete application package for firms that it certifies and all affidavits of no-change, change notices, and on-site reviews. The Airport understands that these records must be retained in accordance with applicable record retention requirements of its financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for its financial assistance agreement, whichever is longer.

The Philadelphia International Airport, as a member of the Pennsylvania UCP established pursuant to §26.81, will support the report to the Department of Transportation's Office of Civil Rights each year on the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following: 1) Women; 2) Socially and economically disadvantaged individuals (other than women); and 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The City of Philadelphia (hereafter 'the City') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The City's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City 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.).

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

Contract Assurance: 26.13 (b)

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

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City will continue to carry out this program until all funds from USDOT financial assistance have been expended, and will provide to USDOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

**Deatrice Isaac, PHL Deputy of Airport Procurement,
City of Philadelphia, Philadelphia International Airport Executive Offices,
Terminals D & E 3rd Floor
Philadelphia, PA 19153
(215) 937-5470
Deatrice.Isaac@phl.org**

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Airport CEO concerning DBE program matters. An organization chart displaying the DBELO's position in the City and the Philadelphia International Airport is found in **Attachment 1** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO also administers the program. The duties and responsibilities include the following:

1. *Gathering and reporting statistical data and other information as required by USDOT.*
2. *Reviewing third-party contracts and purchase requisitions for compliance with this program.*
3. *Working with all departments to set overall triennial goals.*
4. *Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.*
5. *Identifying contracts and procurements so that DBE goals and race-neutral measures are considered for appropriate solicitations.*
6. *Analyzing the City's progress toward attainment and identifying ways to improve progress.*
7. *Participating in pre-bid meetings.*
8. *Advising the City on DBE matters and achievement.*

9. *Participating in PHL's Airport Advisory Board's meetings.*
10. *Providing DBEs with information and assistance in preparing bids and obtaining bonding and insurance.*
11. *Planning and participating in DBE training seminars.*
12. *Providing outreach to DBEs and community organizations to advise them of opportunities.*

Section 26.27 DBE Financial Institutions

It is the policy of the City 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. It further encourages prime contractors on USDOT-assisted contracts to make use of these institutions by inclusion of this information "Business with PHL" section of the Airport's website.

Each time the City updates its DBE Program Plan (at a minimum every three years), it reviews the existence of such financial institutions. The City has identified the following minority-owned financial institutions within the greater Philadelphia area:

Asian Bank

6509 Castor Ave.
Philadelphia, PA 19149
Phone: (215) 592-1188

Noah Bank

7301 Old York Road
Elkins Park, PA 19027 Phone: (215) 424-5100
United Bank of Philadelphia

1502 N. Broad St.
Philadelphia, PA 19122
Phone: (215) 978-5300

Section 26.29 Prompt Payment Mechanisms

The City has established, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 business days from receipt of each payment the City makes to the prime contractor. The City will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

For contracts in which the City does not withhold retainage, prime contractors are prohibited from withholding retainage from its subcontractors.

For contracts in which the City withholds retainage, the City will determine, post-award, if any incremental acceptances of portions of the prime contract will be conducted for release of associated retainage. If the City does perform incremental acceptances and/or retainage releases, within thirty (30) days of receipt of such payment from the City the prime contractor must release the associated retainage to subcontractors whose work has been completed. Incremental release of retainage from the City does not initiate the beginning of any warranty period unless

explicitly stated by the City.

The City of Philadelphia will provide appropriate means to enforce the requirements of this section as part of its corrective action measures. These means include:

1. Withholding from the contractor in violation ten percent (10%) of all future payments under the involved eligible project until it is determined that the contractor is in compliance.
2. Withholding from the contractor in violation all future payments under the involved eligible project until it is determined that the contractor is in compliance.
3. Refusal of all future bids or offers for any applicable contract until it is determined that the contractor is in compliance.
4. Cancellation of the current contract.

The City will include a clause similar to the following in each USDOT-assisted prime contract:

The prime contractor must promptly pay all subcontractors under this prime contract for satisfactory performance of its contract no later than ten (10) business days from the receipt of each payment the prime contract receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontracts.

The City may also include the following mechanisms in each USDOT-assisted prime contract:

- a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- b. 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.
- c. Other mechanisms, consistent with this part and applicable state and local law, to ensure that all DBEs and other contractors are fully and promptly paid.

Section 26.31 Directory

The City of Philadelphia is a certifying member of the Pennsylvania Unified Certification Program (PA UCP), with DBE certification staff located at the Airport, and as such relies on the PA UCP's DBE directory. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

Attachment 3 shows the web address to the PA UCP DBE directory.

Section 26.33 Overconcentration

The City has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

Although the City has not established a business development program directly related to the Airport DBE program, the City of Philadelphia has long-term and well-established policies and programs to encourage the participation of minority and women-owned businesses in non-federally funded contracts that are let by the City. The City's Office of Economic Opportunity (OEO) works with the Philadelphia business community to build internal and external alliances with minority- ("MBE"), women- ("WBE") and disabled- ("DSBE") owned business enterprises (collectively "M/W/DSBEs") with the City, and with private industries to help develop strong, mutually beneficial relationships that facilitate successful networking opportunities. The OEO also sponsors outreach and business training classes for the M/W/D/SBE communities. These events are available to the DBE community as well. The City's OEO provides the following supportive services programs, which are also available to the DBEs:

1. One-on-One Small Business Support
2. M/W/SBE Support
3. Lending and Training
4. Workforce Development

More information on these services can be found at the following website: <http://www.phila.gov/commerce/businessSupport/>.

Section 26.37 Monitoring and Enforcement Mechanisms

The City will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. The City will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps provided in 26.109. (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).
2. The City will consider similar action under its own legal authorities, including responsibility determinations in future contracts. In the event of non-compliance with the DBE regulations by a participant in procurement activities, the City will use the mechanisms of contract suspension and/or termination and in some cases, debarment, or imposition of any other remedy that the City deems appropriate, including repayment of any shortfall in committed DBE participation and debarment under the "City of Philadelphia Policy and Procedure for the Debarment and Suspension of Vendors and Contractors" for a period up to three years.
3. The City will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. This will be accomplished by the following means:
 - a. Reviewing bid package documentation thoroughly, obtaining clarification, if necessary.
 - b. Reviewing monthly reports regarding DBE participation to ensure adherence to plan

- as represented in bid documents and as stipulated in this program.
- c. Monitoring progress of payments to DBEs through monthly reports from prime contractors.
 - d. Monitoring progress of DBEs' work through on-site visits and communication with DBEs. The City will implement a monitoring and enforcement mechanism that will include written certification that the City has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during periodic project site visits.
4. The City will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
 5. Failure by a prime contractor and its subcontractors to carry out the DBE requirements is a material breach of contract and may result in termination of the contract, or imposition of any other remedy that the City deems appropriate, including repayment of any shortfall in committed DBE participation and debarment under the "City of Philadelphia Policy and Procedure for the Debarment and Suspension of Vendors and Contractors" for a period up to three years.
 6. During and upon completion of the project, the City will review the actual DBE expenditures to determine compliance with the DBE goal. If the DBE goal is not met, written explanation will be reviewed by the City. If the shortfall in meeting the DBE goal is determined to be unjustified and unwarranted, the City may impose sanctions as appropriate, including repayment of any DBE shortfall.

Prompt Payment Dispute Resolution

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

- Review completed and pending payments to the prime and subcontractor
- Convene a meeting with the prime contractor, the subcontractor, and the Airport's project manager for the work and an Office of Business Diversity representative to develop a resolution to the dispute. Representatives of each of these entities will be individuals authorized to bind each interested party, and take appropriate action.

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

- Inclusion of a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 business days from receipt of each payment the City makes to the prime contractor. The clause that is included is:
The prime contractor must promptly pay all subcontractors under this prime contract for satisfactory performance of its contract no later than ten (10) business days from the receipt of each payment the prime contract receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontracts.

The City of Philadelphia will provide appropriate means to enforce the requirements of this section. These means include:

1. Withholding from the contractor in violation ten percent (10%) of all future payments under the involved eligible project until it is determined that the contractor is in compliance.
2. Withholding from the contractor in violation all future payments under the involved eligible project until it is determined that the contractor is in compliance.
3. Refusal of all future bids or offers for any applicable contract until it is determined that the contractor is in compliance.
4. Cancellation of the current contract.

Prompt Payment complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- Review of completed and pending payments to the prime and subcontractor by the Office of Business Diversity
- Review of attempts (if any) by the subcontract to resolve payment issues with the prime contractor
- Outreach by the Office of Business Diversity to the Airport's Project Manager for the work and the prime contractor, notifying them of the complaint and requesting information regarding the payment(s) in question
- Proposal for complaint resolution (based on the above information) by the Office of Business Diversity.
- If accepted, monitoring by the Office of Business Diversity that the resolution was completed
- Notification to the subcontractor that if it is not satisfied with the proposed resolution or the monitoring of the resolution, that they may contact the FAA directly

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.

Section 26.39 Fostering Small Business Participation

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

The original element was developed and submitted to the FAA by February 28, 2012, as required. It was submitted for review and approval as a free-standing document. This element is being incorporated in this updated DBE Administrative Program in this section.

I. Purpose and Objective of the Small Business Element

Pursuant to 49 CFR § 26.39, this small business element, hereinafter referred to as the Small Business Participation Plan (SBPP), is presented to the Federal Aviation Administration as an amendment to the City of Philadelphia's DBE Program. Section 26.39 requires the inclusion of an element to "structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles

to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors." The City of Philadelphia, acting through the Philadelphia International Airport (Airport), hereby establishes the Airport's plan to implement these requirements.

The Airport's SBPP has been fully integrated into the Airport's DBE Program in recognition that the SBPP will assist in fulfilling the overall intent of Section 26.51 to meet the "maximum feasible portion" of the Airport's overall DBE Goal by using race-neutral means to obtain DBE participation. Implementation of this SBPP will be based solely on the standards of business size and personal net worth, without regard to the race, gender, or social disadvantage of the business owner. This SBPP supports the City's longstanding history of creating and implementing economic development strategies to encourage business growth and foster nondiscriminatory inclusion in all facets of City contracting.

II. Small Business Participation Strategies

The City of Philadelphia, through the Philadelphia International Airport, will employ the following strategies and support activities:

A. Use of Race-Neutral "Subcontracting Goal"

Where feasible, on certain prime contracts that do not have a DBE contract goal (social disadvantage-conscious), prime contractors will be required to provide subcontracting opportunities for qualified small business enterprises (SBEs) as defined herein, without regards to the race, gender or social disadvantage of the business owner. Airport Compliance staff will review projects in advance of issuing a solicitation, and establish in the solicitation document, where feasible, a goal for the participation of SBEs in the contract. The feasibility of any SBE goal will be conditioned upon an examination of the scope of work to be performed and consideration of whether the opportunities are of a size and scope that SBEs, including DBEs, have sufficient capacity to perform.

B. Reduction in Size of Prime Contracts

The City issues construction contracts in accordance with Pennsylvania's Separations Act and issues separate bids for general construction, electrical, plumbing, and mechanical opportunities. This serves to unbundle construction projects.

Additionally, on a quarterly basis, DBE Liaison Officer and/or staff coordinates with Airport Engineering and Procurement staff to review upcoming projects and determine which projects can be reduced in scope and size, a form of unbundling, so that smaller prime contracts might be solicited thus enabling SBEs to bid as prime contractors.

C. Reducing Contract Requirements

In recognition that contract size and scope are not the only barriers which discourage the robust participation of SBEs and DBEs in Airport contracts, especially as prime contractors, the Airport, in consultation with its legal counsel, risk managers, and Procurement Department (a centralized agency within the City of Philadelphia responsible for the letting of sealed competitive bids) will review contract requirements such as pre-qualification, bid security, bonding and insurance.

D. Making Contracting Opportunities More Accessible

The City recognizes that one barrier for small businesses is awareness of contracting opportunities as they arise. PHL has worked with the City of Philadelphia's Procurement Office to make contracting opportunities more accessible to small businesses. The result of this collaboration is that there is now a Contracts Hub (<https://contracts.phila.gov/#/>) which allows firms to search across all contract types for City opportunities. Previously, Professional Service opportunities could only be found in one system and Public Works and Service, Supply, and Equipment in another. The Hub aggregates these opportunities for greater ease of identification. Additionally, PHL has tips for finding opportunities as an embedded part of its outreach session presentations and houses this information on its website for easy access.

To provide firms with a projection of upcoming opportunities at the Airport, under the Capital Development section of the Airport website (<https://phl.org/about/cdp/>), information on upcoming opportunities and project updates are provided.

E. Definitions and Assumptions for this Element

1. Small Business Enterprise

To ensure that all small businesses participating in the SBPP, both DBEs and non-DBEs alike, can compete together on a level playing field, small business enterprise (SBE) will use the definition of "small business concerns" as contained in 49 CFR §26.5:

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

And, the small business concern, in order to participate as an SBE in the SBPP, must be at least 51% owned by individual(s) who meet the personal net worth requirements of the DBE Program, without regard to the individual(s)' social disadvantage.

2. Race-Neutral DBE Participation in the SBPP

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

F. Verification Standards and Procedures

The Airport will require the following verification and/or accept the following certification(s) for any SBE participating in its SBPP:

- 1. Pennsylvania Unified Certification Program (PAUCP) DBE Certification or other states' US DOT DBE Certification**

DBE Certification by a certifying member of the PAUCP or another state's DBE certifying agency, which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a certifying member of the PAUCP or, in the case of another state, by the agency approved by US DOT for the administration of DBE certification.

2. **Pennsylvania Department of Transportation Small Business Enterprise Certification**
3. **A non-DBE certified potential small business concern** may have to complete a simplified application and/or provide the following information no later than two weeks before responses are due to a solicitation or bid opening, as evidence of its small business status and personal net worth:
 - i. Evidence of SBA certification (as described in 13 CFR Parts 121 and 124), and
 - ii. A copy of the business tax returns for the most recent three-year period indicating the gross receipts and/or a notarized statement from a certified public accountant indicating the firm's average gross receipts for the past three years.
 - iii. A notarized statement that each of the firm's owners meets the personal net worth requirements of 49 CFR § 26.67 [currently, each individual owner of a firm must demonstrate that he or she has a personal net worth that does not exceed \$1.32 million.]

Information on PHL's SBE program and the verification form is located at <https://www.phl.org/business/OBD/SBE>.

G. Supportive Services

The City of Philadelphia, through its Office of Business Diversity at the Philadelphia International Airport, is a certifying participant of the Pennsylvania Unified Certification Program and manages certification services as well as full administration of the Airport's DBE program. The management and administration is accomplished through the DBELO. The Office of Business Diversity does not provide direct supportive services and/or business development programs to DBEs or small businesses. However, the Office of Business Diversity coordinates and makes referrals to other providers of these and similar supportive services, including the City's Office of Economic Opportunity (OEO). These services, as relevant, will also be made available to verified SBEs. These services may include:

1. The distribution and dissemination of information about the Airport's Small Business Participation Program, as well as bid information to certified DBEs and, by extension, to potential SBEs.
2. Conducting outreach efforts, i.e., information sessions, open houses, etc., as part of recruitment efforts for both qualified DBE firms and verifiable small business concerns, without regard to race, gender or social disadvantage.
3. Publicizing information to the small business community with regard to current, on-going, and future business opportunities at the Airport.

H. Implementation Plan and Timetable

The Airport's SBPP is currently being implemented through the following tasks:

1. Review, in coordination with Airport Engineering and Procurement staff, all upcoming projects to consider which projects will be conducive for application of either of the two selected SBPP strategies, described in Sections B, and C, above.
2. Review, in coordination with Airport Capital Development Group, Procurement, and Legal staff, the necessary revisions and modifications to solicitation language etc., prior to implementation.
3. Coordinate with other entities, including the City of Philadelphia's Office of Economic Opportunity which provides relevant supportive services and business development services. Prepare special programs appropriate for the small business community to increase their competitive opportunities at the Airport.

I. Principal Responsible Person

The principal responsible person for overseeing and implementing the Airport's SBPP is the currently designated Disadvantaged Business Enterprise Liaison Officer (DBELO).

The City will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of our DBE program.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City does not use quotas in any way in the administration of this DBE program. However, the use of race neutral set-asides for small businesses is permissible as a strategy under 26.39 (b) (1).

Section 26.45 Overall Goals

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), the City will submit its overall three-year DBE Goal to FAA by August 1, 2022 for Federal FYs 2023-2025.

DBE goals will be established for those fiscal years that the City anticipates awarding USDOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the two-step process as specified in 49 CFR Part 26.45. If the City does not anticipate awarding more than \$250,000 in USDOT-assisted prime contracts during any of the years within the three-year reporting period, the City will not develop an overall goal; however this DBE program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The most recent goal document was developed in 2022, for FFY 2023-FFY 2025. A description of the methodology to calculate the overall goal and the goal calculation(s) can be found in **Attachment 4** to this program. This section of the program will be updated on at least a triennial basis.

In accordance with Section 26.45(f), the City will submit its triennial overall goal to USDOT on August 1 of the required year of submission. Before establishing the overall goal, the City will consult with small business development organizations, and other community groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the City will make any necessary adjustments and post the goal on its website.

The City's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

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

Section 26.47 Goal Setting and Accountability

The City understands that it 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 it fails to administer its DBE program in good faith. The City further understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, must be maintained, and this DBE Program must be administered in good faith.

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Submit the analysis and corrective action plan to the FAA Civil Rights office for approval within 90 days of the end of the fiscal year, and maintain a copy of the plan on file for at least three (3) years.

Section 26.49 Transit Vehicle Manufacturers Goals

N/A

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

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 4** to this program. This section of the program will be updated when the goal

calculation is updated.

Section 26.51(d-g) Contract Goals

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

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

The City will express their contract goals as a percentage of the total share of a USDOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder is to make good faith efforts to meet the DBE goal. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The City's requirements for good faith efforts submission for the DBE program are stated in **Attachment 5**, along with required forms.

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

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

Information to be submitted (26.53(b))

The City treats bidders' compliance with good faith efforts' requirements as a matter of responsiveness. This means that the information required for the bid is to be submitted at time of the bid opening. Award of the contract will be conditioned on meeting the requirements of this section.

Each solicitation for which a contract goal has been established will require the bidders to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE 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;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
5. 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.
6. 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.

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

This information will be collected using the forms found in **Attachment 5**.

Administrative reconsideration (26.53(d))

Within ten (10) days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official:

Keith J. Brune, A.A.E., Interim Chief Executive Officer, Philadelphia International Airport, Executive Offices, Terminal D/E, 3rd Floor, Philadelphia, PA 19153, keith.brune@phl.org .

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

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

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

The City will require a prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor will be required to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The City will provide such written consent only if the City agrees, for reasons stated in a concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does

not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The City has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the City has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting its request to the City to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

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

More detailed information on good faith efforts and responses to DBE requirements can be found in **Attachment 5**.

Section 26.55 Counting DBE Participation

The City will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except

as provided for in §26.87(j)

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61- 26.73 Certification Process

The City of Philadelphia is a certifying member of the PAUCP, meaning that the City has full authority to implement a DBE and ACDBE certification program, consistent with the requirements of 49 CFR Parts 26 and 23 (for airport concession DBEs). The current PA UCP Memorandum of Agreement is included in **Attachment 8**. The certifying members of the PAUCP include:

1. Allegheny County Equity and Inclusion Office
2. Pittsburgh Regional Transit
3. Pennsylvania Department of Transportation (PennDOT)
4. Philadelphia International Airport
5. Southeastern Pennsylvania Transportation Authority (SEPTA)

The City exercises this authority and responsibility with and through the certification staff based at the Philadelphia International Airport. The staff utilizes the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Airport certification staff makes all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should access information at <https://paucp.dbesystem.com/>.

The certification application forms and documentation requirements are found in **Attachment 6** to this program.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

As stated, the City is a certifying member of the PAUCP. The Airport's certification staff, as part of the PAUCP, will meet all of the requirements of this section. The Airport's certification staff uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT/FAA-assisted contracts. Under the PA UCP Program, there are five (5) certifying members which conduct DBE certifications. To be certified as a DBE, a firm must meet all certification eligibility standards.

Section 26.83 Procedures for Certification Decisions

The City will ensure that only firms certified as eligible DBEs under this section participate as DBEs in its DBE program. The City will take the required steps outlined in 26.83(c) in determining whether a DBE firm meets the standards of subpart D of this part.

Once a DBE has been certified by the City, it shall remain certified until and unless the City

removes its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(l) of this part.

The City will not require DBEs to reapply for certification or undergo a recertification process. However, the City may conduct a certification review of a certified DBE firm, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of the City that leads it to question the firm's eligibility, the City may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

Annual Affidavits and Notices of Change C26.83(j))

Under the PAUCP, the airport certification staff and the PAUCP require all DBEs, every year on the anniversary of the date of the DBE's certification, to inform them, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the firm's application for certification.

The airport certification staff and the PAUCP also require all DBEs it has certified to submit, on the anniversary date of their certification, an annual affidavit meeting the requirements of 26.83. The text of this affidavit is below:

I affirm that there have been no changes in circumstances affecting the Firm's ability to meet size, disadvantaged status, ownership, and/or control requirements of 49 CFR Parts 26 and 23, and 13 CFR Part 121; nor have there been any material changes in the information provided in the Firm's application form, except for changes about which I have provided written notice to the recipient under 49 CFR 26.83(i). I further affirm that my Firm continues to meet the Small Business Administration (SBA) size criteria and the overall gross receipts cap of 49 CFR Parts 26 and 23. I further affirm that my personal net worth does not exceed \$1.32 million.

The airport certification staff and the PAUCP require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The airport certification staff and the PAUCP will notify all currently certified DBE firms of these obligations prior to their renewal by mail. This notification will inform DBEs that to submit the annual affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

As of January 1, 2012, the airport certification staff and the PAUCP accept DBE certifications obtained by DBEs in their home states, unless they find good cause not to accept them. If the airport certification staff and the PAUCP find good cause not to accept the certification of a DBE in its home state, the PAUCP will follow the procedures as outlined in Section 26.85. Option B

In instances where there is an appeal to the airport certification's staff determination to deny or remove an interstate certification, the local appeals officer will be Sharron Williams, City of Philadelphia Assistant Solicitor.

Section 26.86 Denials of Initial Requests for Certification

If the airport certification staff or the PAUCP denies a firm's application or decertifies it, that firm may not reapply until twelve (12) months have passed from that action.

Section 26.87 Removal of a DBE's Eligibility

In the event the City proposes to remove a DBE's certification, the City will follow procedures consistent with 26.87. **Attachment 7** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the City has determined that the PA UCP Appeals Committee will serve as the decision-maker in de-certification proceedings. The City has established an administrative "firewall" to ensure that the PA UCP Appeals Committee will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.88 Summary Suspension of Certification

The City shall follow the procedures consistent with 26.88 of this Part regarding suspending a DBE's certification.

The City shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

The City will immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83).

When a firm is suspended pursuant to 26.88 (a) or (b), the City will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the City information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the City will either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the City

commences a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under paragraph 26.88 (a) or (b) is not appealable to the U.S. DOT.

The failure the City to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. DOT under § 26.89 of this part, as a constructive decertification.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the decision in a certification matter to USDOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of the Airport, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) the Airport failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice. Such appeals may be sent to: s33appealsmanagementrecords@dot.gov.

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the Revision Date: 2019-02-12 29 administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The airport certification staff and the PAUCP will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for USDOT-assisted contracting.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City

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

Section 26.109 Information, Confidentiality, Cooperation

The City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the City will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

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

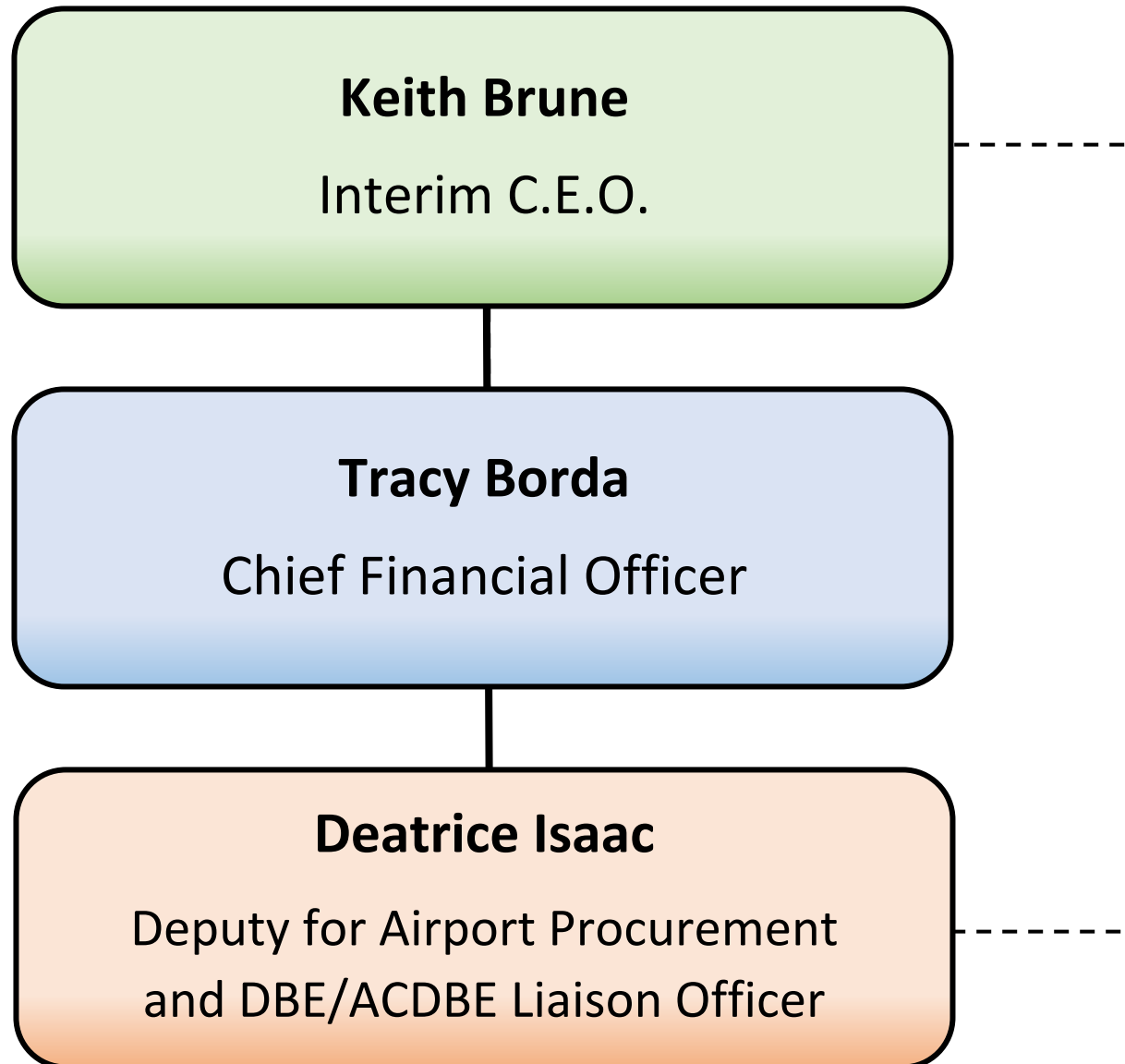
ATTACHMENTS

- Attachment 1A-B Organizational Chart
- Attachment 2 Bidders Information Data Collection Form
- Attachment 3 DBE Directory (web link)
- Attachment 4 Overall Goal Calculation; Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 5 Good Faith Efforts Requirement and DBE Submissions Forms
- Attachment 6 Certification Application Forms
- Attachment 7 Procedures for Removal of DBE's Eligibility
- Attachment 8 UCP Agreement
- Attachment 9 Regulations: 49 CFR Part 26 (web link)

Attachment 1

Organizational Charts

PHL Airport



Attachment 2

Bidders Information Data Collection Form

BIDDER'S LIST

Name of Prime Contractor: _____

In accordance with USDOT's Disadvantaged Business Enterprise (DBE) Regulations (49 CFR Part 26), the City of Philadelphia is required to create and maintain a comprehensive Bidder's List. This list collects information used to determine the relative availability of DBE and non-DBE firms that bid as a prime or subcontractor/supplier. **Please provide the following information for your firm and for ALL subcontractors/suppliers that provided bids/quotations/qualifications in support of this solicitation.** Submit this information with your response to the solicitation. Attach additional copies of the form as necessary.

Name of Contractor/ Supplier/Subcontractor	Firm Address	Is the Firm a DBE? (Yes or No)	Age of the Firm	Select Average Annual Gross Receipts of Firm
				<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$3,000,000 <input type="checkbox"/> over \$3,000,000
				<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$3,000,000 <input type="checkbox"/> over \$3,000,000
				<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$3,000,000 <input type="checkbox"/> over \$3,000,000
				<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000 - \$3,000,000 <input type="checkbox"/> over \$3,000,000

Attachment 3

DBE Directory

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

<http://www.paucp.com>

Attachment 4

Overall Goal Calculation;
Breakout of Estimated Race-Neutral
& Race-Conscious Participation

METHODOLOGY for Establishing the Overall Disadvantaged Business Enterprise (DBE) Goal for FFY 2023-2025 for:

*The City of Philadelphia's Division of Aviation
Philadelphia PA*

In fulfillment of the requirements of Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26), the City of Philadelphia's Division of Aviation has developed a proposed Overall Goal for FFY 2023-2025 for Airport Improvement Program (AIP)-funded projects at the Philadelphia International Airport (PHL) and the Northeast Philadelphia Airport (PNE). The methodology used to establish this goal is described below.

I. Detailed Methodology: Specific Steps

A. Amount of DBE Goal and List of Anticipated Program of Projects

The City of Philadelphia's Division of Aviation has established an overall DBE goal for FFY 2023-2025 for the Philadelphia International Airport (PHL) and the Northeast Philadelphia Airport (PNE) which is **18.8%**. The overall DBE goal is projected to be achieved through 3.6% race/gender-neutral means and 15.2% race/gender-conscious means. The overall goal represents the percentage of federal financial assistance that will be expended in United States Department of Transportation (USDOT)-assisted contracts with DBE firms.

The Division of Aviation expects to award approximately **\$355,950,000** in FAA-funded projects over the next three federal fiscal years for PHL and PNE. The 18.8% overall DBE goal indicates that the Division of Aviation has set a goal of awarding approximately **\$66,918,600** with DBEs over the FFY 2023-2025 triennial period.

Tables 1(a) and 1(b) represent the Division of Aviation's list of FAA-assisted projects considered in preparing this goal methodology.

Table 1(a)

PHL - Project Name / Description				
Fiscal Year		Estimated Project Cost	Construction	Design
FY23	Reconstruct Taxiway S (Phase 1)	42,500,000	38,250,000	4,250,000
	Reconstruct Taxiway Y (K to S)	12,000,000	10,800,000	1,200,000
	Rehabilitate RW 9R-27L (Design)	4,500,000		4,500,000
	VALE Equipment/ Infrastructure	4,500,000	4,050,000	450,000
	Restroom Phases 5-9	117,250,000	117,250,000	
FY24	Rehabilitate RW 9R-27L	40,500,000	40,500,000	
	Rehabilitate Taxiway E	6,000,000	5,400,000	600,000
	Rehabilitate TW S (Southern Feeder to 27R)	6,000,000	5,400,000	600,000
	(NEC) T/W S9 High Speed	13,000,000	11,700,000	1,300,000
FY25	Reconstruct Taxiway S (Phase 2)	42,500,000	42,500,000	
	Rehabilitate Taxiway Z	24,000,000	21,600,000	2,400,000
PHL Total		\$312,750,000	\$297,450,000	\$15,300,000

Table 1(b)

PNE - Project Name / Description				
Fiscal Year		Estimated Project Cost	Construction	Design
FY23	Rehabilitate Taxiway L (Construction Phase 2)	4,800,000	4,800,000	
	Rehabilitate Runway 15-33 (Design)	2,000,000		2,000,000
	Rehabilitate Taxiway C (phase 1)	4,800,000	4,320,000	480,000
	VALE/ZEV Infrastructure	2,000,000	1,800,000	200,000
FY24	Rehabilitate Runway 15-33 (Construction Phase 1)	10,000,000	10,000,000	
	Rehabilitate Taxiway C (phase 2)	9,600,000	8,640,000	960,000
FY25	Rehabilitate Runway 15-33 (Construction Phase 2)	10,000,000	10,000,000	
	PNE Total	43,200,000	39,560,000	3,640,000
Combined Totals		\$355,950,000	\$337,010,000	\$18,940,000

Based on the breakdown of the estimated dollars attributed to construction/construction related services and engineering/design/construction management services identified in the anticipated DOT-assisted projects, **Table 2** represents the weighted percentage of those dollars relative to the total estimated project costs.

Table 2: PHL – PNE Estimated Project Costs

Project Type	Estimated Project Costs	% of Total Estimated Project Costs (weight)
Construction/Construction Related Services	\$337,010,000	95%
Engineer/Design/Construction Management Services	\$18,940,000	5%
	\$355,950,000	100%

B. Determination of the Airport’s Market Area

The Airport has determined that its market area is regional (**see Table 3(a) below**). The market area was established using the seven counties from where 69% of DBEs are located that have participated in PHL’s AIP-funded projects over the past three fiscal years (**See Table 3(b) below**).

Table 3(a): PHL – PNE Regional Market Area

COUNTIES	
Bucks PA	Delaware PA
Burlington NJ	Montgomery PA
Camden NJ	Philadelphia PA
Chester PA	

Table 3(b): Number of DBEs by County / Location

Market Area	Number of DBEs by County (FY 2019, 2020, 2021)	%
Bucks County (PA)	2	
Chester County (PA)	1	
Delaware County (PA)	6	
Montgomery County (PA)	5	
Philadelphia County (PA)	7	
Burlington (NJ)	3	
Camden (NJ)	3	
Total (7 Counties)	24	69%
All Other Locations	11	31%
Combined Totals	35	100%

C. Step 1: Determination of Base Figure (Relative Availability of DBEs) (§ 25.45(c))

Based on information provided by the Airport concerning its proposed projects for FFY 2023-2025, the relative availability of DBEs to non-DBE firms was developed based on the specific North American Industry Classification System (NAICS) code and descriptions corresponding to those projects identified in Tables 1(a) and 1(b) above.

The data sources used for this analysis include:

1. 2020 County Business Patterns (CBP), U.S. Census Bureau, April 28, 2022
2. City of Philadelphia Office of Economic Opportunity Registry, May 2022
3. Pennsylvania UCP Directory, May 2022
4. State of New Jersey UCP Directory, May 2022

Table 4(a) represents the breakdown of subcontractible elements, by NAICS code, associated with the Airport's anticipated Construction and Construction Related service projects.

Table 4(b) represents the breakdown of subcontractible elements, by NAICS code, associated with the Airport's anticipated Engineering/Design/Construction Management related projects.

Table 4(a): DBEs by Relevant Construction / Construction Related NAICS Codes

NAICS Code / Description		DBE Firms	All Firms
236220	Commercial and Institutional Building Construction	60	644
237110	Water and Sewer Line and Related Structures Construction	30	81
237130	Power and Communication Line and Related Structures Construction	21	87
237310	Highway, Street, and Bridge Construction	47	118
237990	Other Heavy and Civil Engineering Construction	23	29
238110	Poured Concrete Foundation and Structure Contractors	19	231
238120	Structural Steel and Precast Concrete Contractors	20	43
238130	Framing Contractors	19	118
238190	Other Foundation, Structure, and Building Exterior Contractors	9	58
238210	Electrical Contractors and Other Wiring Installation Contractors	30	1211
238220	Plumbing, Heating, and Air-Conditioning Contractors	41	1689
238310	Drywall and Insulation Contractors	13	227
238320	Painting and Wall Covering Contractors	25	573
238340	Tile and Terrazzo Contractors	4	143
238350	Finish Carpentry Contractors	12	470
238910	Site Preparation Contractors	42	369
238990	All Other Specialty Trade Contractors	49	498
324121	Asphalt Paving Mixture and Block Manufacturing	0	19
327390	Other Concrete Product Manufacturing	1	22
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	11	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	8	47
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	20	232
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	6	97
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	4	27
444190	Other Building Material Dealers	7	376
484220	Specialized Freight (except Used Goods) Trucking, Local	21	250
493110	General warehousing and storage	3	216
541380	Testing Laboratories	14	80
541922	Commercial photography services	7	53
561612	Security Guards and Patrol Services	5	124
561621	Security Systems Services (except Locksmiths)	16	137
561730	Landscaping Services	1	2132
561990	All Other Support Services	13	203
562111	Solid Waste Collection	17	144
562112	Hazardous Waste Collection	1	5
562910	Remediation Services	14	101
Totals		633	10954

Table 4(b): DBEs by relevant Engineering/Design/Construction Management NAICS Codes

NAICS Code / Description		DBE Firms	All Firms
541310	Architectural Services	49	383
541320	Landscape architectural services	39	87
541330	Engineering Services	107	984
541340	Drafting services	9	16
541360	Geophysical Surveying and Mapping Services	4	7
541370	Surveying and Mapping (except Geophysical) Services	10	46
541611	Administrative Management and General Management Consulting Services	96	1432
541620	Environmental Consulting Services	50	209
541690	Other Scientific and Technical Consulting Services	25	397
561410	Document preparation services	0	164
TOTAL		389	3725

Using the DBE Directories and US Census Bureau data provided in Tables 4(a) and 4(b) above, the overall relative availability of DBE base figure is calculated in **Table 5(a)**. Because the Airport can estimate the projected amount of construction-related and professional service contracting opportunities, weighting (as recommended by USDOT's Tips for Goal-Setting and shown in Table 2 above) is possible. The weighted base figure is calculated in **Table 5(b)**.

Table 5(a): Overall Relative DBE Availability

Project	Number of Available DBEs	Number of All Firms	Relative Availability	
Construction / Construction Related Services	633	10,954	5.78%	
Engineering/Design/Construction Management Services	389	3,725	10.44%	
Combined Totals	1,022	14,679	6.96%	Overall availability of DBEs

Table 5(b) Weighted Base Figure

Project	Weight*	x	Availability	Weighted Base Figure
Construction / Construction Related Services	95.0%	x	5.78%	5.49%
Engineering/Design/Construction Management Services	5.0%	x	10.44%	0.52%
			Total	6.01%

*See Table 2.

II. Adjustments to the Base Figure (§ 25.45(d))

Subsequent to establishing the FFY 2023-2025 DBE goal base figure, the Airport examined available evidence to determine what adjustment, if any, would be required to ensure a narrowly-tailored goal.

A. Adjustment Factors Considered

The regulation states that there are several types of evidence that must be considered when adjusting the base figure. Those factors and how they were considered are noted below:

- *The current capacity of DBEs to perform work in your USDOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.*

The past participation for DBEs that PHL has realized in the past several years, was considered a **relevant** factor and is analyzed below.

- *Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.*

There was a disparity study conducted by the City of Philadelphia in 2020 which was not already factored into our base figure. Details on how the relevant portions of that study were included in our adjustment are noted below.

- *If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.*

Not applicable, as our base goal is not that of another recipient.

- *Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program.*

No additional statistical information was found or factored into this goal setting, beyond that which was accounted for in the City of Philadelphia’s 2020 disparity study.

- *Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.*

No additional statistical information was found or factored into this goal setting, beyond that which was accounted for in the City of Philadelphia’s 2020 disparity study.

Past Participation: Since the Airport’s anticipated contracting opportunities for FFY 2023-2025 are similar to recent years, the PHL and PNE historical overall DBE goals and goal attainments were examined relative to the consideration of past participation (**See Table 6**).

Table 6: PHL and PNE Historic DBE Goal Attainments

Fiscal Year	DBE Goal	Goal Attainment
2019	16.30%	8.99%
2020	17.93%	15.38%
2021	17.93%	16.51%
	MEDIAN	15.38%

Source: Division of Aviation’s Annual “Uniform Report of DBE Awards / Commitments and Payments

Disparity Study: The City of Philadelphia commissioned a disparity study in 2020 for city and Metro-area contracts. The disparity study analyzed the availability versus utilization of minority, women, and disabled-owned small businesses (M/W/DSBEs) in the Philadelphia Metropolitan Statistical Area (CMSA) for public works contracts; personal and professional services contracts; and services, supplies, and equipment contracts. PHL’s projected FAA-funded projects for FFY 2023-2025 are public works-based contracts, therefore, the Airport considered making an adjustment of its DBE base figure based upon the data from the disparity study for public works contracts.

The 2020 disparity study makes a goal recommendation of 35% for DBE participation for public works contracts. Because of the requirements in 49 CFR Part 26.45 for goal-setting, the Division of Aviation will not set its goal at 35%, but has determined, as it has in DBE past goal- setting

methodologies, that this is a relevant factor to incorporate into the base figure adjustment.

When applying the Step One weighted base figure of 6.01%, the Airport's historical median DBE goal attainment for previous FAA-funded activities of 15.38%, and the disparity study's recommendation for a goal of 35% for DBE participation in public works contracts, the resultant adjusted base figure is calculated in **Table 7** below.

Table 7: Base Figure Adjustment

Step One Base Figure	Median Past Participation	Disparity Study	Divided by	Adjusted Goal
6.01%	15.38%	35%	3	18.8%
= 56.39%				

Accordingly, the City of Philadelphia's Division of Aviation proposed overall DBE goal for FFY 2023-2025 AIP-funded projects is 18.8%.

III. Breakout of Estimated Race-Conscious/Race-Neutral Participation

The Division of Aviation will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. In addition to including Diversity, Equity, and Inclusion as a foundational tenet of the Airport's strategy, the Division of Aviation will use a combination of the following race-neutral means to increase DBE participation:

1. Reviewing procurements to ensure adequate time for bid preparation and that unnecessarily restrictive requirements are not included.
2. Disseminating information communications on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors).
3. Arranging and participating in DBE capacity-building and matchmaking events.
4. Ensuring distribution of the PAUCP DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
5. Conducting quarterly internal meetings/reporting with procurement, project management, and diversity staff to discuss upcoming procurements and potential for reducing barriers for DBEs to compete, such as unbundling, capacity-building, and bid notification.

To calculate the race-neutral and race-conscious split of the overall goal, the Airport analyzed its race-neutral achievement over the past three years. As reflected in **Table 8** below, the median of past race-neutral participation is 0.0%.

Table 8: PHL and PNE Historic Race-Neutral DBE Goal Attainments

FY	RN Portion of Goal	RN Goal Attainment
2019	3.81%	0.00%
2020	3.60%	0.00%
2021	3.60%	0.00%

Even though race-neutral attainment has not been as projected in the past, PHL understands that the regulations require that the maximum feasible portion of the overall goal is to be obtained through race-neutral means. PHL also acknowledges that COVID-19 has had detrimental impacts on DBE growth and contracting activity. Because of this, PHL is proposing to retain its previously FAA-approved race-neutral projection of 3.6% and increase its efforts to attain participation race-neutrally. That would result in a projection of attaining 3.60% using race-neutral means, and 15.2% using race-conscious means.

The Division of Aviation will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (26.51(f)) and it will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal; and
- DBE participation on a prime contract exceeding a contract goal.

IV. Process

Before establishing the overall goal, the Division of Aviation consulted with various minority trade organizations and small and/or minority business development agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Division of Aviation's efforts to establish a level playing field for the participation of DBEs.

PHL convened a roundtable of stakeholders on May 23, 2022 to consult with the airport on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and PHL's efforts to establish a level playing field for the participation of DBEs. In addition to internal Airport stakeholders, invited to this roundtable were minority, women's and general contractor groups, community organizations that included:

- Airport Minority Advisory Council
- Conference of Minority Transportation Officials – Philadelphia Chapter
- Women's Transportation Seminar – Philadelphia Chapter
- National Association of Women Business Owners – Greater Philadelphia Chapter
- Asian American Chamber of Commerce
- African American Chamber of Commerce of PA, NJ, & DE
- Greater Philadelphia Hispanic Chamber of Commerce of Greater Philadelphia
- Eastern Minority Supplier Development Council
- Women's Business Enterprise Center East
- Goldman Sachs 10,000 Small Businesses
- Ben Franklin Technology Partners
- Philadelphia Industrial Development Corporation
- Independence Business Alliance
- Philadelphia Area Labor Management Committee
- Greater Philadelphia Chamber of Commerce
- Urban Affairs Coalition
- PHL Diversity – A division of the Philadelphia Visitors and Convention Bureau
- Temple University Small Business Development Center

- City of Philadelphia's Law Department
- City of Philadelphia's Office of Transportation, Infrastructure, and Sustainability

A summary of this meeting, including the attendee list, input received, and the presentation provided is included as Appendix A of this Attachment. Following this consultation, the Division of Aviation posted a notice of the proposed overall goal on the Airport website (<http://www.phl.org>). The notice provided a copy of the methodology presentation.

The Division of Aviation will begin using the overall goal on October 1, 2022, unless the Division of Aviation has received other instructions from USDOT/FAA.

V. Contract Goals

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

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

The Division of Aviation will express its contract goals as a percentage of the total share of a USDOT-assisted contract.

Appendix A
2023 – 2025 DBE Goal Consultation
May 23, 2022

The following attendees participated in the virtual goal-setting consultation meeting

Name (Original Name)	Organization
Alea Bunch	Eastern Minority Supplier Development Council
Valarie Cofield	Eastern Minority Supplier Development Council
Regina Hairston	African-American Chamber of Commerce of PA# NJ & DE
Khine Zaw	Asian American Chamber of Commerce of Greater Philadelphia
Somaly Osteen	Asian American Chamber of Commerce of Greater Philadelphia
Erica Gibson	City of Philadelphia
Orlando Altamonte	City of Philadelphia
Michelle Flamer	City of Philadelphia Law Dept.
Colisa Harris	Delon Hampton
Nestor Torres	Great Philadelphia Hispanic Chamber of Commerce
Ken Anderson	Greater Phila Chamber of Commerce
James Campbell	Greater Phila Chamber of Commerce
Lori Piscopo	Hunt Engineering
Susan Menno	Hunt Engineering Co
Carolina Villegas	Itnova Consulting
Judy Bernicker	JBC Associates
Richard Horstmann	KSE Engineers
Denise Bailey	Milligan Consulting, LLC
Ayomide Komolafe	Milligan Consulting, LLC
Kristin Tighe	Milligan Consulting, LLC
Frank Petriccione	Palm/Built-Rite
Anthony Wigglesworth	Palm/Built-Rite
Marla S. Hamilton	Phila. Industrial Development Corp.
Kathleen Padilla	PHL
Deatrice Isaac	PHL
Deneen Wilson	PHL
Heather Redfern	PHL
Laura Frein	RIG Consulting
Tiffany King	SEPTA
Katie Capoferri	SEPTA
Mary Connell	SEPTA
Maura Shenker	Temple University SBDC
Tish Lewis	The Enterprise Center
Marc Coleman	The Tactile Group/Greater Phila Chamber of Commerce
Liz Walsh	Women's Business Enterprise Center

Following a discussion of the powerpoint presentation (attached), a general discussion was held on the goal methodology, issues impacting DBEs, and PHL's upcoming contracting opportunities. The following is a summary of comments received and discussions held at the meeting. None of the information provided yielded a revision of the proposed goal.

A total of 14 of questions and comments (Q/C) were received from the stakeholder community. Below is a summary of those questions and comments (Q/C) and PHL's answer or action (A).

1. Q/C: It may be helpful for stakeholder outreach to understand the types and geographic distribution of firms that have participated in PHL work in the past. A: PHL can provide this and work with stakeholders to understand the profile of successful firms.
2. Q/C: Can you explain the math behind the 6%, 15%, and 35%, why these are averaged together? A: It was explained that this is consistent with the methodology described by the regulation, where items are averaged together.
3. Q/C: Smaller firms may not have the capacity in construction to compete on a cost basis even if they can compete on a quality basis. A: PHL understands this challenge for small businesses and noted that recently, the City approved alternative methods of procurement (such as best value) that may be able to have an impact on this issue.
4. Q/C: How many tiers are monitored down for DBE participation? A: The USDOT program counts all subcontracting tiers, the City of Philadelphia's local program does not count all tiers.
5. Q/C: How can more services be provided to increase the race neutral participation? A: PHL looks to build capacity of smaller local construction firms with its stakeholders. It helps to know the airport environment. PHL takes a regional partnership approach with the Greater Philadelphia Chamber. Reducing barriers and capacity building will eventually bear fruit in time. It is a shared responsibility to increase race neutral participation between the DBE community and the prime contractor community.
6. Q/C: The Greater Philadelphia Chamber of Commerce has created an "Inclusive Growth Dashboard" for the region. A: This may be a useful tool for all stakeholders; PHL will certainly review it.
7. Q/C: How are primes counted in the federal program? A: All contract goals are subcontract goals. There are no goals/quotas for contracting with primes. A DBE prime contractor is counted as 100% race neutral.
8. Q/C: Good faith effort is not well defined; we have encountered issues with primes contacting them even though they don't do construction and primes still include them as part of their good faith effort. A: There is a difference in use of this and 'best efforts' between City-only funded procurements and FAA-funded procurements. For FAA-funded projects with a DBE goal, PHL receives information on DBEs used and good faith efforts with bids (as part of responsiveness). If the prime does not meet the goal, PHL does review the substance of the efforts; including if the prime bidder solicited DBEs in the appropriate NAICS codes. The DBE regulations have very detailed information on making good faith efforts determinations (that PHL follows) for USDOT-funded opportunities that contain a DBE goal.
9. Q/C: What is PHL doing to partner with the City's Office of Economic Opportunity (OEO) and Rebuild to advance capacity? A: PHL partners regularly with the OEO on outreach events and capacity-building workshops. For example, the Airport's annual Business Opportunity Forum (scheduled for September 30 this year) is done in conjunction with the City's Minority Enterprise Development Week (MEDWeek) events which is led by the OEO.
10. Q/C: How much of the 16% DBE achievement is attributable to supply efforts? A: PHL did an analysis of DBE use and two areas show as prominent areas: supply and trucking.

11. Q/C: How much will PHL partner with OEO and Rebuild to advance capacity of DBEs/MBEs/WBEs? What are the plans for the new fiscal year? A: These are distinct programs with distinct legal requirements, but a wealth of opportunity exists for partnership.

12. Q/C: Increasing capacity of black and brown contractors does not help the construction workforce due to union membership and lack of black and brown workforce. Black and brown contractors are having issues with non-minority union workers and accusations of unfair labor practices. A: PHL understands this challenge and it is likely one of the reasons for the prevalence of DBE attainment in the supply and trucking areas of work (referencing the Q/C 10 above).

13. Q/C: Need to engage in a collective effort with all agencies and departments to increase attainment. A: PHL agrees that working together and combining efforts not only helps to stretch city and stakeholder resources, but makes the efforts easier for DBEs to access information and resources in one location or at one event.

14. Q/C: Thank you for your time today and all you have done for the DBE/WBE/MBE community at PHL. A: PHL equally thanks its stakeholders for their time today and their partnership over the years.

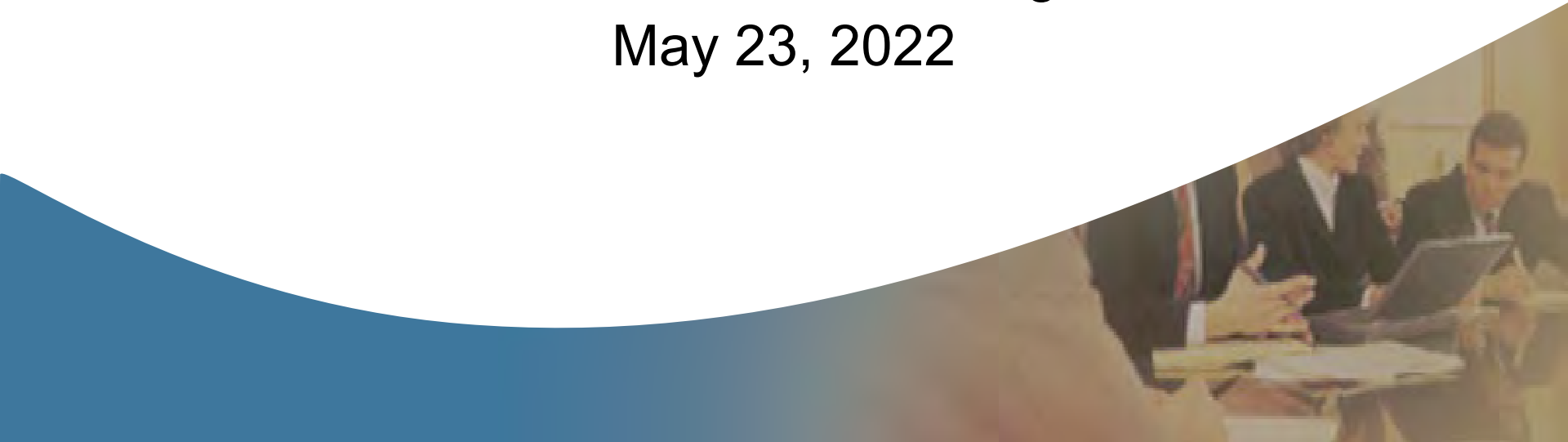
Photographs from the consultation meeting:



Presentation from the Consultation Meeting



Disadvantaged Business Enterprise (DBE)
Federal Fiscal Year 2023-2025
Goal Setting
Stakeholders Meeting
May 23, 2022



Overview

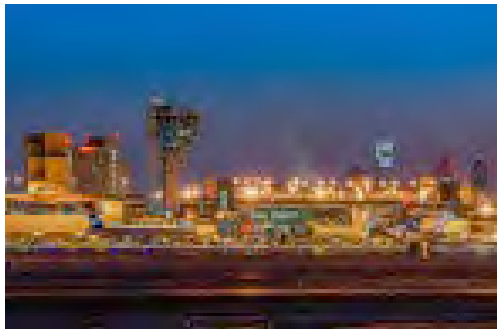
- Introductions
- Overview of PHL
- DBE Program Basics
- PHL Goal Setting Methodology
- How to Provide Comments
- Partnering Opportunities
- Questions

Introductions

- Kathleen Padilla
 - PHL Deputy Director of Aviation
 - Office of Business Diversity
- Denise Bailey
 - Milligan Consulting, LLC
 - Philadelphia MBE
 - Specializing in transportation oversight, economic development, diversity consulting
 - PHL's on-call DBE consultant

Overview of PHL

- Serves over 32 million passengers annually
- Generates \$16.8 billion in spending for the regional economy and accounts for more than 106,000 full-time jobs annually
- Provides business opportunities for professional services, construction, commodities, and concessions
- Capital Development Program (CDP) encompasses design, construction, and management of innovations and improvements to PHL and Philadelphia Northeast (PNE) airports



DBE Program Basics

- Governing US DOT Regulation
 - 49 CFR Part 26 and Participation by DBEs in Department of Transportation (DOT) Financial Assistance Programs
- PHL Responsibilities
 - Establish Overall Goals (every three years)
 - Determine Contract Goals
 - Certification
 - Performed as part of the Pennsylvania UCP (www.paucp.com)
 - Monitoring and Enforcement
 - Reporting

PHL Goals

Goal Type	Current Goal	Current Achievement
FAA DBE	17.93%	16.51%
FAA Airport Concession DBE (non car rental)	21.3%	34.95%
FAA Airport Concession DBE (car rental)	2.05%	1.56%
City of Philadelphia M/W/DSBE	30%	36%

Establishing Overall Goals

- 49 CFR 26.45 of CFR requires the Airport to set an overall DBE goals for FAA-funded projects at PHL and PNE.
- Overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in the airport's FAA-funded contract opportunities.
- Goal must reflect determination of the level of DBE participation PHL would expect absent the effects of discrimination.

DBE Goal Setting

- PHL's Current DBE Goal is 17.93%
- Past Participation

Fiscal Year	DBE Goal	DBE Achievement	Over/under
FY 2019	16.30%	8.99%	-7.31%
FY 2020	17.93%	15.38%	-2.55%
FY 2021	17.93%	16.51%	-1.42%

DBE Goal Setting

- PHL is currently developing its Federal Fiscal Years 2023-2025 DBE goals
- Goal-setting is a two-step process
 - Establish a base figure based on the relative availability of DBEs to participate in PHL's FAA-funded capital projects.
 - Make any necessary adjustments to the base figure based on local market conditions.

Calculating the Base Figure

- This goal focuses on the participation of DBEs in FAA-funded contracts that will be *awarded* over the next three years.
- Potential projects are forecast three years into the future.
- This provides a “best estimate” of potential contracting activity and opportunities.

PHL's Base Figure

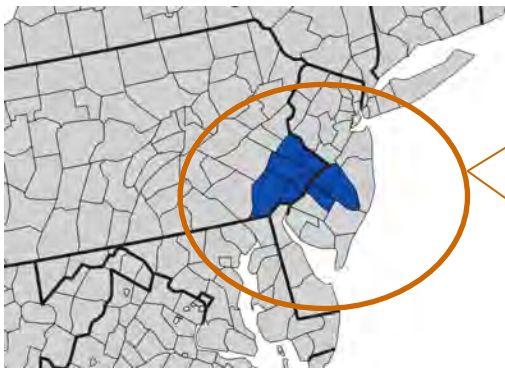
Federal Fiscal Year
2023 – 2025
Anticipated
FAA-Funded Projects

PHL - Project Name / Description	
Fiscal Year	
FY23	Reconstruct Taxiway S (Phase 1) - <i>Design and Construction</i> Reconstruct Taxiway Y (K to S) - <i>Design and Construction</i> Rehabilitate RW 9R-27L - <i>Design</i> VALE Equipment/ Infrastructure - <i>Design and Construction</i> Restroom Phases 5-9 - <i>Construction</i>
FY24	Rehabilitate RW 9R-27L - <i>Construction</i> Rehabilitate Taxiway E - <i>Design and Construction</i> Rehabilitate TW S (Southern Feeder to 27R) - <i>Design and Construction</i> (NEC) T/W S9 High Speed - <i>Design and Construction</i>
FY25	Reconstruct Taxiway S (Phase 2) - <i>Construction</i> Rehabilitate Taxiway Z - <i>Design and Construction</i>

PNE - Project Name / Description	
Fiscal Year	
FY23	Rehabilitate Taxiway L (Phase 2) - <i>Construction</i> Rehabilitate Runway 15-33 - <i>Design</i> Rehabilitate Taxiway C (Phase 1) - <i>Design and Construction</i> VALE/ZEV Infrastructure - <i>Design and Construction</i>
FY24	Rehabilitate Runway 15-33 (Phase 1) - <i>Construction</i> Rehabilitate Taxiway C (Phase 2) - <i>Design and Construction</i>
FY25	Rehabilitate Runway 15-33 (Phase 2) - <i>Construction</i>

PHL's Base Figure

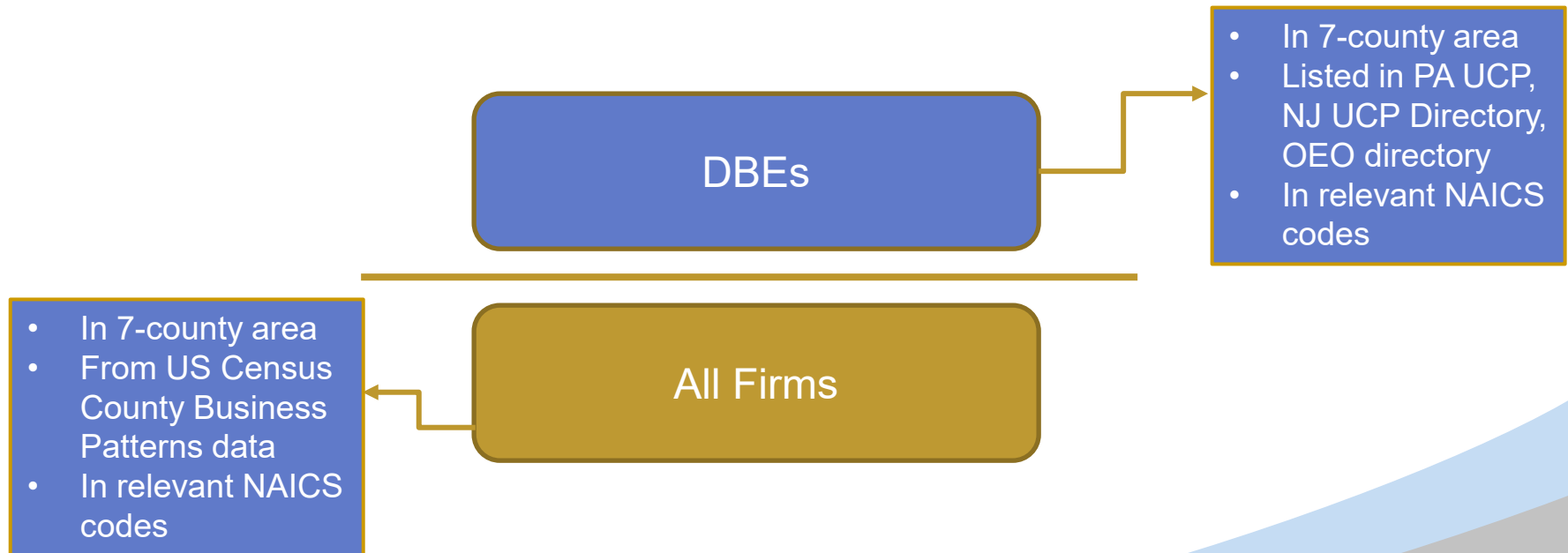
- 69% of DBEs awarded work on PHL projects in the past three years are located in a 7-county area



Philadelphia County, PA
Delaware County, PA
Montgomery County, PA
Bucks County, PA
Chester County, PA
Camden County, PA
Burlington County, PA

PHL's Base Figure

- Based on projected opportunities and past/current DBE participation, PHL estimates the % of DBEs compared to all firms that can participate in PHL's FAA-funded contracts.



Construction-Related NAICS Codes

NAICS Code / Description	
236220	Commercial and Institutional Building Construction
237110	Water and Sewer Line and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237310	Highway, Street, and Bridge Construction
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238310	Drywall and Insulation Contractors
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327390	Other Concrete Product Manufacturing
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423320	Brick, Stone, and Related Construction Material Merchant Wholesalers
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
444190	Other Building Material Dealers
484220	Specialized Freight (except Used Goods) Trucking, Local
493110	General warehousing and storage
541380	Testing Laboratories
541922	Commercial photography services
561612	Security Guards and Patrol Services
561621	Security Systems Services (except Locksmiths)
561730	Landscaping Services
561990	All Other Support Services
562111	Solid Waste Collection
562112	Hazardous Waste Collection
562910	Remediation Services

Design-Related NAICS Codes

NAICS Code / Description	
541310	Architectural Services
541320	Landscape architectural services
541330	Engineering Services
541340	Drafting services
541360	Geophysical Surveying and Mapping Services
541370	Surveying and Mapping (except Geophysical) Services
541611	Administrative Management and General Management Consulting Services
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
561410	Document preparation services

561410	Document preparation services
541690	Other Scientific and Technical Consulting Services
541620	Environmental Consulting Services

PHL's Base Figure

Project	Number of Available DBEs	Number of All Firms	Relative Availability	
Construction / Construction Related Services	633	10,954	5.78%	
Engineering/Design/Construction Management Services	389	3,725	10.44%	
Combined Totals	1,022	14,679	6.96%	Overall availability of DBEs

Availability

Project Type	Estimated Project Costs	% of Total Estimated Project Costs (weight)
Construction/Construction Related Services	\$337,010,000	95%
Engineer/Design/Construction Management Services	\$18,940,000	5%
	\$355,950,000	100%

Weighting

Project	Weight*	x	Availability	Weighted Base Figure
Construction / Construction Related Services	95.0%	x	5.78%	5.49%
Engineering/Design/Construction Management Services	5.0%	x	10.44%	0.52%
			Total	6.01%

Weighted Goal

Adjusting PHL's Base Figure

Once a base figure has been calculated, relevant evidence in the market area is examined to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. Considerations include:

- Past DBE participation
- Evidence from disparity studies
- Any available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, such as:
 - Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate
 - Data on employment, self-employment, education, training and union apprenticeship programs, to the extent that it is relevant

Adjusting For Past Participation

- Past participation of DBEs was determined to be the Relevant adjustment to consider.
- For past three years, that participation was:

Fiscal Year	DBE Achievement
FY 2019	8.99%
FY 2020	15.38%
FY 2021	16.51%

Regulations require using the median (or middle) past participation percentage

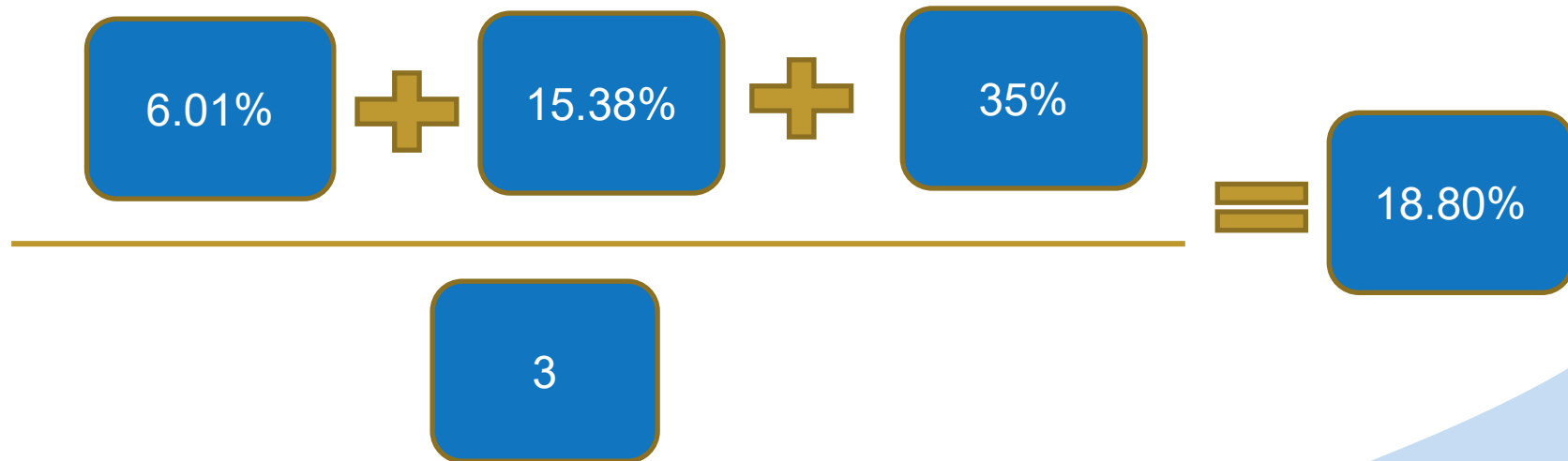
Adjusting For Disparity Study

- City of Philadelphia's 2022 Disparity Study was considered a relevant input into the goal-setting process.
- For relevant public works-type projects, that study recommended a goal of 35%



Adjusting PHL's Base Figure

Calculate the Overall Goal by *averaging* the results of Step 1 (6.01%) with Step 2 (15.38% + 35%)



Projecting Race-Neutral/Race Conscious Split

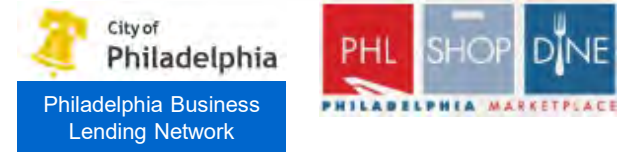
- Once the overall goal is established, PHL must project what part of the goal it anticipates achieving race-neutrally (i.e. no DBE goals set on agreements/contracts) and what portion it anticipates achieving race-consciously (i.e. setting a goal).
- Since the airport has exceeded its goals, it needs to factor that into the future use of race-conscious goals.
- Based on past participation and current agreements, PHL anticipates attaining 3.60% race neutrally and 15.2% race-consciously for its FFY 2023-2025 goal

Public Participation

- PHL is required to communicate with the public in two ways
 - Consultative process with stakeholders
 - Today
 - Publishing of goal on its website
- Please meet with us after this session or send us your comments on the goal setting to dbailey@miconsult.net
- Send comments by May 31, 2022

Partnering Opportunities

- PHL hosts business-capacity building workshops throughout the year. Recent topics have included:
 - Workforce Diversity and OSHA Requirements for Airport Construction Projects
 - Preparing for Capital Project Opportunities at Philadelphia International Airport
 - Doing Business with Regional Transportation Agencies
 - Negotiating and Managing Joint Venture and Concessions Agreements Workshop
 - Responding to Professional Services Requests for Proposals
 - Construction Firm Roundtables
- PHL's Annual Business Opportunity Forum is scheduled for September 30, 2022



Additional Information on PHL Opportunities

- See PHL's Capital Development Program Website for opportunity updates

<https://www.phl.org/about/cdp/opportunities>

A screenshot of the PHL Capital Development Program website content. It includes a breadcrumb trail: home > about phl > capital development > opportunities. The main heading is 'Let's Work Together' followed by a paragraph about the program's goals. Below this is a section for 'Professional Services Opportunities' for 'Quarter 2 - 2022'. A table lists three opportunities: 'On-Call Sustainability', 'Airport Utility Infrastructure Master Plan', and 'Architect and Engineer Services'.

home > about phl > capital development > opportunities

Let's Work Together

Capital Development offers an exciting opportunity to be part of an innovative effort to transform PHL into a premier global hub. By smartly sourcing and connecting large, small and diverse businesses to real opportunities, we will achieve our goals, engage the business community and deliver a first class experience for travelers.

Contracting opportunities will be updated regularly; tables below as of April 2022.

Professional Services Opportunities

Quarter 2 - 2022

OPPORTUNITY	DESCRIPTION	MORE INFORMATION
On-Call Sustainability	Assistance with the Sustainability program and planning efforts, ongoing implementation of goals, targets, and initiatives established in the Sustainability Action Plan; establishment of baseline metrics and projections, involvement with comprehensive management programs related to waste, energy, air emissions, climate change, noise, wetlands, and land management, water conservation, ground transportation, and possibly other sustainability initiatives with social (employee and stakeholder-based) and/or economic components at PHL and PNE.	
Airport Utility Infrastructure Master Plan	Provide Project Management services and develop and implement an Airport campus-wide Utility Infrastructure Master Plan.	
Architect and Engineer Services	City of Philadelphia, Division of Aviation seeks qualified applicants to provide comprehensive project management, engineering, survey, and location services for the implementation of a utility infrastructure master plan, 25-008 MBE and/or WBE	https://philawx.phila.gov/econtract/ Opportunity Number: 21220418152956



Questions/Discussion

Attachment 5

Good Faith Efforts Requirement and
DBE Submission Forms

**DISADVANTAGED BUSINESS ENTERPRISE
REQUIREMENTS**

DISADVANTAGED BUSINESS ENTERPRISES IN CITY CONTRACTS

**INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS
RELATING TO PARTICIPATION OF
DISADVANTAGED BUSINESS ENTERPRISES IN
FEDERALLY FUNDED PROJECTS**

This solicitation is issued under the Regulations of the U.S. Department of Transportation ("U.S. DOT"), 49 C.F.R. Part 26, as amended. It is the policy of the City of Philadelphia ("City") and U.S. DOT that disadvantaged business enterprises ("DBE"), as defined in 49 CFR Part 26, as amended, shall have a level playing field on which to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to this contract. All forms, information and documentation submitted are subject to the penalties of 18 U.S.C.S. 1001 relating to false statements and 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.

I. DBE GOAL

To create a level playing field on which Disadvantaged Business Enterprises ("DBEs") can compete fairly for U.S. Department of Transportation assisted contracts ("DOT-assisted contracts"), the City of Philadelphia ("City") acting through its DBE Program Office at the Philadelphia International Airport, has established, in connection with this bid, a goal of **12%** for the utilization of firms owned and controlled by DBEs. The DBE Contract Goal and the commitments upon which award is made will remain in effect throughout the life of any contract awarded as a result of this bid. Failure of a bidder to meet the DBE Goal and failure to provide and document "Good faith efforts" in response to the DBE Goal, in the manner specified herein, will result in rejection of the bid as nonresponsive.

II. CONTRACTOR ASSURANCES

The following provisions are binding upon the prime contractor who must also include these provisions in every subcontract, so that such provisions will be binding upon each subcontractor:

(a) Non-Discrimination. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, sex, sexual orientation or gender identity 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 City of Philadelphia 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.

For a contractor to the City, assessing sanctions or disqualifying the contractor from future bidding may take the form of suspension or debarment under the “City of Philadelphia Policy and Procedure for the Debarment and Suspension of Vendors and Contractors” for a period up to three (3) years, and liquidated damages would take the form of repayment of any shortfall in committed DBE participation.

III. DEFINITIONS

Consistent with the federal regulations, the following definitions apply for terms used in this bid and any resulting contract:

- (a) Certified DBE. An entity certified by the Pennsylvania Unified Certification Program (“PaUCP”) as a DBE. For more information visit www.paucp.com
- (b) Good Faith Effort. Efforts to achieve a DBE Goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

IV. COUNTING DBE PARTICIPATION

- (a) If the bidder submitting the bid and serving as prime contractor is a certified DBE, count the dollar amount of the work to be actually performed by the certified DBE toward the DBE Goal.
- (b) If the materials or supplies are purchased from a DBE supplier performing as regular dealer, count 60 percent of the cost of the materials or supplies toward the DBE Goal. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- (c) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward the DBE Goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (d) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE Goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE Goal.
- (e) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE Goal.
- (f) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

- (g) Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- (h) Count expenditures to a DBE contractor toward the DBE Goal only if the DBE is performing a commercially useful function on that contract.
- 1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for performance of the work, and other relevant factors.
 - 2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
 - 3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE is not performing a commercially useful function.
 - 4) When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The determination that the DBE is performing a commercially useful function will be based on the type of work involved and normal industry practices and that determination is not administratively appealable to US DOT.
- (i) The following factors are used in determining DBE credit for DBE Trucking Firms:
- 1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - 2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is a certified DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

- 5) The DBE may lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE owner-operator is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services since these services are not provided by a DBE.
- 6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services. The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

V. ACTIONS TO BE TAKEN BY BIDDER PRIOR TO AND AT BID SUBMISSION

In response to this bid, bidder must make a "Good Faith Effort" to subcontract portions of the project work to a certified DBE(s) to meet or exceed any DBE Goal established for this bid. Award of the contract will be conditioned on meeting these requirements. The demonstration of a Good Faith Effort is accomplished by seeking out DBE participation in the project given all relevant circumstances. Only DBEs certified by the PaUCP by the time of bid submission may be counted toward the DBE Goal; efforts to include firms not certified by the PaUCP are not Good Faith Efforts to meet the DBE Goal.

- (a) The following are the kinds of efforts that may be taken, but they are not deemed to be exclusive or exhaustive. The City will consider other factors and types of efforts that may be relevant:
 - 1) Efforts made to solicit through all reasonable and available means, the interest of all certified DBEs who have the capability to perform the work of the contract. Examples of these efforts are use of the PaUCP DBE Directory, attendance at pre-bid/pre-proposal meetings, advertising and/or written notices to certified DBEs. Use of a DBE in areas of work which it is not certified will not count towards bidder's Good Faith Efforts. Bidder should provide written notification, at least 15 calendar days before the bid opening, to allow the DBEs adequate time to respond to the solicitation. Bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations. Bidder may not reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/proposals in the contractor's efforts to meet the DBE contract goal.
 - 2) Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
 - 3) Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- 4) Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. 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. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the DBE Goal into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE Goal, as long as such costs are reasonable. Also, the ability or desire of bidder to perform the work of a contract with its own work force does not relieve the bidder of the responsibility to make a Good Faith Effort. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - 5) Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
 - 6) Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - 7) Efforts to effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; Pennsylvania DBE Supportive Services Center; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (a) Bidder must provide the following: (If bidder is a certified DBE, it is still obligated to use a Good Faith Effort to meet the DBE Goal, but the value of the work actually performed by the DBE bidder with its own work forces may be counted toward the DBE Goal, along with any work that the DBE bidder has committed to be performed by DBE subcontractors and DBE suppliers.)
- 1) Schedule for Participation (Form A attached) with the bid, which includes
 - The names and addresses of certified DBE(s) that will participate in the contract;
 - A description of the work that each certified 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;
 - The dollar/percentage¹ amount of the participation of each certified DBE firm participating;
- The Schedule for Participation represents the bidder's certification of a legally binding commitment to use the certified DBE(s) in the dollar/percentage amount and for the services indicated thereon.

¹ In calculating the percentage amount, Respondent may apply the standard mathematical rules in rounding off numbers.

- 2) Written confirmation (Form B attached) from the certified DBE(s) that it has agreed to participate in the contract as provided in the bidder's commitment; Form B must be submitted with the bid.
 - 3) A Request For Good Faith Efforts Review (Form C attached) with the bid if the DBE Goal is not met, including any Schedule For Partial Participation, demonstrating that bidder has made a Good Faith effort to meet the DBE Goal.
- (c) If the bidder fails to meet the DBE Goal, the bid must contain documentation of a "Good Faith Effort," the adequacy of which will be reviewed by the City ("Good Faith Effort submission"). The Good Faith Efforts submission must explain and document efforts made by bidder to obtain DBE participation commensurate with the DBE Goal. Mere *pro forma* efforts are not good faith efforts. A bidder submitting a Good Faith Effort submission is strongly encouraged to review Appendix A to Part 26, "Guidance Concerning Good Faith Efforts." Documentation must be verifiable and must include:
- 1) The names, street addresses, telephone and e-mail addresses of DBEs who were contacted, the dates of initial contact and the follow-up efforts made by bidder;
 - 2) A description of the information provided to the DBE to define the work to be performed;
 - 3) Documentation of the reasons why any DBE contacted would not agree to participate.
 - 4) 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.

If the Good Faith Effort Submission is deemed satisfactory by the City, the "Good Faith Effort" will be approved. In such case the contractor shall continue a "Good Faith Effort" throughout the life of the contract to increase the DBE participation to meet the DBE Goal. If the City does not approve the adequacy of the "Good Faith Effort," bidder's bid will be considered nonresponsive and the City will notify the bidder that the bid is rejected. The bidder will be given an opportunity for administrative reconsideration by a City official who did not take part in the original determination that bidder did not meet the DBE Goal or failed to make an adequate Good Faith Effort ("Reconsideration Official"). As part of this reconsideration, the bidder will be given an opportunity to provide written documentation or argument concerning the issue of whether it met the DBE Goal or made adequate Good Faith Efforts to do so. The bidder will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the DBE Goal or made adequate Good Faith Efforts to do so. The result of the reconsideration process is final and is not administratively appealable to the U. S. Department of Transportation.

- (d) Any bidder's bid that does not provide either certification of meeting the DBE Goal (including Form A and Form B described in Section V(b) above) or a Good Faith Effort submission (Form C described in Section V(b) above, and the documentation described in section V(c) above) will be considered nonresponsive and will be rejected without further review of the bid.

VI. ACTIONS REQUIRED BY PRIME CONTRACTOR AFTER AWARD

- (a) Prime Contractor shall include all assurances, as provided in Part II of these Requirements, in all subcontracts and Prime Contractor shall cause its subcontractors to conform to these assurances.
- (b) Prime Contractor must provide the City with executed subcontracts for each DBE within 90 days from the date of the notice to proceed given on the prime contract. Failure to provide the executed subcontract may result in a temporary stop of work on the 91st day of the contract until an acceptable DBE subcontract is provided to the City. Any time period involved in such a temporary stop of work will not extend the period of performance of the contract nor be accepted by the City as a justification for project time extension.
- (c) The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the City's written consent. Unless the DBE Program Office's written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Before requesting this consent, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the DBE Program Office, of its intent to request to terminate and/or substitute, and the reason for the request. The prime contractor must give the DBE five days to: respond to the notice, provide the DBE Program Office and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract, and provides the reason(s) why the DBE Program Office should not approve the prime contractor's action.

If the DBE Program Office approves the termination or substitution, the Prime Contractor is required to make a Good Faith Effort to re-contract the same or other commercially useful work with another certified DBE no later than seven days following receipt of the DBE Program Office approval.

- (d) Prime Contractor must maintain records necessary for compliance with DBE utilization obligations by indicating:
 - 1) The number of DBE and non-DBE subcontractors and the type of work, materials or services performed on the project;
 - 2) Efforts to secure DBE firms whenever a subcontractor is contemplated during a contract; and
 - 3) Documentation of all communication to obtain the services of DBEs on a project.
- (e) Prime Contractor must promptly pay all subcontractors for satisfactory performance of their contracts no later than ten (10) business days from receipt of each payment the City makes to the Prime Contractor. The Prime Contractor must promptly make full payment of retainage to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City.
- (f) When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

- (g) From the total of the amount determined to be payable on a partial payment, ten percent (10%) of such total amount will be deducted and retained by the City until the final payment is made, except as may be provided (at the Prime Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS in the "General Provisions" contract document. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Prime Contractor exercise his/her option, as provided in the subsection 90-08 referred to above, no such percent retainage shall be deducted.
- (h) In the event that successful bidder is found to be in noncompliance with these prompt payment requirements, the City may, at its discretion, withhold payment to said contractor pending payment being made to the subcontractor(s) in question. Any issue or dispute, which may affect the prompt payment of subcontractors, should be brought to the attention of the Airport contract manager, as well as to the attention of the DBE Program Office in situations involving DBE subcontractors, before a state of noncompliance is reached.
- (i) Prime Contractor must comply with the City's electronic payment tracking system as directed.
- (j) Upon completion of a DBE's work, the Prime Contractor must submit a certification of the actual amount paid to the DBE. If the actual amount paid is less than the amount of the subcontract, an explanation is required and subject to the review and action of the City.
- (k) The City has identified the following minority-owned financial institutions within the greater Philadelphia area: Asian Bank 913 Arch Street – 3rd Floor Philadelphia, PA 19107; Customers Bank 1015 Penn Avenue Wyomissing, PA 19610; Noah Bank 7301 Old York Road Elkins Park, PA 19027; United Bank of Philadelphia 30 South 15th Street, Suite 1200 Philadelphia, PA 19102 and encourages prime contractors to make use of these institutions.

VIII. FAILURE TO COMPLY WITH DBE REQUIREMENTS

- (a) Failure by the bidder to meet the DBE Goal and failure to provide a verifiable "Good Faith Effort" in response to this bid will result in rejection of the bid as nonresponsive.
- (b) Failure by a Prime Contractor and its subcontractors to carry out the DBE requirements is a material breach of contract and may result in termination of the contract, or imposition of any other remedy that the City deems appropriate, including repayment of any shortfall in committed DBE participation and debarment under the "City of Philadelphia Policy and Procedure for the Debarment and Suspension of Vendors and Contractors" for a period up to three years.
- (c) During and upon completion of the project, the City will review the actual payments to DBEs to determine compliance with the DBE commitments. If the DBE commitments are not met, written explanation from the contractor will be reviewed by the City. If the shortfall in meeting the DBE commitments is determined to be unjustified and unwarranted, the City may impose sanction(s) as appropriate including repayment of any DBE shortfall.
- (d) Contractors are required to cooperate fully and promptly with USDOT and City compliance reviews, certification reviews, investigations, and other requests for information. The Prime contractor agrees to submit, within the time limits prescribed by the City, all documentation that may be requested by the City, including, but not limited to, copies of subcontracts with the DBEs listed in the bid/proposal, purchase orders, monthly DBE reports, canceled

checks, etc. Failure to do so shall be a ground for appropriate action against the party involved including a finding of non-responsibility for future contracts and/or suspension and debarment.

- (e) Contractors must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 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. Violations of this prohibition constitute noncompliance with 49 CFR Part 26.

ATTACHMENTS

**FORM A
SCHEDULE FOR PARTICIPATION
BY
DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

Name of Bidder _____

Bid Opening Date: _____
(mm/dd/yyyy)

DBE	Description of Work or Supply Effort	NAICS Code(s) Under Which DBE Will Perform	DBE Participation	
			Dollar Amount \$	Percentage of <u>Prime Contract</u> (calculate Regular Dealer 60% rule if applicable)
Name				
Address				
Email				
Contact Person				
Name				
Address				
Email				
Contact Person				

Submission of this form constitutes the Bidder's written commitment to utilize the DBEs named.

Duplicate Form as Needed

Duplicate Form as Needed

Form A

PLEASE NOTE:

1. If the bidder is a DBE, it is still required to complete this form and must describe the work that it will perform with its own workforce and the dollar/percentage amount of the contract that this represents.
2. A binding commitment must have been achieved with the DBE for the work and percentage/dollar amount of participation (as reflected by the DBE's quotation) listed on this Schedule for Participation.
3. DBEs listed above must be certified by the PaUCP at the time of bid opening in order to count toward the DBE goal.
4. If DBE is a regular dealer performing a Supply Effort, count only 60% of the cost of the materials.

FORM B

CONFIRMATION OF DBE PARTICIPATION

City of Philadelphia

Bid Opening Date: _____
 (mm/dd/yyyy)

BID NUMBER	PROJECT	DBE GOAL
PRIME CONTRACTOR		
CONTACT PERSON		TELEPHONE NUMBER
COMPLETE THIS SECTION FOR DBE FIRM		
DBE FIRM		
CONTACT PERSON		TELEPHONE NUMBER
<p>I am a DBE certified by the Pennsylvania Unified Certification Program (PA UCP). I hereby certify that as a DBE, I quoted the price and type of work as described on the Prime Contractor's Schedule For Participation for the above referenced bid.</p> <p>Signature of DBE: _____ Date: _____ (Signature and Title of Company Official) (mm/dd/yyyy)</p> <p>I hereby certify, on behalf of the Prime Contractor, and intending to be bound thereby, that the information contained herein is true and correct to the best of my knowledge, information and belief.</p> <p>Signature of PRIME: _____ Date: _____ (Signature and Title of Company Official) (mm/dd/yyyy)</p>		

Note: Complete one form for each DBE on the project

Page 1 of 5

FORM C

REQUEST FOR GOOD FAITH EFFORTS REVIEW

Name of Bidder: _____

Date: _____

I, _____, request a reduction of the DBE Contract Goal specified in this Invitation and Bid for the participation of Disadvantaged Business Enterprises (DBEs) from _____% to _____%. I represent, under penalty of law and as evidenced by the attached documentation, that I have made good faith efforts prior to proposal submission to meet the DBE Contract Goal in accordance with the criteria set forth in 49 C.F.R. Section 26.53, but have been unable to achieve this goal for the following reasons*:

*You may attach supplemental pages and documentation if necessary.

REQUEST FOR GOOD FAITH EFFORTS REVIEW
SCHEDULE FOR Partial PARTICIPATION
BY
DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Name of Bidder _____

Bid Opening Date: _____
 (mm/dd/yyyy)

DBE	Description of Work or Supply Effort	NAICS Code(s) Under Which DBE Will Perform	DBE Participation	
			Dollar Amount \$	Percentage of Prime Contract (calculate Regular Dealer 60% rule if applicable)
Name				
Address				
Email				
Contact Person				
Name				
Address				
Email				
Contact Person				

Submission of this form constitutes the Bidder's written commitment to utilize the DBEs named.

Duplicate Form as Needed

Duplicate Form as Needed

Page 3 of 5

Name of Respondent: _____ Date: _____

A. CONTRACTOR'S ADVERTISEMENTS FOR PARTICIPATION

Have you advertised in general circulation media, trade association publications and minority or female focused media concerning subcontracting opportunities in general? If so attach copies of all such advertisements published by you within the past six months. If copies are not available, explain why and state the text of the advertisement(s) and the publications where they were printed.

B. NOTIFICATION TO DISADVANTAGED BUSINESS ENTERPRISES

- (1) Did you contact in writing any Disadvantaged Business Enterprise(s) to solicit their participation in this contract? If so, attach dated copies of all such solicitations.

- (2) Identify by name, address, date and telephone number each Disadvantaged Business Enterprise that you contacted orally, and name the person with whom you spoke. If your company maintains a telephone log, please attach relevant entries.

Page 4 of 5

Name of Respondent: _____ Date: _____

C. DISADVANTAGED BUSINESS ENTERPRISES UNAVAILABLE TO PARTICIPATE IN CONTRACT

Of those Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which were interested in the contract but which were unavailable to work on this contract or were unable to prepare a quote. State the reasons for the unavailability of each Disadvantaged Business Enterprise. The attached certification of unavailability form should be completed by the DBE and submitted for each unavailable firm whenever possible.

D. INFORMATION AND ASSISTANCE PROVIDED TO DISADVANTAGED BUSINESSES

Of those Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which you provided with plans, specifications and requirements of the contract. Detail all assistance you provide to interested Disadvantaged Business Enterprises and all efforts at negotiation to specific sub-bids below.

I HEREBY VERIFY THAT THE FOREGOING STATEMENTS ARE TRUE. THIS VERIFICATION IS MADE SUBJECT TO THE PENALTIES SET FORTH IN 18 Pa.C.S. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES, AND 18 U.S.C.S. 1001, RELATING TO FALSE STATEMENTS. I UNDERSTAND THAT THIS REQUEST FOR GOOD FAITH EFFORTS REVIEW WILL BE CONSIDERED AND APPROVED OR DISAPPROVED ON THE BASIS OF THE INFORMATION HEREIN PROVIDED.

Name (Signature)

Title:

Page 5 of 5

DUPLICATE AS NECESSARY

Name of Respondent: _____ Date: _____

**CERTIFICATION OF UNAVAILABILITY
OF DISADVANTAGED BUSINESS ENTERPRISES**

I, _____

do hereby certify that I was offered an opportunity to proposed on the above referenced

RFP for _____
(Describe Work or Supply Effort Solicited)

by _____
(Name of Prime Respondent's Representative Making Solicitation)

on _____
(Give Date of Solicitation)

but was unavailable to participate/unable to prepare a quote (strike inappropriate term) for the following reasons:

Name of Disadvantaged Business

Signature of Principal of
Disadvantaged Business Enterprise

Title

Date

Attachment 6

Certification Application Forms

The DBE Certification application and related forms for the Commonwealth of Pennsylvania may be found at

<https://paucp.dbesystem.com/>

Attachment 7

Procedures for Removal of a DBE's Eligibility

From the PA UCP Procedures Manual

CERTIFICATION APPEALS PROCESS **(Including Removal of Eligibility Proceedings)**

Purpose:

The Pennsylvania Unified Certification Program (PA UCP) Disadvantaged Business Enterprise (DBE) Certification Appeals Committee (Committee) entertains appeals concerning the denial of certification and appeals concerning the removal of eligibility by any of its Certifying Participants (CP). In accordance with the certification standards and procedures of 49 Code of Federal Regulations (C.F.R.), Part 23 (Part 23) and 26 (Part 26), the PA UCP affords firms denied certification or facing the removal of eligibility an administrative due process hearing in a manner consistent with state law. The Committee will act on behalf of the entire PA UCP and all PA UCP members will honor its determinations.

Composition:

The Committee is comprised of nine (9) voting members representing each of the nine (9) organizations in the PA UCP Oversight Committee. One of the nine (9) voting members will serve as Chairperson for a two-year term. A two-year term is necessary to ensure continuity of leadership. All Committee voting members will be appointed for a one-year term by their respective organizations. All Voting Members will be responsible for designating an alternate who can attend the scheduled hearing in their absence. Advisers are available to the Committee on an as-needed basis, including a legal adviser on a rotational basis.

Training:

The PA UCP Oversight Committee is responsible for ensuring that proper training and support is provided to the Committee.

Operating Procedures:

Any firm aggrieved by a denial or removal of eligibility decision will be afforded the opportunity to file an appeal with the Committee. However, consistent with institutional guidance an aggrieved firm will be informed that it does not forfeit the right to take an appeal to US DOT if it first elects to appeal to the Committee. The firm will also be informed that the ninety (90) day appeal right to US DOT set forth in Section 26.89(c) does not start to run until a final decision has been rendered by the Committee.

A decision will be deemed final when the firm is advised of the determination in a written letter detailing the Committee's findings and the portions of the record evidence that supported each finding. This letter shall provide the address and time frame for taking an appeal to US DOT. Firms that elect to file an appeal with the Committee as the result of an initial denial decision or removal of eligibility will be given thirty (30) calendar days to do so. Appellants must state their intention and reason(s) for the appeal in writing to the CP that issued the denial or recommended removal of eligibility. That CP will be responsible for notifying the Chairperson of the request so that the firm may be placed on the agenda. The appellant's letter will be acknowledged by a notice from the Committee informing them as to the date, location, and time for the hearing.

The Committee will conduct its regularly scheduled hearings in Harrisburg, Pennsylvania, at the headquarters of the Pennsylvania Department of Transportation or the Pennsylvania Turnpike Commission. Each proceeding will last approximately sixty (60) minutes. In the event that there are extenuating circumstances, the Committee may afford the appellant additional time.

If an appellant is unable to attend the scheduled meeting, he or she must submit a written explanation and justification for his or her inability to attend the meeting. The DBE regulation set forth in 49 CFR Part 26 requires that appeals for removal of eligibility be heard as soon as possible and does not afford the Committee the discretion to continue a proceeding over an extended period of time. In addition, Part 26 also allows an appellant to present information and arguments in writing in lieu of a hearing. Therefore, while the Committee will review and evaluate every request on a case-by-case basis, it will be unable to grant a continuance in the absence of compelling circumstances.

During each hearing, a presenter from the CP that made the denial determination or removal of eligibility will make a brief presentation outlining the reasons for a given determination. The presenter will be given up to fifteen (15) minutes to make this presentation. The presenter will originate from the CP that made the determination but will not be able to vote or participate in any deliberations at the conclusion of the proceeding.

Following this, the appellant will be given up to fifteen (15) minutes to present its position. Absent a compelling reason, the Committee will consider all record

evidence but will not consider new information provided at the time of the proceeding.

Following both presentations, the Committee members will be given up to fifteen (15) minutes to seek clarification relating to any points addressed in either presentation. The proceeding will then adjourn and the Committee members will be given up to fifteen (15) minutes to deliberate and make a determination as to the firm's eligibility.

Special Procedures for Removal of Eligibility Proceedings:

Consistent with Section 26.87 of Part 26, firms recommended for denial of recertification or subject to removal of eligibility for any reason will be afforded the opportunity to participate in an informal administrative due process hearing. A stenographer will be present and a verbatim transcript will be made. The hearing will be conducted in a similar fashion to the initial denial proceedings with the addition of the stenographer and the transcript. Firms wishing to obtain copies of the transcript will be asked to contact the CP that generated the proceeding. Section 26.87 hearings will be conducted during regularly scheduled hearings. However, a special hearing may be convened on an as-needed basis and in the event of a conflict of interest involving any Committee members or other circumstances.

A proceeding to remove eligibility may be based upon a written complaint that satisfies the specificity requirements of Part 26. US DOT, a certifying member, or any third party may initiate a proceeding. Consistent with Part 26, the Committee will not accept a general allegation or an anonymous complaint.

Consistent with Section 26.109(b), the Committee will keep the identity of a given complainant confidential at the election of the complainant. If such confidentiality will hinder an investigation or result in a denial of administrative due process to other parties, the Committee will advise the complainant of the need to waive this privilege. Consistent with Section 26.87 of Part 26, the Committee is obligated to ensure that the separation of functions component of an ineligibility proceeding is honored. To this end, every voting member involved in the removal of eligibility proceeding will originate from an office or personnel that did not take part in any action leading to or seeking to implement the removal of eligibility and does not take direction from an office or personnel involved in the initial action that gave rise to the proceeding. Potential conflicts of interest will be anticipated and addressed either by the Committee directly or, upon request by the Committee Chairperson, by the Oversight Committee.

In a Section 26.87 hearing, the firm will be afforded the opportunity to advance arguments against the ineligibility determination and to respond to determinations made by the initiating complainant. Consistent with Section 26.87, a DBE firm will retain its certification status during the pendency of any ineligibility proceeding.

Internal Procedures:

The Committee Chairperson will be responsible for scheduling the hearings and for generating an agenda. The hearing dates will be scheduled in advance. A minimum of two (2) firms should be on the agenda in order to convene a hearing. The starting time of the hearing will be at the discretion of the Chairperson. Appeals must be received at least thirty (30) days prior to the next scheduled hearing in order to be placed on the agenda. The individual presenter will be responsible for generating a background package and for submitting this package to each Committee members no later than ten (10) days prior to the scheduled hearing. This packet will be limited to relevant record evidence and a two-page maximum executive summary.

Committee Dispositions:

Five (5) voting members constitute a quorum. The Committee will meet in an executive session to make a determination following each appeal. Non-legal advisers will be excused from these sessions. The decision to certify or deny will be by a majority vote. In the event of a tie vote, the Chairperson's vote will dictate the outcome of the appeal.

The Chairperson of the Committee will be responsible for generating a letter relative to all Committee dispositions. In the event that a denial or removal of eligibility is upheld, the firm will be provided with a letter delineating the reasons for the denial or removal of eligibility under Part 26 and relating the portions of the record evidence that gave rise to the determination. The firm will be advised of its right to initiate an appeal with US DOT.

In the event that a firm is granted certification or is adjudged to be qualified to remain in the program, a letter informing the firm of Committee's decision will be sent and also indicate that a follow-up letter will be sent by the certifying participant that currently retains the file. The follow up letter to the firm will include all necessary details relative to DBE certification (e.g. no change affidavit, certification number, reassessment date, the type(s) of work the firm can perform in the program, etc.). The Committee will entertain appeals brought by an initial applicant or a DBE facing a removal of eligibility. In either instance, the provisions of Part 26, Subparts D and E will be applied uniformly by the Committee in making a disposition.

Ineligibility decisions will be based upon the criteria set forth in Part 26, Subparts D and E including changes in the firm's circumstances that render it ineligible; information that was not available at the time of the initial certification; a change in the certification standards since the firm was certified; or a documented finding that the certification was factually erroneous. Following an ineligibility proceeding and decision, the Chairperson of the Committee will generate a written notice of the decision setting forth the reasons for the decision and the portions of the record

evidence that gave rise to each and every conclusion. The complainant or the concerned operating administration of US DOT will also be provided with this notice.

The Chairperson will also advise the firm of its appeal rights to US DOT once the Committee has made an administratively final determination.

The appellant will be notified in writing of the determination of the Committee within fifteen (15) days following the hearing or proceeding. If the firm receives a favorable determination, the letter will include the certification number, reassessment date, and the type of work classification(s). The firm will also be advised of the need to file annual updates.

Waiting Period for Reapplication:

Any firm that wishes to reapply to the PA UCP following a denial determination may do so six months after the hearing or proceeding date.

Confidentiality for Applicant Submissions:

The Committee members will make every effort to ensure that all documents containing financial information and findings related to an individual review remain confidential, including, but not limited to, the individual personal net worth statements and accompanying documentation submitted by prospective or existing DBE firms as well as complainants.

Information for US DOT:

If a firm takes their appeal to US DOT, the CP must provide US DOT with a well organized, indexed, and paginated transcript of the entire administrative record within 20 days of the request.

Attachment 8

UCP Agreement



November 30, 2001

***COOPERATIVE MEMORANDUM OF AGREEMENT TO ESTABLISH A
UNIFIED DISADVANTAGED BUSINESS ENTERPRISE
CERTIFICATION PROGRAM AMONG UNITED STATES
DEPARTMENT OF TRANSPORTATION RECIPIENTS IN THE
COMMONWEALTH OF PENNSYLVANIA***

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PREAMBLE - HOW THE COMMONWEALTH OF PENNSYLVANIA'S UCP CAME TO BE

The undersigned present the following Agreement establishing a Unified Certification Program (UCP) for the Commonwealth of Pennsylvania (PA UCP) for review and approval by the Secretary of the United States Department of Transportation (DOT). Pursuant to the federal regulation set forth in 49 Code of Federal Regulations (C.F.R.), Section 26.81, this document is being submitted within the time allotted, together with the requisite eighteen-month UCP implementation schedule and a PA UCP Training, Forms and Procedures Manual (Manual).

To arrive at this juncture, the Commonwealth organized a PA UCP Task Force (UCP TF) comprised of participants from the Disadvantaged Business Enterprise (DBE) certifying participants (CERTIFYING PARTICIPANTS) within the Commonwealth as well as several other participants. The CERTIFYING PARTICIPANTS are: the Pennsylvania Department of Transportation (PENNDOT), the Port Authority of Allegheny County (PORT AUTHORITY), the City of Philadelphia's Minority Business Enterprise Corporation (MBEC), the Southeastern Pennsylvania Transportation Authority (SEPTA) and Allegheny County's Minority/Women/Disadvantaged Business Enterprise Program (COUNTY). Other representatives hailed from the Pennsylvania Turnpike Commission (TURNPIKE COMMISSION), the Allegheny County Airport Authority (AUTHORITY) and Allegheny County's Department of Public Works (DPW). A representative from the Federal Highway Administration (FHWA) also attended many of the task force meetings.

Although invitations were extended to over two hundred Commonwealth entities, representatives from the CERTIFYING PARTICIPANTS and the other named entities provided the only constant presence at scheduled meetings and proceeded without opposition with the initiative to develop the PA UCP. A copy of the letter used to initiate the PA UCP is set forth in the Manual.

The UCP TF first began meeting on a bi-monthly basis in January of 2000. Most of the representatives were involved with the DBE certification process within their own organizations and were sufficiently versed in the intricacies of the new federal regulation. In addition, a legal adviser from PENNDOT was present at most meetings to ensure compliance with every aspect of Section 26.81 and the other certification standards and procedures set forth in Subparts D and E of the federal regulation.

One of the first objectives formulated by the UCP TF was to determine the best format for the PA UCP. Since the federal regulation makes it clear that there is no prescribed format for a UCP, the UCP TF began by discussing several options. After much debate, the UCP TF elected to create mandatory reciprocity by requiring that the five major CERTIFYING PARTICIPANTS continue to perform certification functions for the entire Commonwealth of Pennsylvania (Commonwealth) subject to prescribed guidelines aimed at ensuring uniformity and "one-stop shopping" for DBE applicants. This decision was made after buy-in from each of the UCP TF member organizations and after formal notice was given to the other known DOT recipients within the Commonwealth.

Following several orientation meetings, the UCP TF created numerous subcommittees to develop the various components of an operational PA UCP. Topics addressed by the subcommittees included: ownership rights; internal appeals; intake; oversight; investigatory forms and procedures; the PA UCP directory; procedures and training operating manual; legal issues; UCP web site(s); shared data bases; education and training; finance and resource allocation; application, personal net worth statements, recertification applications and no change affidavits; ethics, and the UCP agreement and eighteen (18) month implementation schedule.

A Steering Committee (SC) comprised of one member of each organization represented on the UCP TF provided leadership and direction for the PA UCP initiative. The SC also served as the vehicle for ensuring that deadlines were being honored and as the conduit for the exchange of information.

The UCP TF determined that it would be best to make use of existing resources and pull together resources, where required. The consensus was that a web-based system associated with certification, recertification and the requisite PA UCP directory would need to be structured so that each of the CERTIFYING PARTICIPANTS would be able to access current information about the status of any given DBE applicant or firm certified by the CERTIFYING PARTICIPANTS. The UCP TF has considered the possibility of outsourcing and centralizing this function but is concerned about cooperative compatibility issues arising out of state procurement laws and procedures. A web-based system is currently being developed that will link the CERTIFYING PARTICIPANTS and enable each one to keep abreast of additions or deletions to the DBE roster and any pending decisions or investigations. An informational web site that can be accessed in part by the general public and in whole by the CERTIFYING PARTICIPANTS and the other members of the UCP TF has been up and running for several months.

Since "one-stop shopping" is at the heart of any UCP, the PA UCP will be structured so that the DBE applicant can choose the CERTIFYING PARTICIPANT to receive its application. However, upon receipt by a given CERTIFYING PARTICIPANT, the application will either be handled internally or forwarded to another CERTIFYING PARTICIPANT where there is a backlog or geographic considerations make it more cost-efficient for another CERTIFYING PARTICIPANT to entertain the application. The PA UCP Agreement includes an Exhibit E that depicts functional relationships of the proposed PA UCP including an internal appeal process.

It is the intention of the CERTIFYING PARTICIPANTS to make all certification decisions on behalf of all DOT recipients in the Commonwealth. The signature page and the acknowledgement documents from all DOT recipients within the Commonwealth confirm that this will be the case. A copy of the concurrence language to be added to funding documents for Commonwealth Subrecipients that receive federal funding through PENNDOT is included in the submission packet. Notice has been given to all concerned that PA UCP certification decisions shall be binding on all DOT recipients within the Commonwealth and that the PA UCP shall provide "one-stop shopping" to applicants for certification. Once a DBE applicant has been certified by any of the CERTIFYING PARTICIPANTS, all other DOT recipients within the Commonwealth will recognize the

certification by one as certification by all. This comports with the "one-stop shopping" component of 49 C.F.R. Section 26.81 and ensures that a prospective DBE applicant will need to apply only once for a DBE certification that will be honored by all recipients. If a CERTIFYING PARTICIPANT or other PA RECIPIENT/SIGNATORY is unwilling to abide by a decision made by a PA UCP CERTIFYING PARTICIPANT, an internal mechanism for dispute resolution will be in place to address issues as they arise.

One additional component of the PA UCP is to be noted. To ensure program integrity and quality assurance, the UCP TF has formed a PA UCP Oversight Committee (OC). The guidelines for the OC are set forth in the Manual. The UCP TF determined early on that there is great benefit to having a separate committee oversee the process and ensure that it is working well. The OC will essentially pick up where the SC left off once the PA UCP is implemented

As required, the PA UCP Agreement is being submitted for approval by DOT and sets forth in detail the terms and conditions of the participants' understanding. The Agreement includes the required topics set forth in Section 26.81 dealing with pre-certifications, processing of applications from out-of-state applicants, and the format and content of the requisite DBE directory. It also addresses such concerns as appeals, third party complaints, confidentiality, continuing education, training, and a code of conduct and ethics. The Agreement memorializes that the PA UCP will at all times ensure that its agents act in compliance with the certification standards and procedures set forth in 49 C.F.R. Part 26, Subparts D and E. As memorialized in the Agreement, all participants in the PA UCP will cooperate fully with oversight, review, and monitoring activities of the DOT and all its directives and guidance concerning certification matters. All CERTIFYING PARTICIPANTS have agreed to follow the guidelines set forth in a PA UCP code of conduct and ethics in carrying out the DBE certification components of 49 C.F.R. Part 26. By submitting the Agreement, the CERTIFYING PARTICIPANTS are also ensuring that the PA UCP will have sufficient resources and technical expertise to carry out the certification function of the DBE regulation.

With this background, the UCP TF is proud to present the attached Agreement. This Agreement was sent to all known DOT recipients for review and comment during a forty-five day comment period. All comments received during this prescribed period were taken into account.

The benefits of developing a new process from the ground up are immeasurable. Numerous friendships and constructive debates have evolved over the course of the UCP TF developmental process. The UCP TF looks forward to implementing the PA UCP over the course of the next eighteen months.

AGREEMENT NO. 360001
FEDERAL ID NO. 23-6003105
FEDERAL ID NO. 23-1642972
FEDERAL ID NO. 25-6011888
FEDERAL ID NO. 25-6001017
FEDERAL ID NO. 23-6003047
FEDERAL ID NO. 23-6003240
FEDERAL ID NO. 25-1843496

**COOPERATIVE MEMORANDUM OF AGREEMENT TO
ESTABLISH A UNIFIED DISADVANTAGED BUSINESS
ENTERPRISE CERTIFICATION PROGRAM AMONG UNITED
STATES DEPARTMENT OF TRANSPORTATION RECIPIENTS
IN THE COMMONWEALTH OF PENNSYLVANIA**

THIS COOPERATIVE MEMORANDUM OF AGREEMENT, made and entered into this 26TH day of February, 2002, by and between the Commonwealth of Pennsylvania, acting through its Department of Transportation, with a mailing address at PO Box 3447, Harrisburg, PA 17105-3447, hereinafter referred to as PENNDOT,

and

Southeastern Pennsylvania Transportation Authority, a body corporate and politic exercising the powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with a mailing address at 1234 Market St., Eleventh Floor, Philadelphia, PA 19107, hereinafter referred to as SEPTA,

and

Port Authority of Allegheny County, a public transportation entity within the City of Pittsburgh, with a mailing address at 345 Sixth Avenue, Third Floor, Pittsburgh, PA 15222-2527, hereinafter called PORT AUTHORITY,

and

ALLEGHENY COUNTY, acting through its M/W/DBE Program and its Department of Public Works, a political subdivision of the Commonwealth of Pennsylvania with a mailing address at County Office Building Room 416, 542 Forbes Avenue, Pittsburgh, PA 15219-2904, hereinafter called COUNTY,

and

the City of Philadelphia, acting through its Finance Department of the Minority Business Enterprise Council of the City of Philadelphia, with a mailing address at 1401 JFK Boulevard, Suite 330, Philadelphia, PA 19102-1666, hereinafter called MBEC,

and

the PENNSYLVANIA TURNPIKE COMMISSION, an independent commission organized under the laws of the Commonwealth of Pennsylvania, with a mailing address at P.O. Box 67676, Harrisburg, PA 17106, hereinafter called TURNPIKE COMMISSION,

and

the ALLEGHENY COUNTY AIRPORT AUTHORITY, a not-for-profit entity, with a mailing address at 1000 Airport Boulevard, Suite 4000, Landside Terminal, P.O. Box 12370, Pittsburgh, PA 15231-0370; hereinafter called AUTHORITY,

and

THE UNITED STATES DEPARTMENT OF TRANSPORTATION RECIPIENTS IN THE COMMONWEALTH OF PENNSYLVANIA LISTED ON EXHIBIT A.

and

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*PENNDOT, SEPTA, COUNTY, PORT AUTHORITY, and MBEC when used collectively are hereinafter referred to, for the purposes of this Agreement and the implementation of the Commonwealth of Pennsylvania's Unified Certification Program (PA UCP), as the CERTIFYING PARTICIPANTS. The term "UCP TF" refers to all of the CERTIFYING PARTICIPANTS, the TURNPIKE COMMISSION, DPW, and the AUTHORITY, the entities that developed the PA UCP. The term "PA RECIPIENTS/ SIGNATORIES" refers to all DOT RECIPIENTS within the Commonwealth of Pennsylvania (Commonwealth) that receive funds directly or through another recipient, through the programs of the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration, including all of the CERTIFYING PARTICIPANTS. Where obligations are imposed directly on the CERTIFYING PARTICIPANTS, it is understood that by signing this Agreement, the PA RECIPIENTS/SIGNATORIES are in accord. The term "NON-CERTIFYING PARTICIPANTS" refers to the PA RECIPIENTS/ SIGNATORIES not actively engaged in the Disadvantaged Business Enterprise (DBE) certification process.

WITNESSETH:

WHEREAS, 49 Code of Federal Regulations (C.F.R.) Section 26.81 mandates that all Commonwealth DOT RECIPIENTS (PA RECIPIENTS) that receive Federal funds (from the three impacted operating administrations of the United States Department of Transportation (DOT), the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA)) within a given state participate in a Unified Certification Program (UCP) for prospective and existing DBEs; and,

WHEREAS, all PA RECIPIENTS/SIGNATORIES recognize that they are under a mandate to enter into and execute this Cooperative Memorandum of Agreement (the Agreement) establishing a UCP for the Commonwealth (PA UCP); and,

WHEREAS, the TURNPIKE COMMISSION (a subrecipient of DOT funds), DPW, (a subrecipient of DOT funds), and AUTHORITY (an entity that receives funds directly from the FAA) elected to assist the CERTIFYING PARTICIPANTS with the creation of the PA UCP, and have evidenced their commitment to the PA UCP by joining the CERTIFYING PARTICIPANTS at the table to develop the PA UCP; and,

WHEREAS, the CERTIFYING PARTICIPANTS comprise the existing DBE certifying entities within the Commonwealth; and,

WHEREAS, the CERTIFYING PARTICIPANTS convened a meeting on January 20, 2000 to assume a leadership role in the development of a UCP for all Commonwealth entities that have DBE certification program responsibilities; and,

WHEREAS, on March 7, 2000, the CERTIFYING PARTICIPANTS issued a letter inviting all of their PA RECIPIENT counterparts (including Subrecipients) to partner with the CERTIFYING PARTICIPANTS by joining a PA UCP Task Force (UCP TF) designed to

develop the format for the PA UCP, the content of the Agreement, and the requisite PA UCP Implementation Schedule; and,

WHEREAS, the letter informed all known PA RECIPIENTS that pursuant to 49 C.F.R. Part 26 (Part 26), all PA RECIPIENTS that receive funds from the FHWA, FTA, and FAA are required to sign the Agreement to be submitted to the Secretary of DOT for approval no later than March 4, 2002 (or otherwise indicate their concurrence in funding documents for grantees that receive funds directly from PENNDOT); and,

WHEREAS, the CERTIFYING PARTICIPANTS, the TURNPIKE COMMISSION, the AUTHORITY, and DPW, along with a representative from FHWA, provided a constant presence at regularly scheduled meetings held from January 2000 and served as members of the UCP TF; and,

WHEREAS, as the result of these meetings, the UCP TF has designed a PA UCP that is consistent with the certification standards and procedures set forth in Part 26, Subparts D and E in general, and with the UCP provisions set forth in Subpart E, Section 26.81 in particular; and,

WHEREAS, subject to the approval of DOT, the CERTIFYING PARTICIPANTS have pledged to perform all DBE certification functions on behalf of the PA UCP and by executing the Agreement, the other PA RECIPIENTS/SIGNATORIES have agreed to allow the CERTIFYING PARTICIPANTS to operate and conduct the business of the PA UCP in the manner prescribed in this Agreement and to abide by its decisions; and;

WHEREAS, the PA RECIPIENTS/SIGNATORIES will ensure that applicants for certification or recertification are required to apply only once for a DBE certification that will be recognized by all PA RECIPIENTS and will honor the "one-stop shopping" requirement of Section 26.81; and,

WHEREAS, the PA RECIPIENTS/SIGNATORIES are committed to ensuring that the PA UCP has sufficient resources and technical experience to be fully operational no later than eighteen (18) months following the approval of the Agreement by the DOT Secretary; and,

WHEREAS, the PA RECIPIENTS/SIGNATORIES desire to enter into this Agreement to ensure compliance with Subparts D and E of Part 26 and to set forth their respective performance responsibilities and financial obligations.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the PA RECIPIENTS/SIGNATORIES agree, with the intention of being legally bound, to the following:

ARTICLE 1 – INCORPORATION OF RECITALS

1.01 Recitals. The foregoing recitals are hereby incorporated by reference as a material part of this Agreement.

ARTICLE 2 –MISSION STATEMENT

2.01 Commitment to the Mission of “One-Stop Shopping.” Consistent with Part 26, Section 26.81, the PA RECIPIENTS/SIGNATORIES have banded together to form a DBE UCP for the entire Commonwealth. The PA RECIPIENTS/SIGNATORIES are committed to ensuring that all applicants for DBE certification within the Commonwealth are afforded “one-stop shopping” through the establishment of the PA UCP. Applicants for such certification will be required to apply only once for a DBE certification that will be recognized and honored by all the CERTIFYING PARTICIPANTS and all PA RECIPIENTS/SIGNATORIES. To effectuate this result, the CERTIFYING PARTICIPANTS will perform any and all certification functions. A decision made by any one of the CERTIFYING PARTICIPANTS will be recognized as a decision by all in accordance with Section 26.81 of Part 26. A list of all known

PA RECIPIENTS/SIGNATORIES is set forth in Exhibit A, which is attached to and made part of this Agreement. The CERTIFYING PARTICIPANTS, acting through PENNDOT, will ensure that Subrecipients indicate their willingness to abide by the rulings of the PA UCP and to recognize as DBEs those entities that are certified by the CERTIFYING PARTICIPANTS in a concurrence provision to be inserted into their funding documents.

- 2.02 Adherence to the UCP Mandate.** The PA RECIPIENTS/SIGNATORIES, acting through the CERTIFYING PARTICIPANTS, agree to adhere to all requirements for certification set forth in Subparts D and E of Part 26 and all existing or future corrective amendments or clarifying or correction documents that impact the certification standards and procedures of Part 26. The PA UCP will carry out the nondiscrimination provisions of Part 26 and cooperate fully with the oversight, review, and monitoring activities of DOT and its operating administrations. Consistent with Part 26, the CERTIFYING PARTICIPANTS will ensure that all certifications issued by the PA UCP are pre-certifications that have been made final prior to the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

ARTICLE 3 - FORMAT OF THE UCP

- 3.01 Chosen Format - Mandatory Reciprocity.** Inasmuch as Part 26 does not prescribe the format for a state's UCP, the UCP TF has selected a system of mandatory reciprocity among the CERTIFYING PARTICIPANTS. The CERTIFYING PARTICIPANTS are: PENNDOT, SEPTA, MBEC, PORT AUTHORITY, and COUNTY. The CERTIFYING PARTICIPANTS will continue to operate as separate entities but have agreed to perform their certification functions using the same forms, guidelines, and procedures. This approach is consistent with institutional guidance issued by DOT's Office of General Counsel (official question and answer posted on April 12, 1999).
- 3.02 Manner of Operation.** Several committees comprised of at least one

representative from each of the CERTIFYING PARTICIPANTS will oversee the UCP process and handle internal appeals and administrative due process hearings. In adopting this format, the UCP TF has instituted safeguards and measures to ensure that the process is fair and uniform. The CERTIFYING PARTICIPANTS will make every effort to educate prospective applicants about the PA UCP certification process. A copy of a Process Flow Map depicting the step by step process for certification by the PA UCP is set forth in Exhibit B, which is attached to and made part of this Agreement.

3.03 Types of Participants. The PA RECIPIENTS/SIGNATORIES understand and agree that the PA UCP shall be comprised of the CERTIFYING PARTICIPANTS as well as the other entities that currently constitute the class of PA RECIPIENTS and serve as SIGNATORIES to this Agreement. Other entities throughout the Commonwealth that have interest in the PA UCP may also join the ranks of the PA UCP. As indicated in the PA UCP Standards and Procedures Manual (Manual), which is incorporated by reference as if physically attached to this Agreement, its membership will be comprised of entities designated as either Certifying Participants or Non-Certifying Participants.

3.04 “One-Stop Shopping.” Utilizing the mandatory reciprocity format, the CERTIFYING PARTICIPANTS will make all certification decisions on behalf of the PA UCP. By signing this Agreement, the PA RECIPIENTS/SIGNATORIES understand and agree that mandatory reciprocity is the accepted format. The CERTIFYING PARTICIPANTS will ensure that DBE applicants are afforded “one-stop shopping” under the guiding principle that certification by any one CERTIFYING PARTICIPANT constitutes certification by all. The PA UCP will be designed with the ease of the applicant in mind and the PA RECIPIENTS/SIGNATORIES will ensure that the PA UCP is user-friendly and easily accessible.

ARTICLE 4 – RELATIONSHIP OF THE RECIPIENTS

- 4.01 Commitment to an Operational PA UCP.** The PA RECIPIENTS/SIGNATORIES will honor and follow the certification standards and procedures of Part 26 and will ensure that the PA UCP is fully operational within eighteen (18) months following the date of approval by the DOT Secretary. The PA RECIPIENTS/SIGNATORIES understand and agree that failure to abide by Part 26 DBE certification standards and procedures could result in a compliance review by the concerned DOT operating administration.
- 4.02 Immunity.** Since the PA RECIPIENTS/SIGNATORIES are and remain separate political subdivisions, public agencies, airports and transit authorities, each shall be immune from and not assume liability for the actions taken by any other legal entity; including, but not limited to, the CERTIFYING PARTICIPANTS. This immunity provision is consistent with the Commonwealth Procurement Code set forth in Title 62 of the Pennsylvania Consolidated Statutes, Section 101 *et. seq.* In the event that a CERTIFYING PARTICIPANT or another member of the class of PA RECIPIENTS/SIGNATORIES is named in any lawsuit or claim, the CERTIFYING PARTICIPANT or other member of the PA RECIPIENTS/SIGNATORIES shall be responsible for any suits or claims brought by third parties or resulting from a decision that it rendered or an action that it took. Should any claim or suit require the assistance or resources of the PA UCP, the PA UCP, acting through the CERTIFYING PARTICIPANTS and other PA RECIPIENTS/ SIGNATORIES, may, where practicable, provide assistance in the preparation for the suit or claim. The CERTIFYING PARTICIPANTS and all PA RECIPIENTS/ SIGNATORIES shall not assume liabilities other than those expressly stated in this Agreement. Nothing in this provision shall be interpreted to waive the sovereign immunity of the COMMONWEALTH.
- 4.03 Third Party Rights.** It is agreed by all PA RECIPIENTS/SIGNATORIES that in no provision in this Agreement or other statements prior to or contemporaneous with this Agreement, there is created any right or expectation in any third party or third

parties (including, without limitation, subcontractors) enforceable at law or in equity or any other proceeding against any PA RECIPIENT/SIGNATORY to this Agreement, its officers, board, subsidizers, employees, agents or assigns.

ARTICLE 5 – PA UCP CODE OF ETHICS

- 5.01 Program Integrity.** The CERTIFYING PARTICIPANTS will ensure that program integrity is the cornerstone of PA UCP operations and that prospective applicants to the DBE program are afforded “one-stop shopping” that is mandated by Part 26. As evidence of its commitment to both program integrity and “one-stop shopping,” the UCP TF has crafted a Code of Ethics (COE). The COE is intended to present guiding principles for the operation, conduct, and actions taken by the CERTIFYING PARTICIPANTS.
- 5.02 Subject Matter of the COE.** The COE is comprised of three sections that focus on serving the public interest, respecting the dictates of Part 26 certification standards and procedures, and ensuring personal and organizational integrity. In recognition of the confidentiality provisions of Part 26, the corrective amendment to Part 26, and of the guidance set forth in DOT’s supplemental notice of proposed rulemaking, dated September 8, 2000 (SNPRM), the CERTIFYING PARTICIPANTS will ensure that program personnel are informed of the significance of protecting and safeguarding personal financial information consistent with Federal, state and local law. A PA UCP Oversight Committee (OC) will oversee the entire PA UCP process and function as the body that will ensure that the CERTIFYING PARTICIPANTS make a concerted effort to adhere to the guiding principles set forth in the COE.
- 5.03 Integration of the COE.** The COE has been integrated into the Manual that will serve as the working document for the entire PA UCP. A copy of the COE is set forth in Exhibit C, which is attached to and made part of this Agreement.

ARTICLE 6 – DEFINITIONS

- 6.01 Incorporation of Part 26 Definitions Section 26.5.** The PA UCP recognizes that Section 26.5 of Part 26 sets forth definitions that apply to the operation of its program and has incorporated these definitions by reference as if physically attached to this Agreement.
- 6.02 Creation of Terms Specific to the PA UCP.** In addition to the definitions set forth in the regulatory text of Section 26.5, the PA UCP has developed working definitions to clarify terms that apply to its own unique operation. These terms are set forth within the provisions of this Article.
- 6.03 Certification Appeals Committee.** A committee organized by the PA UCP that will meet on a regular basis to entertain appeals of eligibility or ineligibility decisions rendered by any of the CERTIFYING PARTICIPANTS. At a minimum, the Committee will be comprised of one representative from each of the CERTIFYING PARTICIPANTS who did not take part in any decision making process. The Committee will conduct both internal appeals from certification applicants and the administrative due process hearings required for removal of eligibility proceedings under Section 26.87 of Part 26.
- 6.04 Certifying Participants.** SEPTA, PENNDOT, PORT AUTHORITY, COUNTY and MBEC.
- 6.05 DBE Certification Process.** The Part 26 process by which a prospective applicant for the DBE program is determined to be eligible or ineligible. The certification standards and procedures are set forth in Subparts D and E of Part 26.
- 6.06 DBE Certification Affidavit.** The PA UCP Application to be used by DBEs as part of the “one-stop shopping” certification process. This document is set forth in the form of an affidavit, must be submitted with a sworn and notarized statement, and must be deemed complete before the ninety (90) day certification period consistent with Part 26. At such time as a national form is distributed, it will replace the PA

UCP Application in its entirety.

- 6.07 **DOT**. The United States Department of Transportation.
- 6.08 **DOT Funds**. Funds derived directly or through another recipient from the FHWA, FTA, and FAA.
- 6.09 **Implementation Schedule**. A document that must accompany the Agreement that indicates the manner in which the UCP will become fully operational within eighteen (18) months following approval of the Agreement by the DOT Secretary. In accordance with the regulations, a complete agreement that is not disapproved or remanded [by the Secretary] within 180 days of receipt is deemed to be accepted.
- 6.10 **Ninety (90) Day Decisions**. The time frame in which certification decisions must be made under Part 26. It will commence upon the date that the Application and all supporting documentation required by Part 26 have been received and have been deemed complete.
- 6.11 **Non-Certifying Participants**. All PA RECIPIENTS not actively engaged in or performing DBE certification functions (and any other entities that elect to join the group). For purposes of this Agreement, the NON-CERTIFYING PARTICIPANTS are also referred to as the PA RECIPIENTS, since this group is comprised of all other recipients of funds from FHWA, FAA, and FTA including all Subrecipients.
- 6.12 **No Change Affidavit**. A signed, notarized statement completed by a DBE firm on the anniversary date of its certification affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership or control or any material changes in the information provided in its Application. This document is a requirement under Part 26.
- 6.13 **Notice of Change**. A written affidavit to be submitted by a DBE firm within thirty (30) days of any change in its circumstances that impacts its ability to meet Part 26 eligibility standards relative to business size, disadvantage, ownership and control. This document is a requirement of Part 26.

- 6.14 On-Site Review.** A required component of the certification review process under Part 26 that will take place during the ninety (90) day period following the date that the application is deemed complete. This entails a visit to the applicant firm's physical location(s) to verify information provided in the Application and collect any additional information deemed necessary for the PA UCP to make a well-reasoned and informed certification decision.
- 6.15 Oversight Committee.** A group organized for the express purpose of ensuring that Part 26 certification standards and procedures are implemented and enforced.
- 6.16 PA Recipients.** Consistent with Section 26.5 of Part 26, all Commonwealth entities, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FHWA, FTA, or FAA, or that have applied for such assistance.
- 6.17 Personal Net Worth (PNW) Statement.** A signed, notarized statement confirming that each owner whose ownership and control is being relied upon for purpose of obtaining DBE certification has a personal net worth (PNW) that does not exceed the threshold amount of \$750,000.00. The statement is submitted along with appropriate documentation consistent with Part 26. [This term will have no effect on certification of airport concessionaires unless and until DOT amends its rules concerning the airport concessionaires program to establish a PNW requirement for concessionaires.]
- 6.18 Signatories.** The PA RECIPIENTS and the COUNTY including PENNDOT and all airport, transit authorities and other entities within the Commonwealth that receive funds from the FHWA, FTA, and the FAA. The term is used in this document to designate the binding nature of the commitment made by the PA RECIPIENTS.
- 6.19 Statement of Disadvantage.** A notarized document signed by each presumptively disadvantaged individual applying for DBE certification in accordance with Part 26. The applicant firm must certify that it meets Part 26 standards for social and economic disadvantage.

- 6.20 **Subrecipients.** Those entities that receive federal funds through the state department of transportation.
- 6.21 **UCP TF.** The group convened for the purpose of developing the PA UCP.

ARTICLE 7 – PA UCP OVERSIGHT COMMITTEE AND FUNCTION

- 7.01 **Purpose.** To ensure that the PA UCP complies with all aspects of Part 26, Subparts D and E, and preserves program integrity, it will operate under the direction of an Oversight Committee (OC). The OC will take effect at the time that the PA UCP comes into being, which is currently understood to be eighteen (18) months following approval of this Agreement by the DOT Secretary.
- 7.02 **Functions.** The OC will ensure that Part 26 certification standards and procedures are implemented and enforced. The OC will also ensure that its members cooperate fully with oversight, review, and monitoring directives and activities of DOT related to certification. The OC will meet several times a year to ensure that the PA UCP Part 26 mandates are being met and that the PA UCP is in compliance with Part 26 and all DOT directives. OC members will also consult with one another to resolve issues on an as-needed basis. As evidence of its commitment to the PA UCP, the UCP TF has developed the following objectives and functions for the OC:
- Ensure that the PA UCP is functioning as designed.
 - Monitor the regulatory environment and keep abreast of regulatory changes.
 - Initiate and coordinate education and training.
 - Ensure continuity of process.
 - Resolve disputes between and among the CERTIFYING PARTICIPANTS.
 - Ensure end-user customer satisfaction.
 - Ensure that certification determinations are made within the ninety (90) day time period mandated by Part 26.
 - Ensure that a system of internal controls is in place to create and maintain a reliable and valid PA UCP database.

- Ensure the integrity of the certification and appeal processes.
- Ensure the timeliness and accuracy of the PA UCP web site data and information.
- Provide centralized communication with DOT.
- Develop and maintain a PA UCP strategic plan.
- Ensure compliance with the Implementation Schedule and milestone calendar.

7.03 Composition. The OC will be comprised of one member of each of the CERTIFYING PARTICIPANTS, and one member of the AUTHORITY, DPW, and the TURNPIKE COMMISSION. The chairperson of the OC will serve in this capacity for one year and each of the participating entities will have the opportunity to serve as chairperson of the OC. Any NON-CERTIFYING PARTICIPANT that expresses interest may be considered for membership on the OC. The charter of the OC is outlined in the Manual.

ARTICLE 8- THE INTAKE PROCESS

8.01 The PA UCP Application. Until such time as a national application is disseminated by DOT, the CERTIFYING PARTICIPANTS agree to use their own DBE Certification Affidavit that appears in the Manual. All PA RECIPIENTS/SIGNATORIES will recognize this document as the document to be used to initiate the DBE certification process within the Commonwealth. The CERTIFYING PARTICIPANTS also agree to use the other forms set forth in the Forms Section of the Manual including the requisite “No Change Affidavit,” “Notice of Change,” “PNW Statement,” “Statement of Disadvantage,” “Recertification Affidavit,” and “Option to Transfer/Renounce” required by Part 26.

8.02 “One-Stop Processing” of Applications. The PA UCP Application will be received by any of the CERTIFYING PARTICIPANTS. Depending upon considerations of geography and resources, the Application will be reviewed by the CERTIFYING PARTICIPANT that initially receives the document or forwarded to

another CERTIFYING PARTICIPANT. In either event, the CERTIFYING PARTICIPANT involved at any step of the process will ensure that the DBE applicant firm receives a formal acknowledgement of its application both at the point of entry into the process and at any point where an application is forwarded from one CERTIFYING PARTICIPANT to another. The Process Flow Map set forth in Exhibit B depicts the entire process under which an application is received or forwarded and by which identifying information concerning the applicant firm is entered into the PA UCP database.

8.03 Formal Acknowledgement that an Application is Deemed Complete.

Recognizing that Section 26.83 of Part 26 requires that certification decisions be made within ninety (90) days of receiving all information from the applicant firm, the CERTIFYING PARTICIPANT conducting the intake will review the Application for completeness and notify the applicant of the date this occurs. An internal checklist contained in the Manual sets forth the general standard by which the Application is reviewed for completeness and the types of submissions that must be provided by the applicant. The reviewing CERTIFYING PARTICIPANT will ensure that its certification decision is issued within ninety (90) days of the date that the Application is deemed complete or otherwise follow the provision of Section 26.83 that allows for a one-time sixty (60) day extension for extenuating circumstances. In such event, the CERTIFYING PARTICIPANT will honor the regulatory requirement that the applicant firm be provided with written notice and a full explanation as to the reason for the delay. The CERTIFYING PARTICIPANTS understand and agree that consistent with Part 26, should a CERTIFYING PARTICIPANT fail to make a decision within ninety (90) days, this inaction shall be viewed as a constructive denial of certification giving rise to an appeal by the applicant firm to DOT in accordance with Part 26, Section 26.89.

8.04 Communication Component. The CERTIFYING PARTICIPANTS, as well as the other PA RECIPIENTS/SIGNATORIES, will ensure that there is effective communication within the prospective DBE and prime contracting communities and that these communities are made aware of how the PA UCP will operate when the

PA UCP is implemented. PA UCP certification-related documents and information will be accessible through the Internet and agency web sites as well as in printed form from the offices of any of the CERTIFYING PARTICIPANTS. Prospective applicants will also be informed about separate agency requirements that arise under state or local laws such as prequalification and bulletin listings, to the extent applicable. With awareness of the language in the proposed SNPRM, the PA UCP will provide supplemental forms where necessary for the benefit of applicants required to submit additional information relative to the fulfillment of other requirements outside the DBE program that are not inconsistent with Part 26.

8.05 Requests for Additional Information. In the event that the Application submitted by the prospective applicant firm is deemed incomplete or deficient, the firm will be given fifteen (15) calendar days to submit the requisite documentation. Should the information not be provided within the allotted time, another letter will be issued informing the applicant firm that if the requested information is not received within an additional fifteen (15) calendar days, the application will be returned and the file will be closed. The CERTIFYING PARTICIPANTS recognize that Section 26.109(c) specifies that a failure to cooperate by virtue of the applicant's failure to respond to requests for information constitutes a separate ground for a certification denial decision. Therefore, should the situation arise where the applicant firm is recalcitrant and unwilling to respond to reasonable informational requests for information deemed necessary to supplement the Application, the CERTIFYING PARTICIPANTS may also determine that the provisions of Section 26.109(c) should be invoked and that the applicant firm should be issued a denial based upon the failure to cooperate. As with any denial, the PA UCP will also provide internal appeal rights or, in the event of an ineligibility or removal of eligibility determination, the opportunity for a Section 26.87 hearing.

8.06 Processing of Recertifications and Update Submissions. The CERTIFYING PARTICIPANT that handles the initial certification will be expected to handle the Recertification Application as well as the "Notice of Change" and "No Change Affidavit" required on the annual anniversary date of a firm's certification.

ARTICLE 9 – THE PA UCP DATABASE

- 9.01 Access and Maintenance.** Consistent with the chosen format for the PA UCP, the DBE database will be accessible by each of the CERTIFYING PARTICIPANTS, and, may, where necessary, be accessible to NON-CERTIFYING PARTICIPANTS. A web-based system (System) will serve as the source of accurate, timely, and up-to-date information for tracking the DBE certification process. The System will be accessed through the PA UCP's home page and housed on a server. The CERTIFYING PARTICIPANT that initially receives the Application will input basic applicant information into the System via a web browser.
- 9.02 Access by the Public and Security Matters.** The CERTIFYING PARTICIPANTS agree to make general information input into the System and subsequently entered into the PA UCP DBE Directory available to the public. The CERTIFYING PARTICIPANTS agree that detailed or sensitive financial information or other confidential information submitted by an applicant firm will be kept confidential in accordance with Part 26.
- 9.03 Information Related to Dispositions.** Information relating to a certification determination or disposition will be input by the CERTIFYING PARTICIPANT that renders the decision and will contain a notation as to the nature of the determination and the date that this occurs. In the event that certification is granted, the CERTIFYING PARTICIPANT will ensure that the System contains the date of the certification, the date of certification expiration, the North American Industry Classification System (NAICS) work code (s) and the specific work that the firm is authorized to perform.
- 9.04 Interrelationship with the DBE Directory.** The CERTIFYING PARTICIPANTS will ensure that the System serves as the conduit for the requisite PA UCP Directory to be made available to the public in electronic form as well as in print. The CERTIFYING PARTICIPANTS will ensure that the data is accessible through routing and variable report outputs established by the UCP TF and that it is

periodically assessed by the OC.

ARTICLE 10 – INITIAL TRAINING AND CONTINUING EDUCATION

- 10.01 PA UCP Manual – A Work in Progress.** The CERTIFYING PARTICIPANTS understand and agree that they must keep abreast of information and additional requirements contained in any and all updates, corrections or guidance documents related to Part 26 certification standards and procedures. To this end, the OVERSIGHT COMMITTEE will update the Manual periodically and track any and all official pronouncements issued by DOT that directly or indirectly impact the PA UCP.
- 10.02 Continuing Education.** The CERTIFYING PARTICIPANTS will schedule training sessions to ensure that DBE program personnel and prospective and existing DBE firms are well-versed in Part 26 certification standards and procedures and any guidance documents that issue. The CERTIFYING PARTICIPANTS will also ensure that the relevant contracting communities are kept abreast of developments that impact the conduct and purpose of their work.

ARTICLE 11 – PA UCP INITIAL CERTIFICATION/RECERTIFICATION PROCEDURES

- 11.01 Overview of Initial Certification.** As noted in earlier articles of this Agreement, the PA UCP is committed to operating in accordance with Part 26 certification standards and procedures. The CERTIFYING PARTICIPANTS will perform the required site visit and the other six (6) review steps cited in Section 26.83 of Part 26, including a job site visit to any on-going project in the Commonwealth that has a significant field component. The CERTIFYING PARTICIPANTS will also honor and comply with the certification standards and procedures set forth in the airport concessionaire portion of the federal regulation and will recognize the Memorandum of Understanding entered into between DOT and the Small Business Administration (SBA). The

CERTIFYING PARTICIPANTS will ensure that an applicant firm meets the group membership, size, disadvantaged status, ownership, and control standards. The applicant will be required to submit a completed Application with all required supporting documentation. In the event that any one of the CERTIFYING PARTICIPANTS does not have sufficient resources to conduct the requisite site visit, the OC will be consulted for guidance and may, where appropriate, request that another CERTIFYING PARTICIPANT perform the site visit on the initial CERTIFYING PARTICIPANT'S behalf.

11.02 Ninety (90) Day Decisions. As noted in Article 8 of the Agreement, once the Application is deemed complete, the CERTIFYING PARTICIPANT will ensure that the applicant is sent a letter indicating that the application package has moved into the review phase of the process. The CERTIFYING PARTICIPANT will ensure that trained personnel conduct an on-site visit to the office of the applicant firm to perform an interview and that the applicant firm is provided with a list of information necessary for the upcoming interview. In those instances where there are extenuating circumstances that require that the review period exceed the ninety (90) day period allotted for certification decisions that are deemed complete, the CERTIFYING PARTICIPANT will adhere to the Part 26 requirement that the applicant be notified as to the reason for the delay and of the need for an extension not to exceed sixty (60) days.

11.03 Relationship to Prequalification and Other Agency Requirements. The CERTIFYING PARTICIPANTS will provide applicant firms with information to the extent applicable and practicable, where separate requirements, outside the DBE program, such as prequalification and bulletin listings, must be obtained prior to performing work for a given entity. In such event, the CERTIFYING PARTICIPANTS will notify the applicant firm that the responsibility is on the firm to ensure that it initiates this separate process. The CERTIFYING PARTICIPANTS will make available a PA UCP informational brochure in print as well as in electronic form on the PA UCP web site.

- 11.04 The Interview Process.** The CERTIFYING PARTICIPANT processing the Application will ensure that the requisite interview is performed and will make use of various internal confidential documents and checklists set forth in the Manual. If, during the interview, additional documentation is required that the applicant is unable to produce at that time, the applicant firm will be given fifteen (15) calendar days to provide the requisite information by means of a letter left with the applicant firm which details the needed information. In those instances the CERTIFYING PARTICIPANT may, in its discretion, use the one-time additional sixty (60) day extension provided for in Part 26. The CERTIFYING PARTICIPANT will conduct a job-site visit.
- 11.05 The CERTIFYING PARTICIPANT'S Findings.** As the result of the review of the Application, the completion of all of the steps delineated in Section 26.83, and any documentation resulting from the site visit and any job site visits, the CERTIFYING PARTICIPANT will complete the applicable internal documents that serve as the basis for making an eligibility decision.
- 11.06 Home State Certification.** Consistent with the discretion given to the CERTIFYING PARTICIPANTS by Part 26, the PA UCP will require that an out-of-state applicant obtain certification from the UCP located in the state in which it maintains its principal place of business before submitting an application to the PA UCP. As required by Part 26, the home state UCP will be expected to share information and documents regarding the firm and the CERTIFYING PARTICIPANTS will comply with all such requests. The CERTIFYING PARTICIPANTS will allow out-of-state firms that have been certified by one of the CERTIFYING PARTICIPANTS prior to the implementation of the PA UCP to seek recertification from the PA UCP so long as they continue to meet the certification standards and procedures of Part 26. In recognition of the language set forth in DOT's Notice of Proposed Rulemaking (NPRM), dated May 8, 2001, SBA-certified firms whose principal place of business is outside the Commonwealth will be subject to the same processing rules unless there is a report of a home state on-site review.

11.07 Certification Decisions. The CERTIFYING PARTICIPANTS will send a certification determination letter to the applicant firm. The classifications in which the DBE firm is authorized to perform will be designated in the decision letter. Denial decisions will be detailed in a letter tailored to the specific facts and relevant provisions of Part 26 in accordance with the procedures outlined in the Manual and described in general terms in Article 12 of this Agreement. The CERTIFYING PARTICIPANTS understand and agree that Section 26.85 of Part 26 requires that the applicant receive a detailed, written explanation of the reasons for the denial determination.

11.08 Failure to Cooperate. The CERTIFYING PARTICIPANTS recognize that Part 26, Section 109(c) establishes that the applicant's failure to cooperate as the result of the failure to respond to reasonable information requests by the PA UCP constitutes a ground, in and of itself, for a certification denial decision. As indicated in Article 8 of this Agreement, the CERTIFYING PARTICIPANTS will advise applicants to the DBE program of the consequence of this failure where it is evidenced by the applicant at any phase of the certification process.

11.09 Three (3) Year Certifications. The PA UCP will issue all certifications for a period of three (3) years, unless modified by the OC as provided by the regulations. Approximately sixty (60) days prior to the expiration of the initial term, the CERTIFYING PARTICIPANTS will notify the DBE firm of the need to complete a Recertification Affidavit.

11.10 Recertification. The CERTIFYING PARTICIPANT that issued the initial certification will be charged with the responsibility for conducting the recertification process. Once a Recertification Application or Affidavit is received for consideration, the same procedures as outlined in Article 8 will apply. The determination to do a site visit will depend upon the CERTIFYING PARTICIPANT'S available resources, the length of time that has passed since the last site visit, and other relevant circumstances.

11.11 Forms Required During the Three-Year Certification Term. The CERTIFYING

PARTICIPANTS will ensure that the requisite forms including, annual update information required by Part 26, are submitted during both the initial certification period and any recertification period(s). At the time of the initial certification or recertification, the CERTIFYING PARTICIPANTS will inform DBE firms that a “No Change Affidavit” is required on the annual anniversary date of certification and recertification and of the need to submit a “Notice of Change” where there has been a change in the firm’s circumstances since the last certification or recertification that would affect its continuing ability to meet Part 26 standards.

ARTICLE 12 - CONFIDENTIALITY COMPONENTS OF APPLICANT SUBMISSIONS

- 12.01 Confidentiality Required by Part 26.** Consistent with procedures concerning the release of internal review documents related to the certification determination under the corrective amendment to Part 26 and Section 26.67, the CERTIFYING PARTICIPANTS will treat all documents containing financial information and findings related to an individual review as confidential, including the individual personal net worth statements and accompanying documentation submitted by prospective applicants. As indicated in Part 26, this information will only be released where prior written approval is obtained from the submitter or the information is requested by DOT as part of an appeal process. All personnel taking part in the certification process on behalf of the CERTIFYING PARTICIPANTS will be expected to sign a Confidentiality Statement similar to the model contained in the Manual.
- 12.02 Compliance with the Pennsylvania Right to Know Law.** The Pennsylvania Right to Know Act provides that “[e]very public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania.” 65 P.S. Section 66.2. The term does not encompass reports, communications, papers that result from an investigation, or correspondence and internal memoranda either to or from an agency. A copy of this Law is set forth in

the Manual. However, for purposes of this Agreement, the CERTIFYING PARTICIPANTS understand and agree that this Law will be applicable to the extent that it is not inconsistent with Part 26.

ARTICLE 13 – DBE CERTIFICATION APPEALS PROCEDURES

- 13.01 PA UCP DBE Certification Appeals Committee.** The UCP TF has created a DBE Certification Appeals Committee (Appeals Committee). The Appeals Committee will make decisions on behalf of the entire PA UCP and all PA RECIPIENTS/SIGNATORIES will honor its determinations.
- 13.02 Composition.** The Appeals Committee will be comprised of one voting member from each of the CERTIFYING PARTICIPANT organizations. A prescribed group of Non-Certifying Recipients (NCPs) may serve in a non-voting or advisory capacity. The chairperson will be one of the individuals from the CERTIFYING PARTICIPANT organizations and will hold this position for a designated term. During a given calendar year, formal meetings will be conducted, as needed, at a location to be determined by the Appeals Committee. A legal adviser from one of the CERTIFYING PARTICIPANT organizations may attend meetings, to the extent practicable, and may serve as a resource for clarification of the certification standards and procedures of Part 26.
- 13.03 Process for Initial Certification Appeals.** Any applicant aggrieved by a denial decision will be given the opportunity to file an appeal with the Appeals Committee. However, consistent with institutional guidance from the United States Department of Transportation (DOT), a given applicant will not need to exhaust this remedy and is authorized to file an appeal directly with DOT, if desired. If an appeal is taken directly to DOT, it will be so noted in the files of the CERTIFYING PARTICIPANTS and no further internal appeal procedures will be conducted. The CERTIFYING PARTICIPANTS understand and agree that Part 26, Section 26.89 requires the PA UCP to recognize any appeals determination made by DOT and to take any prescribed course of action resulting from an appeals determination issued by DOT

that finds that the decision of the PA UCP was unwarranted. The address for submission of an appeal and a description of the process will accompany any denial letter. Applicants will be given thirty (30) calendar days to file an appeal with the Appeals Committee. The CERTIFYING PARTICIPANTS understand that Part 26 requires that the applicant be given ninety (90) days to take an appeal to DOT. The applicant electing to participate in a PA UCP appeal will be informed by letter to schedule an appeal date and will be afforded the opportunity to appear before the Appeals Committee during one of its regularly scheduled meetings. The nature of the meetings is outlined in the Manual and will be explained to applicant firms in their denial letters; however, the applicant firm will be given sufficient time to state the reasons that it believes certification is warranted. The PA UCP presenter will originate from the CERTIFYING PARTICIPANT organization that made the determination but will not be able to vote or participate in any deliberations at the conclusion of the hearing. Absent a compelling reason, the Appeals Committee will consider all information presented as part of the record evidence but will not consider new information provided at the time of the hearing.

13.04 Removal of Eligibility Proceedings. Consistent with Section 26.87 of Part 26, applicant firms denied recertification or those subject to removal of eligibility proceedings for any reason, will be afforded the opportunity to participate in an informal hearing. A stenographer will be present and a verbatim transcript will be made. The hearing will be conducted in a manner consistent with state law and the DBE firm will be given sufficient opportunity to make effective arguments. The Appeals Committee will also handle these administrative due process proceedings during its regularly scheduled meetings or at specially convened meetings in the manner set forth in the Manual. The PA UCP will allow applicant firms to order copies of the transcript of its appeal and requests for transcripts will be addressed and administered by the appropriate CERTIFYING PARTICIPANT.

13.05 Dispositions. The Appeals Committee will meet in an executive session to make a determination following each appeal. The chairperson of the Appeals Committee will be responsible for generating a letter indicating the appropriate disposition. In

the event that a denial results, the applicant firm will be provided with a letter delineating the reasons for the denial under Part 26 and relating the portions of the record evidence that gave rise to the determination. This letter will be reviewed by a legal representative of the PA UCP to ensure that it is in conformance with the regulation. The firm will also be advised of its right to initiate an appeal with DOT in accordance with the applicable provisions of Part 26.

13.06 Forwarding the Record In the Event of an Appeal to DOT. Consistent with Section 26.89 of Part 26, the CERTIFYING PARTICIPANTS understand and agree that they must provide DOT with a well-organized, indexed, and paginated transcript of the entire administrative record for a given applicant firm that has taken an appeal to DOT within twenty (20) days of DOT's request. The CERTIFYING PARTICIPANTS also understand and agree that they are required to honor this requirement where an appeal is brought from a decision rendered by a recipient that relied on the decision of one of the CERTIFYING PARTICIPANTS.

13.07 Waiting Period for a New Appeal. Consistent with Section 26.85 of Part 26, any firm that has been denied certification or has been determined to be ineligible will be required to wait a period of six (6) months from the date of the final appeal determination before submitting a new application.

ARTICLE 14 - INELIGIBILITY COMPLAINTS

14.01 Standing to Initiate an Ineligibility Action/Complaint. Consistent with Part 26, any person will be authorized to file a written complaint with any of the CERTIFYING PARTICIPANTS for the purpose of alleging that a currently certified DBE firm is ineligible to remain in the program and retain its certification. Both PA RECIPIENTS and DOT may also initiate this process.

14.02 Specificity Required for a Complaint. Consistent with Section 26.87, the CERTIFYING PARTICIPANTS will accept and acknowledge any written and signed complaint that contains sufficient specificity to identify the alleged reasons for

removal of eligibility. The CERTIFYING PARTICIPANTS understand and agree that under Part 26 they are not required to accept a general allegation or an anonymous complaint.

14.03 Identity of Complainant Kept Confidential. Consistent with Section 26.109(b), the CERTIFYING PARTICIPANTS will keep the identity of a given complainant confidential, at the election of the complainant. The CERTIFYING PARTICIPANTS also understand and agree that if such confidentiality will hinder an investigation or result in a denial of administrative due process to other parties, the complainant must be advised of the need to waive this privilege.

14.04 Review of the Record. The CERTIFYING PARTICIPANT in receipt of a properly stated ineligibility complaint will honor the Part 26 requirement that it conduct a review of its records, material provided by the firm and the complainant, and other available information.

14.05 Section 26.87 Hearings. Following the conclusion that there is reasonable cause to believe that a currently certified DBE firm is ineligible for the program, the CERTIFYING PARTICIPANT will notify the firm in writing as to the reasons for such a determination. The letter to be issued will specifically reference the record evidence and the provisions of Part 26 upon which this determination is based. Whether the determination is based upon a third party complaint, the findings of a CERTIFYING PARTICIPANT or a directive of DOT, the CERTIFYING PARTICIPANTS will offer the firm the chance for an informal administrative due process hearing in a manner consistent with both Pennsylvania law and Part 26, Section 26.87 and the procedures outlined in the Manual. During the hearing to be conducted by the Appeals Committee, the applicant will be afforded the opportunity to advance arguments against the ineligibility determination and respond to determinations made by the initiating complainant.

14.06 Separation of Functions Component. Consistent with Section 26.87 of Part 26, the CERTIFYING PARTICIPANTS have committed to ensuring that the separation of functions component is honored. Every decision maker involved in the removal

of eligibility proceeding on behalf of the CERTIFYING PARTICIPANTS will originate from an office or personnel that did not take part in any action leading to or seeking to implement the removal of eligibility and does not take direction from an office or personnel involved in the initial action that gave rise to the proceeding. Each decision maker will be given the requisite training and resources to make an informed and reasoned decision. Any decision will be based upon the criteria set forth in Section 26.87 including changes in the firm's circumstances that render it ineligible; information that was not available at the time of the initial certification; information that was concealed or otherwise misrepresented by the applicant at the time of the initial certification; a change in the certification standards since the firm was certified; or a documented finding that the certification was factually erroneous.

14.07 Notice of Decision. Following a Section 26.87 hearing, the chairperson of the Appeals Committee will issue a written notice of the decision setting forth the reasons for that decision and the portions of the record evidence that gave rise to each and every conclusion. The complainant or the concerned operating administration of DOT will also be provided with a notice. The chairperson will also advise the firm of its appeal rights to DOT once the Appeals Committee has made an administratively final determination.

14.08 Notice for DBE Firms Not Requesting A Hearing. Recognizing that DBE firms are not required to participate in a Section 26.87 hearing, the CERTIFYING PARTICIPANTS will also advise DBE firms that they can elect to decline the invitation for a hearing. Regardless of whether a hearing takes place, the DBE firms will be provided with written notice of the disposition.

14.09 Status of Firm Pending A Hearing or Disposition. Consistent with Section 26.87, a DBE firm will retain its certification status during the pendency of any ineligibility proceeding.

ARTICLE 15 – FINANCE AND RESOURCE ALLOCATION

- 15.01 No Application Fee.** The CERTIFYING PARTICIPANTS agree that there shall be no application fee for either certification or recertification.
- 15.02 Resources Provided by CERTIFYING PARTICIPANTS.** Costs of administering the PA UCP certification component will be absorbed by the CERTIFYING PARTICIPANTS. The CERTIFYING PARTICIPANTS reserve the right to enter into cooperative agreements or to provide in-kind services to one another to enhance the certification function of the PA UCP during the eighteen (18) month implementation period.
- 15.03 Projected Expenditure Categories.** The CERTIFYING PARTICIPANTS anticipate that the development and administration of the PA UCP will require expenditures involving information technology database development; server, software and web site maintenance; training and continuing education; appeal meetings, OC meetings and coordination; travel expenses, public outreach and public relations; and maintenance of adequate complement.
- 15.04 Funding Sources.** The CERTIFYING PARTICIPANTS have agreed to follow-up on initial contacts made with the federal, state, and local entities to determine whether there are opportunities for grants available to fund certain components of the PA UCP.

ARTICLE 16 – DISPUTE RESOLUTION AND PROGRAM INTEGRITY ASSURANCES

- 16.01 Notices and Other Communications.** The CERTIFYING PARTICIPANTS will communicate with one another informally by using any means available through existing or emerging technology. However, any official notices sent to applicants or DBE firms or between and among the CERTIFYING PARTICIPANTS shall be made through regular first class mail. As a supplement to this notice, the communication may also be sent via telefax or electronic mail.

16.02 Role of the Oversight Committee (OC). As noted in earlier articles of this Agreement, one of the functions of the OC will be resolving internal PA UCP disputes. The OC will intervene in accordance with prescribed procedures prepared by the UCP TF and described in detail in the Manual. The OC will be granted the authority to review documents contained in the DBE files of the CERTIFYING PARTICIPANTS. In the event that a decision made by a CERTIFYING PARTICIPANT is challenged by another CERTIFYING PARTICIPANT and/or PA RECIPIENT/SIGNATORY, the OC will establish remedial procedures. If the dispute cannot be resolved by the OC, the matter may be referred to a designated executive/official within the CERTIFYING PARTICIPANTS' organizations for additional guidance. Should the OC or the designated official(s)/executive(s) require further guidance or reach an impasse, the OC may bring the matter to the attention of DOT for intervention and possible conciliation. The OC reserves the right to modify or amend the Manual and all exhibits, from time to time, as deemed necessary.

16.03 Audit Process. As part of an overall effort to ensure the integrity of the PA UCP, the OC will be authorized to conduct or avail itself of internal personnel to audit a sample of certification files maintained by all of the CERTIFYING PARTICIPANTS. The CERTIFYING PARTICIPANTS will allow such audits to ensure adherence to Part 26 certification standards and procedures as well as to ensure that the same, forms, and guidelines are being used in accordance with the mandatory reciprocity format outlined in this Agreement and the Manual.

ARTICLE 17 – DBE ASSURANCE LANGUAGE

17.01 Required DBE Assurance Provision. Consistent with Section 26.13 of Part 26, the PA RECIPIENTS/SIGNATORIES (including all CERTIFYING PARTICIPANTS) understand and agree that they shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement or the award and performance of any DOT-assisted contract or in the administration of its DBE

programs or the requirements of 49 C.F.R. Part 26. The PA RECIPIENTS/SIGNATORIES shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The DBE programs of PA RECIPIENTS/SIGNATORIES as required by 49 C.F.R. Part 26 and as approved by DOT are incorporated by reference in this Agreement. The PA RECIPIENTS/SIGNATORIES understand and agree that implementation of the PA UCP is a legal obligation and that failure to carry out its terms shall be treated as a violation of this Agreement and may be subject to the consequences of noncompliance set forth in Part 26. Upon notification to the PA RECIPIENTS/SIGNATORIES of their failure to carry out an approved program, the PA RECIPIENTS/SIGNATORIES understand that DOT may impose sanctions as provided for under 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*).

17.02 Outsourcing Contract DBE Assurance. In the event that the CERTIFYING PARTICIPANTS elect to privatize or outsource any component of the PA UCP's operations, they shall ensure that the following provision appears in any DOT-assisted contract: The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by 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 [NAME OF CERTIFYING PARTICIPANT] deems appropriate. If Contractor is providing services or supplies for the [NAME OF CERTIFYING PARTICIPANT] pursuant to this Contract, it must include this assurance in each contract into which it enters to carry out the project or activities being funded by this contract.

ARTICLE 18 – COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW

- 18.01 Compliance with Applicable Laws.** The PA RECIPIENTS/SIGNATORIES shall comply with all applicable Federal, state, and local laws applicable to the operation and conduct of the PA UCP. The PA RECIPIENTS/SIGNATORIES agree to comply with the “Provisions Concerning the Americans with Disabilities Act” and the Commonwealth’s “Contractor Integrity Provisions,” set forth in Exhibit F, which are attached to and made part of this Agreement.
- 18.02 Compliance with Licensing and Permit Requirements.** To the extent applicable and practicable, the PA RECIPIENTS/SIGNATORIES/CERTIFYING PARTICIPANTS will exercise due diligence in making sure that applicant firms are aware of and have procured at their own expense all required licenses, prequalification and permits necessary to perform their obligations under DOT-assisted contracts.

ARTICLE 19 - REGIONAL AND INTER-JURISDICTIONAL RECIPROCITY AGREEMENTS

- 19.01 Statement of Intentions.** The PA RECIPIENTS/SIGNATORIES will consider entering into regional or inter-jurisdictional agreements in accordance with Section 26.81.
- 19.02 Cooperative Agreements Under the PA Procurement Code.** In the event that the CERTIFYING PARTICIPANTS elect to enter into cooperative agreements, the CERTIFYING PARTICIPANTS will honor and abide by the procurement practices of the CERTIFYING PARTICIPANTS, including, but not limited to, the Commonwealth Procurement Code (Code), 62 Pa. C.S. Section 101 *et. seq.*, which sets forth the procedures to be followed for procurements conducted by or on behalf of more than one public procurement unit with an external procurement activity.

ARTICLE 20 – THE DBE DIRECTORY

- 20.01 Compliance with Sections 26.31 and 26.81.** In accordance with Section 26.81, the CERTIFYING PARTICIPANTS will develop and maintain a unified DBE directory containing a list of all firms certified by the PA UCP and eligible to participate as DBEs in the program. Consistent with Section 26.31, this directory will be accessible and available to all interested persons and will provide the address and phone number of the firm as well as the type of work that the firm is certified to perform as a DBE.
- 20.02 Annual Updates.** Consistent with Section 26.31, the CERTIFYING PARTICIPANTS will revise the directory on an annual basis. Updated information will be made available to contractors and the public upon request in the manner stated in Article 20.03.
- 20.03 Public Access to the DBE Directory.** The PA UCP Directory will be made available to the public on the PA UCP Web Site as well as in printed form. The electronic version will be updated as soon as information regarding any additions, deletions, or other changes has been notated by a given CERTIFYING PARTICIPANT.

ARTICLE 21 – TERMINATION LANGUAGE – CESSATION OF PUBLIC PURPOSE AND COMPLIANCE WITH DOT DIRECTIVES

- 21.01. Cessation of Public Purpose.** The rights and responsibilities of the PA RECIPIENTS/SIGNATORIES/CERTIFYING PARTICIPANTS may be altered as the result of the cessation of public purpose and/or the termination of the DBE program. In such event, the legal impact of this Agreement may be deemed null and void as of the effective date of the action which effectuates this result.
- 21.02. PA UCP Cooperation.** The PA RECIPIENTS/SIGNATORIES/CERTIFYING PARTICIPANTS recognize that Section 26.109(c) requires that all participants in the

DBE program, including recipients, are required to cooperate fully and react promptly with DOT directives. To this end, the PA UCP implementing members understand and agree that they are not authorized to implement the PA UCP until approval has first been obtained from the DOT Secretary.

ARTICLE 22 – IMPLEMENTATION SCHEDULE AND NOTICES

- 22.01 Requisite Implementation Schedule.** Consistent with Section 26.81 of Part 26, the CERTIFYING PARTICIPANTS have developed an eighteen (18) month Implementation Schedule for the PA UCP in Exhibit D which is attached to and made part of this Agreement.
- 22.02 Notices.** Any questions or notices requiring communication with the PA UCP should be directed to PENNDOT who will send copies of all correspondence to the UCP OC.
- 22.03 Execution in Counterparts.** Since there are numerous signatories to this Agreement, it has been executed in counterparts. The list of all necessary signatories is set forth in Exhibit A. Exhibit A also contains a list of those DOT recipients that are not direct signatories to this Agreement but have indicated their concurrence in funding documents originating from the relevant DOT operating administrations.

EXHIBITS

- A. - PA UCP Recipients/Signatories
- B. - PA UCP Initial Certification and Recertification Process
- C. - PA UCP Code of Ethics
- D. - PA UCP Implementation Schedule
- E. - PA UCP Functional Relationships
- F. - “Provisions Concerning the Americans with Disabilities Act” and “Contractor Integrity Provisions”
Concurrence Language for funding documents with Subrecipients

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY [Signature] 2/11/02
Deputy Secretary of Transportation DATE

APPROVED AS TO LEGALITY
AND FORM

PRELIMINARILY APPROVED

BY [Signature] 2/11/02
for Chief Counsel DATE

BY _____
Assistant Counsel DATE

BY [Signature] 2/11/02
Deputy Attorney General DATE

RECORDED NO. 160001
CERTIFIED FUNDS AVAILABLE UNDER
ACTIVITY PROGRAM _____
SYMBOL NON-ENCUMBERED
AMOUNT _____

BY [Signature] 2/21/02
Deputy General Counsel DATE

BY [Signature] 2/13/02
for Comptroller DATE

MISCELLANEOUS

Exhibit A – PA UCP Recipients/Signatories

FHWA RECIPIENTS

FED ID NO.

Pennsylvania Department of Transportation	23-6003105
Pennsylvania Turnpike Commission	23-6003240

FAA RECIPIENTS

FED ID NO.

Allegheny County Airport Authority	25-1843496
Blair County Airport Authority	23-1520479
Bradford Regional Airport Authority	25-1186632
Clearfield-Jefferson Counties Regional Airport Authority	25-1473462
Erie Municipal Airport Authority	25-6004040
Johnstown-Cambria County Airport Authority	25-1063849
Lackawanna & Luzerne Counties D/B/A The Wilkes Barre/ Scranton International Airport	23-1736989
Lancaster Airport Authority	23-6005817
Lehigh Northampton Airport Authority	23-6002608
Pennsylvania State University	24-6000376
Philadelphia City	23-6003047
Reading Regional Airport Authority	23-6050410
Susquehanna Area Regional Airport Authority	23-2927440
Venango County-Venango Regional Airport	25-6001041
Westmoreland County Airport Authority	25-1239457
Williamsport Municipal Airport Authority	24-6000743

FTA RECIPIENTS

FED ID NO.

Area Transportation Authority of North Central Pennsylvania	25-1303477
Beaver County Transit Authority	25-1388570
Berks Area Reading Transportation Authority	23-1908915
Butler Township-City Joint Municipal Transit Authority	25-1616193
Cambria County Transit Authority	25-1303776
Capitol Bus Company	23-1293079
Carbon County	24-6000722
Centre Area Transportation Authority	25-1313123
Chambersburg Transit Authority	25-1659258
City of Hazelton / Hazleton Public Transit	24-6000695
Crawford Area Transportation Authority	25-1365284
Cumberland-Dauphin-Harrisburg Transit Authority D/B/A Capital Area Transit	23-1909161
Delaware River Port Authority of Pennsylvania & New Jersey	21-6001691
DuBois, Falls Creek & Sandy Township Joint Transit Authority	25-1257943
Endless Mountains Transportation Authority	23-2150003
Erie Metropolitan Transit Authority	25-1187702
Fayette Area Coordinated Transportation	25-6001029

Exhibit A – PA UCP Recipients/Signatories

Fullington Autobus Company	25-0494670
Greyhound Lines, Inc.	86-0572343
Indiana County Transit Authority	25-1364758
Lackawanna County Transit System	23-1885973
Lebanon County Transit Authority	23-2170235
Lehigh & Northampton Transportation Authority	23-1884251
Luzerne County Transportation Authority	23-1885989
Mid-County Transit Authority	25-1397075
Mid-Mon Valley Transit Authority	25-1498057
Monroe County Transportation Authority	23-2135841
Mount Carmel Borough	24-6000633
Myers Coach Lines	25-1663166
New Castle Area Transit Authority	25-1087438
Port Authority of Allegheny County	25-6011888
Pottstown Borough	23-6002972
Red Rose Transit Authority	23-1986660
Schuylkill County	23-6003048
Sharon City	69-0230180
Southeastern Pennsylvania Transportation Authority	23-1642972
Susquehanna Transit Company	24-0861025
Transportation & Motor Buses For Public Use Authority D/B/A Altoona Metro Transit (AMTRAN)	23-1556131
Venango County	25-6001041
Warren County Transit Authority	25-1384579
Washington City	25-6000886
Westmoreland County Transit Authority	25-1426754
Williamsport City	24-6000719
York County Transportation Authority	23-6629916

PARTICIPANT SIGNATORIES

FED ID NO.

Allegheny County	25-6001017
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IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

DOT RECIPIENT

**PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION**



BY

Secretary
Title:

1/1/01
DATE

Title:

DATE

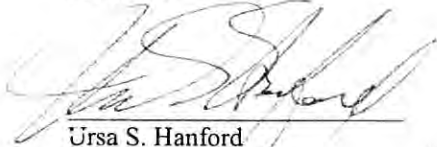
If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers and affixed their respective official and corporate seals.

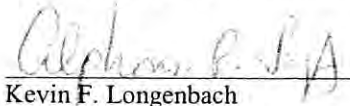
ATTEST:

DOT RECIPIENT
PENNSYLVANIA TURNPIKE COMMISSION


Ursula S. Hanford
Secretary/Treasurer


James J. Dodaro
Vice – Chairman

APPROVED AS TO FORM AND LEGALITY:


Kevin F. Longenbach
Deputy Chief Counsel

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

DOT RECIPIENT

**ALLEGHENY COUNTY AIRPORT
AUTHORITY**

Thomas J. Futch 12/20/01
Title: _____ DATE
MANAGER: ADMINISTRATION COMPLIANCE

BY [Signature] 12/20/01
Title: _____ DATE
EXECUTIVE DIRECTOR

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

John A. Menth
DOT RECIPIENT

BLAIR COUNTY AIRPORT AUTHORITY

John A. Menth

Secretary _____ *12/10/01*
Title: DATE

BY *[Signature]* _____ *12/10/01*
Title: DATE

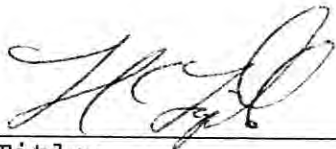
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IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written:

ATTEST

DOT RECIPIENT

**BRADFORD REGIONAL AIRPORT
AUTHORITY**



Title: Airport Director DATE 12/18/01

BY 

Title: Chairman DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**CLEARFIELD-JEFFERSON COUNTIES
REGIONAL AIRPORT AUTHORITY**


Title: Secretary/Treasurer DATE

BY  1-25-02
Title: Chairman DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

ERIE MUNICIPAL AIRPORT AUTHORITY


Title: Secretary of Finance DATE 12/27/01

BY  DATE 12/27/01
Title: President

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**JOHNSTOWN-CAMBRIA COUNTY AIRPORT
AUTHORITY**

Richard Elwood 1/25/02
Title: Secretary DATE

BY *Raymond L. Brown* 1/25/02
Title: Chairman DATE

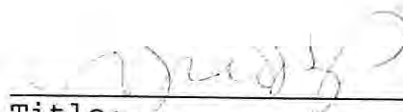
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ATTEST

DOT RECIPIENT

LANCASTER AIRPORT AUTHORITY



Title: Financial & Marketing Director DATE 12/27/11

BY 

Title: Airport Director DATE 12/27/11

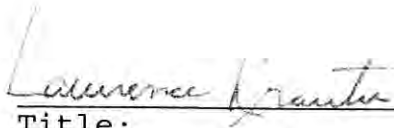
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ATTEST

DOT RECIPIENT

**LEHIGH NORTHAMPTON AIRPORT
AUTHORITY**



Title: _____ DATE 1/22/02
Director of Planning & Engineering



BY _____ DATE 1/22/02
Title: _____
Executive Director

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

PENNSYLVANIA STATE UNIVERSITY

University Park Airport

[Signature]
Title: _____ DATE _____

BY [Signature] DEC 21 2001
Title: DAVID F. MARSHALL
ASSISTANT TREASURER DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

PHILADELPHIA CITY

*Approved by the Board
Nelson Diaz, City Solicitor*

Muhlebach P. Turner 1/23/02
Title: Secretary DATE

BY *James Adams* 1/23/02
Title: DIRECTOR OF FINANCE DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

READING REGIONAL AIRPORT
AUTHORITY

[Signature]
Title: Asst Sec/Treas DATE 01/08/02

BY [Signature]
Title: Chairman DATE 01/08/02

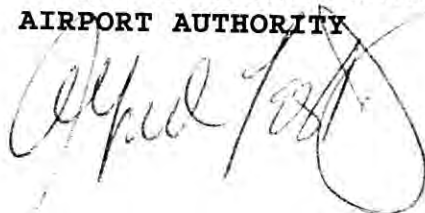
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ATTEST

DOT RECIPIENT

SUSQUEHANNA AREA REGIONAL
AIRPORT AUTHORITY




Title: Assistant Secretary DATE 12/17/01

BY Director of Aviation 12/14/01
Title: _____ DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

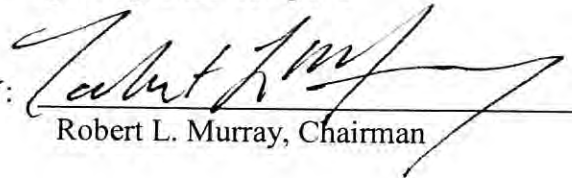
COOPERATIVE MEMORANDUM OF AGREEMENT

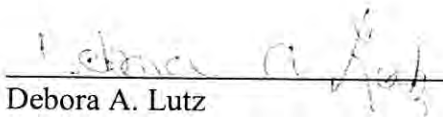
AGREEMENT NO. 360001

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

Date: Dec. 20, 2001

DOT RECIPIENT
VENANGO COUNTY
Venango Regional Airport

BY: 
Robert L. Murray, Chairman


Debora A. Lutz


Larry E. Horn

Attest:

Denise W. Jones, Chief Clerk/County Administrator

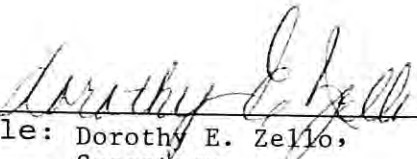
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ATTEST

DOT RECIPIENT

**WESTMORELAND COUNTY AIRPORT
AUTHORITY**


Title: Dorothy E. Zello, Secretary 1/8/02 DATE

BY  1/8/02
Title: Oland Canterno, Chairman DATE


If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.


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ATTEST

DOT RECIPIENT

**WILLIAMSPORT MUNICIPAL AIRPORT
AUTHORITY**

 12/13/01
Title: William R. Worobec DATE
Chairman

BY  12/13/01
Title: Donald E. McKee DATE
Secretary

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

AREA TRANSPORTATION AUTHORITY OF
NORTH CENTRAL PENNSYLVANIA



Title: Chief Financial Officer Date 2-5-02



Title: Chief Executive Officer Date 2-05-02

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

BEAVER COUNTY TRANSIT AUTHORITY

M. Woodley 2/5/02
Title: Assistant Secretary DATE

BY *[Signature]* 2/5/02
Title: Vice Chairman DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**BERKS AREA READING
TRANSPORTATION AUTHORITY**

Barbara J. Troczynski 12/27/01
Title: _____ DATE
Treasurer

BY [Signature] 12-27-01
Title: _____ DATE
Executive Director/CEO

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ATTEST

DOT RECIPIENT

**BUTLER TOWNSHIP-CITY JOINT
MUNICIPAL TRANSIT AUTHORITY**

John K. Argolone 12/18/01
Title: Secretary/Treasurer DATE

BY [Signature] 12/18/01
Title: Chairman DATE


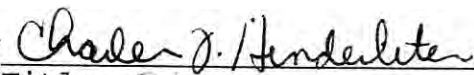
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ATTEST

DOT RECIPIENT

CAMBRIA COUNTY TRANSIT AUTHORITY

	1/16/02 DATE	BY 	1/16/02 DATE
Title: <u>Exec. Director</u>		Title: <u>Chair</u>	

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ATTEST

DOT RECIPIENT

CAPITAL AREA TRANSIT
Cumberland-Dauphin-Harrisburg Transit Authority

Charlene Blaw
D.S. Finance and Admin
Title: Asst DATE: 11/3/02

BY [Signature] 1/8/02
Title: [Signature] DATE

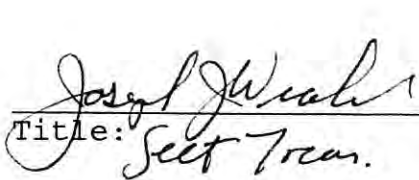
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ATTEST

DOT RECIPIENT

CAPITOL BUS COMPANY


Title: Secy Treas. 12/31/09
DATE

BY  12/31/09
Title: Pres. DATE

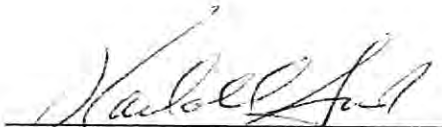
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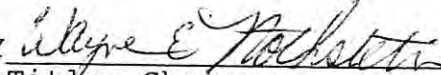
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ATTEST

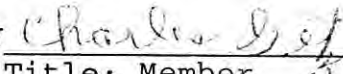
DOT RECIPIENT

CARBON COUNTY

 1-31-02
Title: Chief Clerk/ DATE
County Administrator

BY  1-31-02
Title: Chairman DATE

BY  1-31-02
Title: Vice-Chairman DATE

BY  1-31-02
Title: Member DATE


If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**CENTRE AREA TRANSPORTATION
AUTHORITY**



Title: _____ DATE 12/17/01
DIRECTOR OF ADMINISTRATION/
ASSISTANT TREASURER

BY  12/17/01

Title: _____ DATE
GENERAL MANAGER/SECRETARY

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

CHAMBERSBURG TRANSIT AUTHORITY

[Signature]
Title: Secretary DATE 12/17/01

BY [Signature] 2/17/01
Title: Executive Director DATE

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ATTEST

DOT RECIPIENT
City of Hazleton/
HAZLETON PUBLIC TRANSIT

Robert J. Fume
Title: _____ DATE: _____
DIRECTOR DEPT. OF PUBLIC SERVICES 1/07/02

BY Donna G. Bartlett
Title: Mayor DATE: 1-07-02


If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**CRAWFORD AREA TRANSPORTATION
AUTHORITY**


Title: Treasurer/ Director DATE _____

BY _____
Title: Director DATE _____

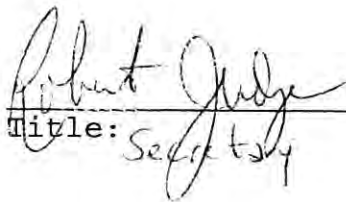
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ATTEST

DOT RECIPIENT

**DELAWARE RIVER PORT AUTHORITY OF
PENNSYLVANIA & NEW JERSEY**


Title: Secretary DATE 12/19/01

BY  12/20
Title: Chief Executive Officer DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

Reviewed by Office of
General Counsel and
Approved as to Legal
Form



IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

DOT RECIPIENT

DUBOIS, FALLS CREEK & SANDY
TOWNSHIP JOINT TRANSIT AUTHORITY

[Signature] 1/15/03 BY [Signature] 1/15/03
Title: Vice-Chairman DATE Title: Ec. Dir. DATE

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ATTEST

DOT RECIPIENT

**ENDLESS MOUNTAINS TRANSPORTATION
AUTHORITY**

Thomas M. Cowling 1-3-01
Title: Secretary DATE

BY [Signature] 12/2/01
Title: Sec. Chair DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

ERIE METROPOLITAN TRANSIT
AUTHORITY

Frank Krederger 12-17-11
Title: _____ DATE
SECRETARY

BY Thomas Kumpf 12-17-11
Title: _____ DATE
General Manager

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**FAYETTE AREA COORDINATED
TRANSPORTATION**

Judith M. Bodkin 2/4/02
Title: Chief Clerk DATE

[Signature]
BY: [Signature] 2/4/02
Title: Commissioners DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

FULLINGTON AUTOBUS COMPANY

Kacey McCracken 10/12/01
Title: Secretary DATE

BY J. Fullington 10/12/01
Title: President DATE


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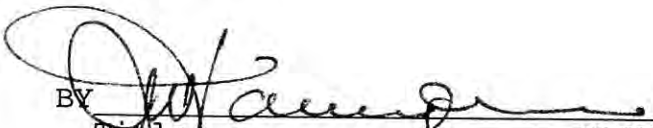

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ATTEST

DOT RECIPIENT

GREYHOUND LINES, INC.


Title: Assistant Secretary DATE 11/9/02

BY  DATE 11/7/02
Title _____
Approved on to form _____
By  DATE 2/12/02


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ATTEST

DOT RECIPIENT

INDIANA COUNTY TRANSIT AUTHORITY


Title: Secretary 1-8-02
DATE

BY  1-8-02
Title: Chairperson DATE

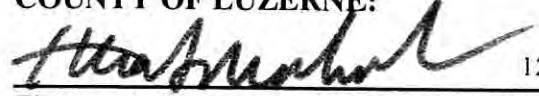
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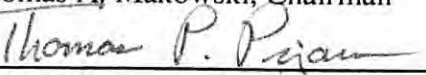
DOT RECIPIENT:

For the Counties of Luzerne and Lackawanna (d.b.a.
The Wilkes-Barre/Scranton International Airport)

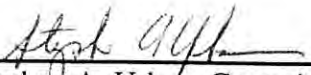
COUNTY OF LUZERNE:



Thomas A. Makowski, Chairman Date 12/20/01



Thomas P. Pizano, Commissioner Date 12/20/01



Stephen A. Urban, Commissioner Date 12/20/01

COUNTY OF LACKAWANNA:



Joseph J. Corcoran, Chairman Date 12/20/01



Randy A. Castellani, Commissioner Date 12/20/01



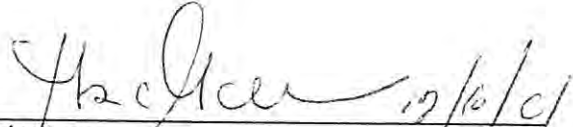
Robert C. Cordaro, Commissioner Date 12/20/01

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

DOT RECIPIENT

LACKAWANNA COUNTY TRANSIT SYSTEM

<i>Larry C. Malinski</i> Title: <u>secretary</u> DATE <u>12-10-01</u>	BY	 Title: <u>CHAIRMAN</u> DATE <u>12/10/01</u>
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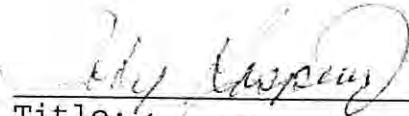
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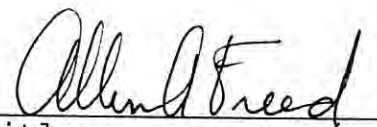
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ATTEST

DOT RECIPIENT

LEBANON COUNTY TRANSIT AUTHORITY


Title: Secretary DATE: 12/10/01

BY 
Title: Vice Chairman DATE: 12/10/01

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ATTEST

DOT RECIPIENT

LEHIGH AND NORTHAMPTON
TRANSPORTATION AUTHORITY

Carole J. Lee 2/5/02
Title: SECRETARY DATE

BY John A. Williams 2/5/02
Title: CHAIRMAN DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

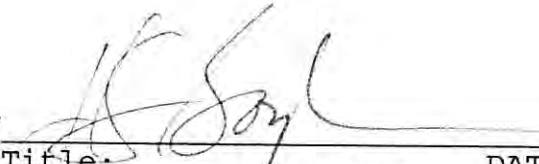
ATTEST

DOT RECIPIENT

**LUZERNE COUNTY TRANSPORTATION
AUTHORITY**



Title: SECRETARY OF THE BOARD DATE: 1/23/02

BY 

Title: EXECUTIVE DIRECTOR DATE: 1/23/02

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

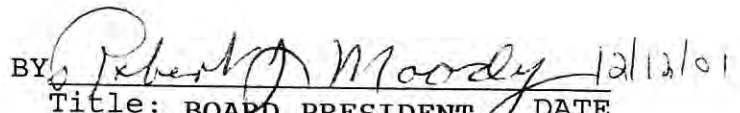
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ATTEST

DOT RECIPIENT

MID-COUNTY TRANSIT AUTHORITY


Title: BOARD SECRETARY DATE 12/12/01

BY 
Title: BOARD PRESIDENT DATE 12/12/01

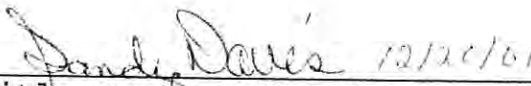

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ATTEST

DOT RECIPIENT

MID-MON VALLEY TRANSIT AUTHORITY

 <u>Sandy Davis</u> Title: Sandy Davis, Secretary	BY	 <u>Dr. Ronald J. Tuman</u> Title: Dr. Ronald J. Tuman Chairman of the Board
DATE 12/20/01		DATE 12/20/01

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**MONROE COUNTY TRANSPORTATION
AUTHORITY**



Title: Secretary 1-23-02
DATE


BY Chadina 1-23-02
Title: _____ DATE

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ATTEST

DOT RECIPIENT

MOUNT CARMEL BOROUGH

Joseph K. Bass 12/30/01 BY [Signature] 12/30/01
Title: Secretary DATE Title: PRESIDENT DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

MYERS COACH LINES

William L. Myers

David A. Myers

William L. Myers
Title: Secretary-Treasurer DATE
12/11/01

BY David A. Myers
Title: President DATE
12/11/01

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

**NEW CASTLE AREA TRANSIT
AUTHORITY**

R. Clark Young 1-30-02 BY Donald J. Conti 1-30-02
Title: Secretary DATE Title: Chairman DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

PORT AUTHORITY OF ALLEGHENY
COUNTY

Suzanne Locantia 12/13/01
Title: *Assistant Secretary* DATE

BY *Paul P. Shortell* 12/13/01
Title: *Chief Executive Officer* DATE

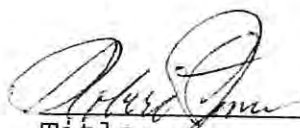
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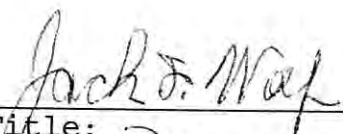
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ATTEST

DOT RECIPIENT

POTTSTOWN BOROUGH


Title: _____ DATE: 12/18/01
Secretary + Borough Manager

BY 
Title: _____ DATE: 12/18/01
President

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

RED ROSE TRANSIT AUTHORITY

Gregory H. Wilson 12-21-01
Title: Director of Capital DATE
Improvements

BY [Signature] 12-21-01
Title: Executive Director DATE

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above written.

Date: January 16, 2002

DOT RECIPIENT

SCHUYLKILL COUNTY

BY

Forrest Shadle
Forrest Shadle, Chairman

Jerry Knowles
Jerry Knowles

Edward Barket
Edward Barket

ATTEST

Jean M. Heppner
Title: Chief Clerk

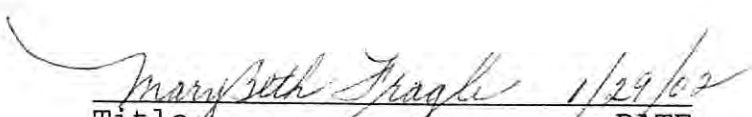
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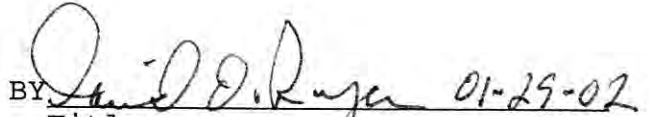
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ATTEST

DOT RECIPIENT

SHARON CITY


Title: Secretary to the Mayor DATE 1/29/02

BY 
Title: Mayor DATE 01-29-02

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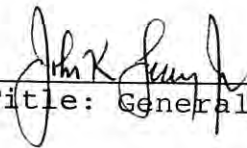
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ATTEST

DOT RECIPIENT

**SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY**


Title: Secretary DATE 1-30-02

BY  1-30-02
Title: General Manager DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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DOT RECIPIENT

SUSQUEHANNA TRANSIT COMPANY


Title: Secy. - Treas. DATE

BY 
Title: Executive Vice-President DATE 6/1/14

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT
Transportation & Motor Buses for Public Use
Authority d.b.a
ALTOONA METRO TRANSIT (AMTRAN)

M. B. Robinson 12/19/01
Title: Secretary DATE

BY [Signature] 12/19/01
Title: Chairman DATE

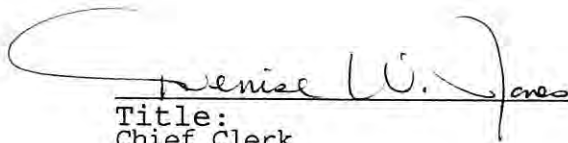
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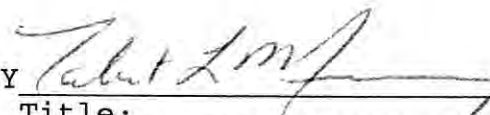
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ATTEST

DOT RECIPIENT

VENANGO COUNTY


Title: Chief Clerk 12-19-01
DATE

BY  12-19-01
Title: Chairman, Board of Venango County
Commissioners DATE

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ATTEST

DOT RECIPIENT

WARREN COUNTY TRANSIT AUTHORITY

John O'Driscoll 1-17-02
Title: DIRECTOR DATE

BY James S. Lyle 1-17-02
Title: Director DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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ATTEST

DOT RECIPIENT

WASHINGTON CITY

[Signature] 1-17-02 BY [Signature] 1-17-02
Title: CITY-CLERK DATE Title: Mayor DATE

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ATTEST

DOT RECIPIENT

WESTMORELAND COUNTY TRANSIT AUTHORITY

Carol Hunt 12/21/01
Title: Secretary DATE

BY [Signature] 12/21/01
Title: [Signature] DATE

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DOT RECIPIENT

WILLIAMSPORT CITY

(Williamsport Bureau of Transportation((WBT))

BY Richard D. Ruffolo, 12/13/01
Title: Mayor of Williamsport DATE

Heaven P. DeLoach, 12/17/01
Title: City Clerk DATE

BY Jose E. Orosco, 12/17/01
Title: City Controller DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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DOT RECIPIENT

YORK COUNTY TRANSPORTATION
AUTHORITY


Secretary 1/3/02

BY 
Chairman 1/3/02

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DOT RECIPIENT

ALLEGHENY COUNTY

<i>Carol L. Sullivan 12-12-01</i> Title: _____ DATE	BY	<i>Jamc Rolly 12-14-01</i> Title: Chief Executive DATE
Director, Dept. of Minority Women & Disadvantaged Business Enterprise		

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

Attachment 9

Regulations: 49 CFR Part 26

The federal regulations, Title 49 Code of Federal Regulations Part 26, may be found at

[https://www.ecfr.gov/current/title-49/
subtitle-A/part-26?toc=1](https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1)