City of Philadelphia

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

for the

Philadelphia International Airport

and the

Northeast Philadelphia Airport

PHILADELPHIA, PENNSYLVANIA

JUNE 2016

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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.

Kathleen Padilla, Director of the PHL Office of Business Diversity, City of Philadelphia, Philadelphia International Airport Executive Offices, Terminals D & E 3rd Floor, Philadelphia, PA 19153 (215) 937-1801, Kathleen.Padilla@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.

The City has disseminated this policy statement to the City of Philadelphia City Council and all of the administrative units of the Airport. The policy statement will also be placed on both the City's and Airport's websites. The City will distribute this statement to DBE and non-DBE business communities that perform work for the City on USDOT-assisted contracts in the following manner:

1. *This Policy statement will be prepared as a handout, and made available at pre-bid conferences and outreach meetings conducted by the City.*

2. *Copies of the policy statement will be emailed to all of the agencies/organizations consulted during the development of the DBE goal methodology, thereby making the City's policy for the airports available to a broader group of small, minority, and women business development agencies.*

Rochelle Cameron, CEO, Philadelphia International Airport

April 11, 2018
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 dbE-Connect (https://faa.dbesystem.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 in the following ways:

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

b. *Including a notice in all solicitations requesting firms that are quoting on subcontracts to report the approved information directly to the DBELO for inclusion in the bidders list.*

c. *Request the above information from all potential bidders who contact the airports seeking bid information, and/or who attend pre-bid meetings, conferences, etc.*

d. *The City may also consider the use of the Bidders List Data Collection form, as shown in* ***Attachment 2.***

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 each certified firm 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 Airport, as a member of the Pennsylvania UCP established pursuant to § 26.81 of this part, will report to the Department of Transportation's Office of Civil Rights, by January 1, 2017, and each year thereafter, 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 sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13b

The 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:

Kathleen Padilla, PHL Director, Office of Business Diversity
City of Philadelphia
Philadelphia International Airport
Executive Offices, Terminals D & E 3rd Floor
Philadelphia, PA 19153
(215) 937-1801
Kathleen.Padilla@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 are included in solicitations (both race-neutral methods and contract-specific goals attainment and identifying ways to improve progress.*
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. *Chairing the DBE Advisory Committee (when formed).*
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, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions.

The City has identified the following minority-owned financial institutions within the greater Philadelphia area:

Asian Bank
Contact: Linda M. Ackerman, VP, CAO and Secretary to the Board
913 Arch Street – 3rd Floor
Philadelphia, PA 19107
Phone: (215) 238-0377
E-mail: lackerman@theasianbank.com

Customers Bank
Contact: Richard Ehst, President & COO
1015 Penn Avenue
Wyomissing, PA 19610
Phone: (610) 231-3670
E-mail: rehst@customersbank.com

Noah Bank
Contact: Edward Shin, CEO
7301 Old York Road
Elkins Park, PA 19027
Phone: (215)-424-5100

United Bank of Philadelphia
Contact: Evelyn F. Smalls, President & CEO
30 South 15th Street, Suite 1200
Philadelphia, PA 19102
Phone: (215) 231-3670
Fax: (215) 231-3672
E-mail: esmalls@unitedbankofphiladelphia.com

The City of Philadelphia will consider the services offered by these banks as well as refer the institutions noted above. The City of Philadelphia will periodically check the listings of the FDIC in an attempt to keep its local list, and the Pennsylvania DBE and minority-owned financial institutions list, up to date.

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 the following clause in each USDOT-assisted prime contract:

> *The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 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 will 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, which is maintained by the Pennsylvania Department of Transportation's Civil Rights office. 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.

The Pennsylvania Department of Transportation updates the Directory on a regular basis. The Directory is available for review by contacting Kathleen Padilla, Director, Office of Business Diversity at the Airport, or by accessing the PA UCP website. **Attachment 3** shows the web address to the PA UCP DBE directory.

In the event any contractor has other DBE firms he/she wishes to use, they will be included in the City's DBE Listing, provided they meet the established certification procedures. Additional DBE firms who desire to be listed will be included in the City's DBE listing upon request if they also can be certified.

The City participates in the required statewide Unified Certification Program, and has access to the UCP statewide 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/Pages/default.aspx.

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 employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
    c. *Monitoring progress of payments to DBEs through monthly reports from prime contractors.*

d. *Monitoring progress of DBEs work through on-site visits and communication with DBEs. The 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 routine project site visits by the City's engineer on a monthly basis. In addition to the engineer, the DBELO will sign off on the written certifications.*

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 from the contractor 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.

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 will be 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

On a quarterly basis, Airport Compliance staff will coordinate with Airport Engineering 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. This will increase the number of solicitations, but attract smaller businesses, who might also qualify as DBEs. Reducing the size of prime contracts should expand the Airport's bidders' list and potentially encourage more price-competitive bids. After gaining more experience with the implementation of this strategy, the Airport will consider developing a standard "tier" of contract size, based on estimated dollar value (e.g.,$5 million and under) and scope of services. The "tier" will enable the Airport to consider race neutral set-asides for SBEs, according to 26.39 (b) (1).

C. Unbundling 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 devise methods to relax contract requirements such as pre-qualification, bid security, bonding and insurance.

D. 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.

E. 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**[1]

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.]

F. Supportive Services

The City of Philadelphia, through its DBE Program Office 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 Airport DBE Program Office, under the Director of Compliance & Federal Certification. The DBE Program Office does not provide direct supportive services and/or business development programs to DBEs or small businesses. However, the DBE Program Office 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.

[1] This is contingent upon the US DOT approval of the Pennsylvania Department of Transportation (PennDOT) Small Business Element and is intended only to facilitate SBE participation on City of Philadelphia projects funded by PennDOT where the City is a grant sub-recipient.

3. Publicizing information to the small business community with regard to current, on-going, and future business opportunities at the Airport.

G. Implementation Plan and Timetable

The Airport proposes to have its SBPP fully implemented within 270 days (nine months) of final FAA approval of the SBPP. The Airport will use this period of time to organize and train staff in order to maximize the potential for ultimate success. These administrative activities will include the following actions:

1. Review, in coordination with Airport Engineering 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 Engineering, Compliance, Risk Management and Legal staff, the necessary revisions and modifications to solicitation language etc., prior to implementation.

3. Initiate discussions with the Pennsylvania UCP to determine whether any changes/modifications are required to the PAUCP stakeholder agreement due to verification of small business concerns.

4. 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.

5. Seek consultation with representatives of the small business community similar to its goal consultation with DBEs. This consultation is expected to elicit information concerning the availability and interest level of small business concerns in competing for opportunities at the Philadelphia International Airport and the Northeast Philadelphia Airport.

6. Publish on the Airport's website a list of approved agencies that certify small businesses.

H. 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 DBELO at Philadelphia International Airport is **Kathleen Padilla, Director of PHL's Office of Business Diversity**.

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 as required by the established schedule below:

Airport Type	**Region**	**Next Goal Due (Goal Period)**
Large & Medium Hub Primary	**All Regions**	**August 1, 2016 (2017/2018/2019)**
Small Hub Primary	All Regions	August 1, 2017 (2018/2019/20207)
Non-Hub Primary	All Regions	August 1, 2018 (2019/2020/2021)
Non-Primary (GAs, Relievers and State DOTs)	**Alaskan, Eastern, & Great Lakes**	**August 1, 2016 (2017/2018/2019)**
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1, 2017 (2018/2019/2020)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1, 2018 (2019/2020/2021)

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 2016, for FFY 2017-FFY 2019. 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 publish a notice of the proposed overall goal, informing the public that the proposed goal and its rational are available for inspection during normal business hours at the Airport, and informing the public that the City will accept comments on the goals for 30 days from the date of the notice. Normally, the City will issue this notice by June 1 prior to the next fiscal three-year period in which the DBE goal is due. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

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 corrective action plan to the FAA Civil Rights office, 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.

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;*
3. *The dollar amount of the participation of each DBE firm participating;*
4. *Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*
5. *Written and signed confirmation from the DBE that it is participating in the contract in the kind and amount of work as provided in the prime contractors commitment and*
6. *If the contract goal is not met, evidence of good faith efforts. 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.*

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., Chief Operating 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
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.

Sample Bid Specification:

THE REQUIREMENTS OF 49 CFR PART 26, REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION, APPLY TO THIS CONTRACT. IT IS THE POLICY OF THE CITY OF PHILADELPHIA, AS THE OWNER OF THE PHILADELPHIA INTERNATIONAL AIRPORT AND THE NORTHEAST PHILADELPHIA AIRPORT, TO PRACTICE NONDISCRIMINATION BASED ON RACE, COLOR, SEX, OR NATIONAL ORIGIN IN THE AWARD OR PERFORMANCE OF THIS CONTRACT. ALL FIRMS QUALIFYING UNDER THIS SOLICITATION ARE ENCOURAGED TO SUBMIT BIDS/PROPOSALS. AWARD OF THIS CONTRACT WILL BE CONDITIONED UPON SATISFYING THE REQUIREMENTS OF THIS BID SPECIFICATION. THESE REQUIREMENTS APPLY TO ALL BIDDERS, INCLUDING THOSE WHO QUALIFY AS A DBE. A DBE CONTRACT GOAL OF _____ PERCENT HAS BEEN ESTABLISHED FOR THIS CONTRACT. THE BIDDER SHALL MAKE GOOD FAITH EFFORTS, AS DEFINED IN APPENDIX A, 49 CFR PART 26, TO MEET THE CONTRACT GOAL FOR DBE PARTICIPATION IN THE PERFORMANCE OF THIS CONTRACT.

The bidder will be required to submit the following information:

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

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.

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 certifying members of the PAUCP include:

1. Allegheny MWBE Program
2. Allegheny Port Authority
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 contact:

Kathleen R. Padilla, Director
Office of Business Diversity
City of Philadelphia
Philadelphia International Airport
Executive Offices, Terminals D & E 3rd Floor
Philadelphia, PA 19153
(215) 937-1801
http://www.paucp.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)(1) 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 (26.83(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(j). The text of this affidavit is below:

> *I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of*

49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Pennsylvania UCP under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed the current SBA limit.

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.

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 Tam Tran, 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 six (6) 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 DBEs 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(j).

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. Such appeals may be sent to:

US Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington DC 20590

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 26.109 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 states in the schedule of DBE participation.

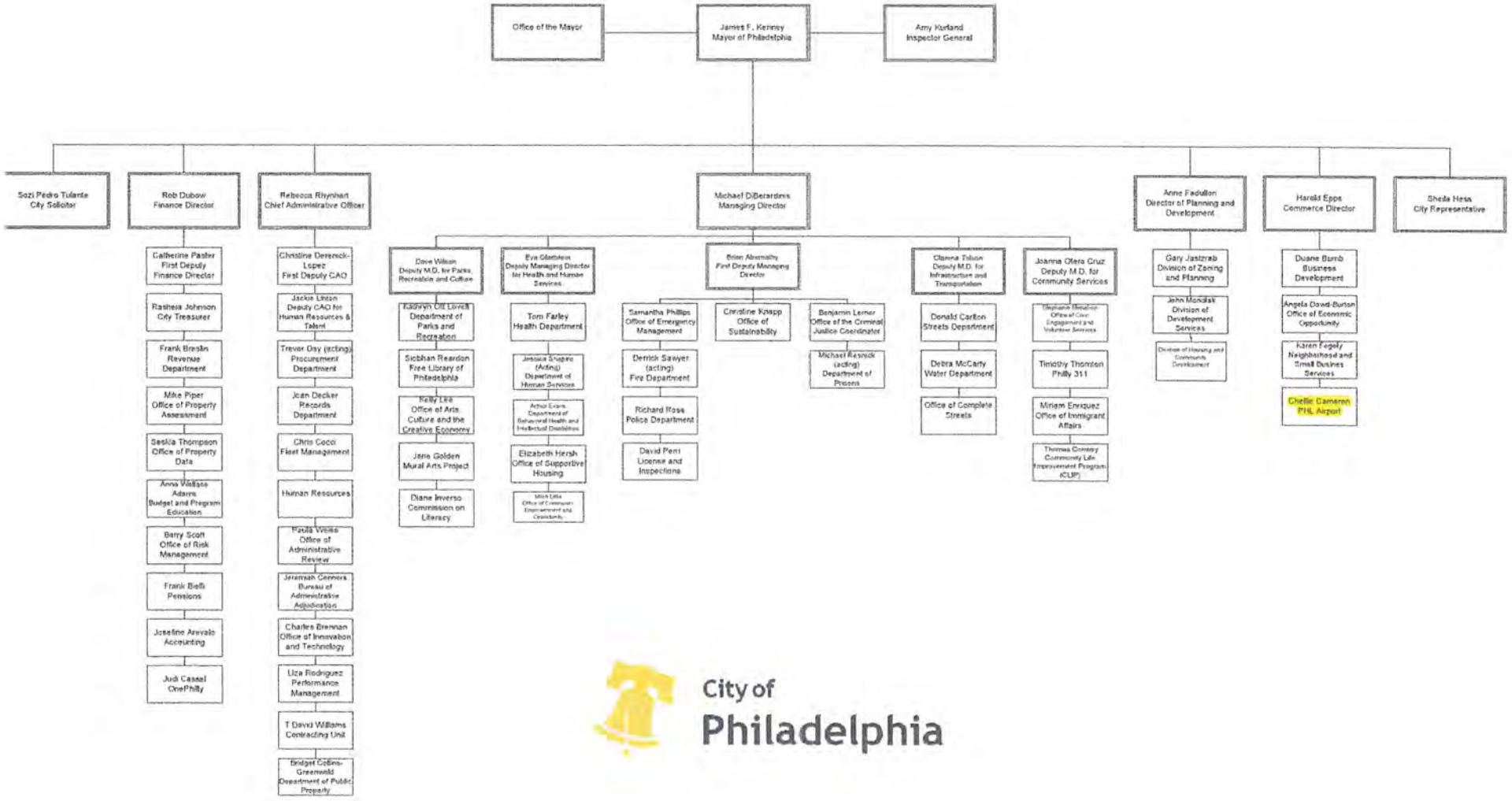
ATTACHMENTS

Attachment 1A-B	Organizational Chart
Attachment 2	Bidders Information Data Collection Form
Attachment 3	DBE Directory (weblink and sample pages)
Attachment 4	Overall Goal Calculation; Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Good Faith Efforts Requirement and DBE Submission 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 (weblink)

Attachment 1

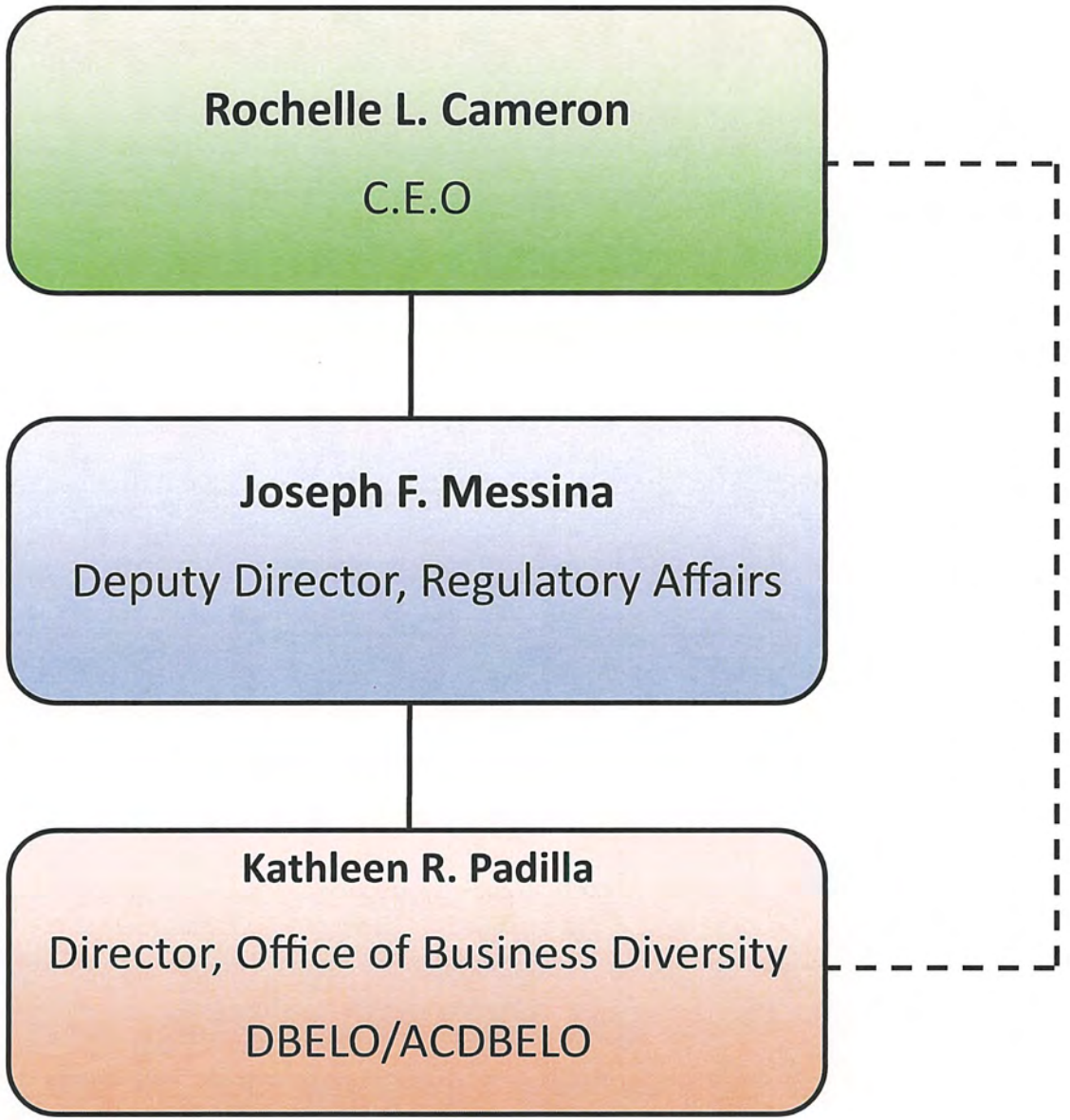
Organizational Chart

City of Philadelphia



City of
Philadelphia

PHL Airport


Rochelle L. Cameron
C.E.O
Joseph F. Messina
Deputy Director, Regulatory Affairs
Kathleen R. Padilla
Director, Office of Business Diversity
DBELO/ACDBELO

Notes about DBELO direct and independent access to the CEO

- **§ 26.25 What is the requirement for a liaison officer?**

  "You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part."

- In its NPRM of May 2010, USDOT noted the following regarding DBELO and staffing:

  "*26.25 already requires that the DBE liaison officer (DBELO) must have direct, independent access to the Chief Executive Officer (CEO) of the recipient's organization concerning DBE program matters. This means that the DBELO must not be required to get anyone's consent or sign-off, or "go through channels," to talk and write personally to the CEO about DBE pro-*

Attachment 2

Bidders Information Data Collection Form

BIDDERS LIST DATA FORM

The City of Philadelphia is required to create and maintain a comprehensive Bidders List bidder pursuant to 49 CFR 26.11. This Bidders List Data Form is used to collect information used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and assists with establishing the City's triennial DBE goal. Each Bidders List is a compilation of bidders, proposers, contractors, subcontractors, and suppliers of materials and services who have submitted bids.
Please provide the following information:

Part A: Business Data (please type or print)

1 Business Name: _____

2 Business Address: _____

_____

_____

_____

3 County Business is located in: _____

4 Name of Contact Person: _____ Title: _____

5 Phone: ( ) _____ 6. Fax: ( ) _____

7 Email Address: _____

8 Is this business certified as a DBE? ☐ Yes ☐ No

9 Business Annual Gross Receipts:_____ 10. Number of Years in Business:_____Yrs_____Months

Part B: Project and Work Description (use additional sheets if necessary)

11 Project Name: _____

12 Provide a brief description of the scope of work, service, and/or materials to be performed or furnished:

_____

_____

_____

_____

13 Provide the NAICS code(s) that best defines your business:

_____ _____ _____ _____ _____ _____

14 Will you subcontract any of your work? ☐ Yes* ☐ No

*(If "Yes", then the subcontractor(s) must also complete an individual Bidders List Data Form)

Part C: Signature

The undersigned hereby declares that the information set forth on this page is current, complete and accurate.

Authorized Signature:_____ Date: _____

Printed Name:_____ Title: _____

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

FFY 2017-2019
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
METHODOLOGY
FOR THE

CITY OF PHILADELPHIA
DIVISION OF AVIATION

ON BEHALF OF

THE PHILADELPHIA INTERNATIONAL AIRPORT AND THE NORTHEAST PHILADELPHIA AIRPORT

PHILADELPHIA, PENNSYLVANIA

JUNE 2016

METHODOLOGY for Establishing the Overall Disadvantaged Business Enterprise (DBE) Goal for FFY 2017-2019 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 2017-2019 for Airport Improvement Program (AIP)-funded projects at the Philadelphia International Airport. The methodology used to establish this goal is described herein.

I. Detailed Methodology: Specific Steps

A. Amount of Goal

The City of Philadelphia's Division of Aviation has established an overall DBE goal for FFY 2017-2019 for the Philadelphia International Airport (PHL) which is **16.30%.** 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 let approximately **$45,762,000** in federally-funded projects over the next three years for PHL. With the goal being 16.30%, this indicates that the Division of Aviation has set a goal of expending approximately **$7,459,791** with DBEs over the next three years at PHL.

B. Determination of the Market Area of the study

The normal market area is derived by determining where the substantial majority of contracting dollars for AIP-funded projects were spent, and from where the majority of bidders over a given period of time have come. Based on discussions with the Airport staff, and reviewing recent projects bid at the Airport, the normal market area for PHL and PNE is detailed in Table 1. The market area was established using the counties from where the substantial majority of bidders (78.58%) in the past three (3) fiscal years have come for previous construction projects and where the substantial majority of dollars (100%) have been spent for previous projects.

Table 1a: Counties in the Local Market Area by expenditures

County	Expenditures Feb '13 - Jan '16	Percentage in dollars Expended (Feb 13 - Jan 16)
Philadelphia County, PA	$73,062,324.25	72.65%
Montgomery County, PA	$27,504,175.00	27.35%
TOTAL	**$100,566,499.25**	**100.00%**

Source: Division of Aviation

Table 1b: Counties in the Local Market Area by number of bidders

County	Number of Bidders	% of Bidders
Montgomery County, PA	11	39.29%
Philadelphia County, PA	11	39.29%
SUBTOTAL	**22**	**78.58%**
Others	6	21.42%
TOTAL	**28**	**100.00%**

Source: Division of Aviation

C. Determination of relevant North American Industry Classification System (NAICS) codes

Based on information provided by the consulting engineer concerning the proposed projects for FFY 2017-2019, a list of NAICS codes corresponding to these projects was developed and is shown below:

Table 2a: Philadelphia International Airport—FFY 2017-2019 Projects & Activities

FY 2017 Projects		
Project	**NAICS Code**	**Activities**
• **North Apron** • **Taxiway Delta** • **Taxiway Delta 4** • **Taxiway Kilo** • **R/W 9R Approach Light Pier Replacement** • **Security Hardening** • **Taxiway K/E and K/T Intersection Concrete** • **Airfield Lighting / Vault Improvements** • **Deicing Facility Improvements**	237130	Power and Communication Line and Related Structures Construction
	237310	Highway, Street, and Bridge Construction
	238110	Poured Concrete Foundation and Structure Contractors
	238210	Electrical Contractors and Other Wiring Installation Contractors
	238910	Site Preparation Contractors
	324121	Asphalt Paving Mixture and Block Manufacturing
	493110	General Warehousing and Storage
	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
	541380	Testing Laboratories
	541611	Administrative Management and General Management Consulting Services
	541620	Environmental Consulting Services
	541922	Commercial Photography
	561410	Document Preparation Services
	561612	Security Guards and Patrol Services
	561621	Security Systems Services (except Locksmiths)
	561730	Landscaping Services
	562111	Solid Waste Collection
	562112	Hazardous Waste Collection

Table 2b: Philadelphia International Airport—FFY 2017-2019 Projects & Activities

FY 2018 Projects		
Project	**NAICS Code**	**Work Activities**
• **Taxiway Delta** • **Taxiway Echo** • **Taxiway Kilo 1** • **Taxiway Kilo 2** • **Taxiway Kilo 3** • **Com Apron**	237130	Power and Communication Line and Related Structures Construction
	237310	Highway, Street, and Bridge Construction
	238910	Site Preparation Contractors
	324121	Asphalt Paving Mixture and Block Manufacturing
	541310	Architectural Services
	541330	Engineering Services
	541340	Drafting Services
	541360	Geophysical Surveying and Mapping Services
	541370	Surveying and Mapping (except Geophysical) Services
	541380	Testing Laboratories
	541611	Administrative Management and General Management Consulting Services
	541620	Environmental Consulting Services
	541922	Commercial Photography
	561410	Document Preparation Services
	561612	Security Guards and Patrol Services
	561621	Security Systems Services (except Locksmiths)
	561730	Landscaping Services

Table 2c: Philadelphia International Airport—FFY 2017-2019 Projects & Activities

FY 2019 Projects		
Project	**Activities**	**NAICS Code**
• **Cargo City Apron** • **Taxiway Juliet** • **Taxiway Kilo 4** • **Taxiway Kilo 5** • **Taxiway Kilo 6** • **Taxiway Quebec** • **Taxiway Romeo** • **Taxiway Tango** • **Taxiway Tango Alpha** • **Taxiway Victor**	237130	Power and Communication Line and Related Structures Construction
	237310	Highway, Street, and Bridge Construction
	238110	Poured Concrete Foundation and Structure Contractors
	238210	Electrical Contractors and Other Wiring Installation Contractors
	238910	Site Preparation Contractors
	324121	Asphalt Paving Mixture and Block Manufacturing
	541310	Architectural Services
	541330	Engineering Services
	541340	Drafting Services
	541360	Geophysical Surveying and Mapping Services
	541370	Surveying and Mapping (except Geophysical) Services
	541380	Testing Laboratories
	541611	Administrative Management and General Management Consulting Services
	541620	Environmental Consulting Services
	541922	Commercial Photography
	561410	Document Preparation Services
	561612	Security Guards and Patrol Services
	561621	Security Systems Services (except Locksmiths)
	561730	Landscaping Services

Source: Division of Aviation

D. Determination of Relative Availability of DBEs in Market Area, compared to all firms

Table 4a: DBEs by relevant NAICS Codes—PHL FFY 2017

NAICS Code	Work activities	DBE firms	All Firms
237130	Power and Communication Line and Related Structures Construction	4	29
237310	Highway, Street, and Bridge Construction	18	40
238110	Poured Concrete Foundation and Structure Contractors	12	77
238210	Electrical Contractors and Other Wiring Installation Contractors	18	358
238910	Site Preparation Contractors	27	108
324121	Asphalt Paving Mixture and Block Manufacturing	0	9
493110	General Warehousing and Storage	1	44
541310	Architectural Services	18	218
541320	Landscape Architectural Services	12	46
541330	Engineering Services	27	364
541340	Drafting Services	9	12
541360	Geophysical Surveying and Mapping Services	2	3
541370	Surveying and Mapping (except Geophysical) Services	3	11
541380	Testing Laboratories	4	24
541611	Administrative Management and General Management Consulting Services	35	523
541620	Environmental Consulting Services	14	58
541922	Commercial Photography	1	29
561410	Document Preparation Services	2	37
561612	Security Guards and Patrol Services	4	69
561621	Security Systems Services (except Locksmiths)	3	40
561730	Landscaping Services	14	548
562111	Solid Waste Collection	10	51
562112	Hazardous Waste Collection	0	4
	TOTAL	**238**	**2702**
	STEP 1 DBE BASE FIGURE =		**8.81 %**

Table 4b: DBEs by relevant NAICS Codes—PHL FFY 2018

NAICS Code	Work Activities	DBE Firms	All Firms
237130	Power and Communication Line and Related Structures Construction	4	29
237310	Highway, Street, and Bridge Construction	18	40
238910	Site Preparation Contractors	27	108
324121	Asphalt Paving Mixture and Block Manufacturing	0	9
541310	Architectural Services	18	218
541330	Engineering Services	27	364
541340	Drafting Services	9	12
541360	Geophysical Surveying and Mapping Services	2	3
541370	Surveying and Mapping (except Geophysical) Services	3	11
541380	Testing Laboratories	4	24
541611	Administrative Management and General Management Consulting Services	35	523
541620	Environmental Consulting Services	14	58
541922	Commercial Photography	1	29
561410	Document Preparation Services	2	37
561612	Security Guards and Patrol Services	4	69
561621	Security Systems Services (except Locksmiths)	3	40
561730	Landscaping Services	14	548
	TOTAL	**185**	**2122**
	STEP 1 DBE BASE FIGURE =		**8.72%**

Table 4c: DBEs by relevant NAICS Codes— PHL FFY 2019

NAICS CODE	WORK AREA	DBE firms	All firms
237130	Power and Communication Line and Related Structures Construction	4	29
237310	Highway, Street, and Bridge Construction	18	40
238110	Poured Concrete Foundation and Structure Contractors	12	77
238210	Electrical Contractors and Other Wiring Installation Contractors	18	358
238910	Site Preparation Contractors	27	108
324121	Asphalt Paving Mixture and Block Manufacturing	0	9
541310	Architectural Services	18	218
541330	Engineering Services	27	364
541340	Drafting Services	9	12
541360	Geophysical Surveying and Mapping Services	2	3
541370	Surveying and Mapping (except Geophysical) Services	3	11
541380	Testing Laboratories	4	24
541611	Administrative Management and General Management Consulting Services	35	523
541620	Environmental Consulting Services	14	58
541922	Commercial Photography	1	29
561410	Document Preparation Services	2	37
561612	Security Guards and Patrol Services	4	69
561621	Security Systems Services (except Locksmiths)	3	40
561730	Landscaping Services	14	548
		215	2557
	STEP 1 DBE BASE FIGURE =		**8.41%**

SOURCES:

1. 2013 County Business Patterns, U.S. Census Bureau, April 2015.
2. City of Philadelphia Office of Economic Opportunity Registry, April 2016
3. Pennsylvania Unified Certification Program (PAUCP) Directory, March 2016.

NOTE: The County Business Patterns data were used as the source to determine the denominator, or the number of all firms in the market area. The DBE directories listed above were used to determine the numerator, or the number of DBE firms in the market area.

E. Determination of the DBE Base Figure

The Step 1 DBE Base Figure was derived by dividing the number of relevant DBE firms into the number of all relevant firms as indicated in Tables 4a-4c above.

The Step 1 DBE Base Figure for FFY 2017 for PHL is 8.81%.

The Step 1 DBE Base Figure for FFY 2018 for PHL is 8.72%.

The Step 1 DBE Base Figure for FFY 2019 for PHL is 8.41%.

II. Adjustments to the DBE Base Figure

After the DBE Base Figure has been developed, the regulations (49 CFR Part 26) require that:

"...additional evidence in the sponsor's jurisdiction be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal" (26:45(d)).

A. Adjustment Factors to Consider

The regulations further state that there are several types of evidence that must be considered when adjusting the base figure. These include:

"(i) 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 historical overall DBE goals and accomplishments in recent years were examined relative to the above consideration. Specifically, the annual 'Uniform Report of DBE Awards or Commitments and Payments' for the reporting periods listed below was assessed.

Table 5: Philadelphia International Airport Historic DBE Accomplishment Data

Fiscal year	*DBE goal*	*Accomplishment*	*Over/under*
FY 2013	14.90%	16.15%	1.25%
FY 2014	14.39%	20.05%	5.66%
FY 2015	14.39%	18.20%	3.81%
	MEDIAN	**18.20%**	**3.81%**

Source: Division of Aviation

The median DBE accomplishment for previous AIP-funded activities as shown above is **18.20%**, compared to the Step 1 DBE base figure of **8.81%**, **8.72%,** and **8.41%** for **FFY 2017, FFY 2018, and FFY 2019, respectively**. It should be noted that the data are based on historical participation that is substantially similar to the proposed activities.

B. Consultations

In accordance with 49 CFR Part 26.45, consultations were held with various agencies to gather:

"(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure...

(iii) 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" (26:45, d.)

The City of Philadelphia commissioned a disparity study in 2014 for city and Metro-area contracts. The disparity study looked at the availability versus utilization of minority, women, and disabled-owned small businesses M/W/DSBEs in the Philadelphia Metropolitan Statistical Area (MSA) for public works contracts; personal and professional services contracts; and services, supplies, and equipment contracts. The study determined that M/W/DSBEs for services, supplies and equipment contracts and personal and professional services contracts were under-utilized. M/W/DSBEs for public works contracts were slightly over-utilized with respect to their availability. The proposed projects for FFY 2017-2019 are public works contracts, so the Airport will consider making an adjustment of its DBE base figure based upon the data from the disparity study for public works contracts.

The disparity study makes a recommendation for a goal of 22% for DBE participation for public works contracts over the next three years starting from FY 2015. Because of the requirements in 49 CFR Part 26.45 for goal-setting, the Division of Aviation will not set its goal at 22%, but will use that factor to adjust its base figure.

The disparity study did not discuss statistical disparities with respect to DBEs' ability to obtain bonding, capital, and insurance. However, the City Controller of the City of Philadelphia conducted an audit and investigation in 2007 into some of the barriers that minority contractors face that inhibit their participation in city contractors. Among the barriers mentioned in the report are:

"Unnecessary granting of waivers from MBEC participation requirements to prime contractors
-Bid packages are too complex for smaller contractors to participate as prime contractors
-Lack of availability of bonding and insurance for smaller M/W/DSBE contractors

-Lack of a comprehensive plan of action to address diversity and inclusion in city contracting and procurement
-Slow certification process (pg. i)"

There are agencies in the Philadelphia area that can assist DBEs to access bonding, capital, insurance, legal services, etc. The Greater Philadelphia Minority Business Strategic Alliance (GPMBSA) has a website (http://www.gpmbsa.com/services.htm) that has links to various agencies in the Philadelphia MSA that are available for DBEs to consult. In addition, the Philadelphia Industrial Development Corporation (PIDC) offers information on its website (http://www.pidcphila.com/) as well for DBEs to inquire about accessing capital and bonding. DBEs can also contact the City of Philadelphia Procurement Department to inquire about bonding assistance.

C. Adjustment to Step 1 DBE Base Figures: FFY 2017-2019

With the adjustment factors considered to this point, the Division of Aviation will adjust the Step 1 base figures for PHL by adding to them the annual historic median DBE participation noted in Table 4 (18.20%) and the recommended goal as derived from the disparity study (22.0%). By averaging the total, the Airport will calculate a final overall goal for PHL.

FFY 2017 DBE base figure (8.81%) + median of past participation (18.20%) + recommended goal from disparity study (22.0%) = 49.01%

49.01 ÷ 3 = 16.34%

FFY 2018 DBE base figure (8.72%) + median of past participation (18.20%) + recommended goal from disparity study (22.0%) = 48.92%

48.92 ÷ 3 = 16.31%

FFY 2019 DBE base figure (8.41%) + median of past participation (18.20%) + recommended goal from disparity study (22.0%) = 48.61%

48.61 ÷ 3 = 16.20%

The Division of Aviation expects to expend approximately $24,872,000 in AIP funds for FFY 2017. Since the goal is 16.34%, this means that the Division of Aviation expects to expend approximately $4,063,256 with DBEs in FFY 2017.

The Division of Aviation expects to expend approximately $11,283,000 in AIP funds for FFY 2018. Since the goal is 16.31%, this means that the Division of Aviation expects to expend approximately $1,839,881 with DBEs in FFY 2018.

The Division of Aviation expects to expend approximately $9,607,000 in AIP funds for FFY 2019. Since the goal is 16.20%, this means that the Division of Aviation expects to expend approximately $1,556,654 with DBEs in FFY 2019.

The Division of Aviation expects to expend a total of $45,762,000 in AIP funds for over the next three years, of which $7,459,791 is projected to be expended with DBEs. $7,459,791/$45,762,000 = **16.30% overall DBE goal for PHL.**

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. The Division of Aviation will use a combination of the following race-neutral means to increase DBE participation:

1. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);*

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. *Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g. simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).*

4. *Ensuring distribution of the PAUCP DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.*

The Division of Aviation estimates that, in meeting its overall goal for PHL of **16.30%**, it will obtain 3.81% using race-neutral means, and 12.49% using race-conscious means. The reason for the breakout is because Table 5 shows that the median amount by which goals were exceeded is 3.81%. It is projected that the Division of Aviation will meet 3.81 points of its overall goal using race-neutral means, and the remainder will be met utilizing contract goals.

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

The Division of Aviation will normally submit its overall goal to the FAA by August 1 prior to the commencement of the next three-year period.

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.

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 informed the public that the proposed goal and its rationale were available for inspection during normal business hours at the Division of Aviation's administrative office, and informed the public that it would accept comments on the goals for 30 days from the date of the notice. The notice was published in the Al Dia News, Korea Times, Philadelphia Daily News, Philadelphia Inquirer, Philadelphia Metro and Philadelphia Tribune newspapers (see Appendix B). The notice included the address to which comments could be sent and addresses where the proposal could be reviewed.

The Division of Aviation's overall goal submission to the FAA includes a summary of information and questions and comments received during this public participation process and its responses. The summary can be found in Appendix A.

The Division of Aviation will begin using the overall goal on October 1, 2016, unless the Division of Aviation has received other instructions from USDOT/FAA (or, if the goal is established on a project basis) by the time of the first solicitation for a USDOT/FAA-assisted contract for the projects.

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:

PUBLIC COMMENTS

PHL PHILADELPHIA INTERNATIONAL AIRPORT

April 27, 2016
DBE Goal Public Consultation Meeting
Philadelphia Airport Marriott
1:00 pm – 4:00 pm

DBE 3-Year Goal Public Comments and Responses

The following is an excerpt from the stenographer's notes for the public consultation meeting:

AUDIENCE MEMBER: Where does the 22 percent participation come from?

MR. KEN WEEDEN: The 22 percent came from the Philadelphia Disparity Study that was conducted by the Office of Economic Opportunity.

AUDIENCE MEMBER: My name is James Davie. I'm with JV Bravo Company. I have a PA UCP certification. Obviously, I'm not a minority. I'm not a woman. The Airport, when they put out the stuff -- the PMO, the EOP plans and everything -- they state minority and women. So I'm -- my question is, when a lot of the EOP plans is put out, you just calling for minority and women. I have a PA UCP. I was found economically/socially disadvantaged, so I'm essentially blind to the prime contractors because they are only listing minority and women. Can you help me navigate through that?

MR. KEVIN WEEDEN: Kathy can answer that.

MS. PADILLA: I just wanted to – with the EOP plans, they are under the Office of Economic Opportunity. And it's a different program. So, they have a disabled category and they set disabled goals on their contracts.

MR. DAVIE: They don't. They stopped seven years ago.

MS. PADILLA: I can't speak for them.

MR. DAVIE: My question goes back to DBE.

MS. PADILLA: We're not the Economic Opportunity Plan. We wouldn't be advertising those.

MR. DAVIE: I understand.

MS. PADILLA: When we list opportunities they're for DBEs, and you are a DBE. So you are -- you would be counted in our program in that category.

MR. KEVIN WEEDEN: And I would add, that the DBE Program is a federal program. It's based on federal funds, so the other programs are based on non-federal funds...

MR. DAVIE: I am totally aware of that. I just used the City's disparity report that came from OEO. There is some connection there. I understand federal and city. I'm very – for five years now I've been in this situation.

MR. KEVIN WEEDEN: Right.

We have plenty of time if you have something on your mind. Feel free to stand up and ask.

(No further questions asked.)

Well, if we don't have any other questions, I think that that will be the end of the presentation.

Thank you for coming. And I will turn it back over to Kathy.

MS. PADILLA: Again, I want to thank everyone for coming here today. Please, let us know any other questions or comments you have. One other thing I want to discuss for a second, when talking about the OEO and the DBE Program, one of the other big differences is the DBE Program is also a small business program. So on the OEO side, you can be a minority, but you can be a billionaire and still qualify for the program. So that will show why there are sometimes different goal levels between the two programs.

Our businesses can only be up to a personal net worth of $1.32 million. And there you can be at any size. There are different reasons for different goals.

And I also wanted to thank Ken and Kevin for being here today. Please also, talk to our staff if you have any questions regarding certification, monitoring, any other projects at the Airport. Thank you.
(Applause)
(Public Meeting concludes at 1:43 p.m.)

In addition to the public consultation meeting, a commenter submitted an email to the Office of Business Diversity expressing support for the overall DBE goal being higher than 14%. (Note: The goal, as originally prepared, was 15.62%.). The commenter also expressed support for higher percentages for participation for projects that were not federally-funded as well.

APPENDIX B:

NOTICE TO THE PUBLIC

Attachment 5

Good Faith Efforts Requirement and DBE Submission Forms

DISADVANTAGED BUSINESS ENTERPRISES IN CITY CONTRACTS

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

1. **Policy**. This invitation and bid 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 the maximum opportunity 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.

2. **DBE Obligation.** Bidders shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Bidders shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded by the U.S. DOT. The successful bidder shall include this obligation of nondiscrimination in every subcontract, so that such provisions will be binding upon each subcontractor.

3. **DBE Goal**. Bidders are required to use good faith efforts to meet the goal of ___% participation by DBEs. Bidders are required to submit the following with their bid:

   a. A Schedule For Participation demonstrating that Bidder has met or exceeded the DBE Goal; or

   b. A Request For Good Faith Efforts Review, including any Schedule For Partial Participation, demonstrating that Bidder has made a good faith effort to meet the DBE Goal.

   Submission of the Schedule For Participation or, when necessary, a Request For Good Faith Efforts Review, which become part of the bidder's bid, is an element of responsiveness to the bid. **The failure to submit either a Schedule For Participation or a Request For Good Faith Efforts Review responsive to the DBE goal shall result in rejection of the bid.** Notwithstanding the foregoing, if after bid opening, the City determines that the bidder, having submitted a Schedule For Participation with its bid certifying that it fully met the DBE goal, did not actually achieve the DBE goal, the City shall permit the bidder to submit a Request For Good Faith Efforts Review in order to evaluate whether the bidder made good faith efforts to meet the DBE goal.

4. **Counting DBE Participation.** The Schedule For Participation must contain the name and address of each DBE, a detailed description of the work (including a supply effort) to be performed by each named DBE and the

percentage and dollar amount of participation. An entity wishing to participate as a joint venture DBE shall, in addition to the Schedule For Participation, complete and submit a Joint Venture Eligibility Information Form available at the Office of Economic Opportunity ("OEO"). Listing of a DBE on the Schedule For Participation or a Schedule For Partial Participation accompanying a Request For Good Faith Efforts Review, constitutes a representation by the bidder that the DBE is capable of completing the subcontract with its own work force and that the bidder has made a binding commitment with such firm prior to submission of the bid. Such a listing is also a representation that if the bidder is awarded the contract, the bidder will subcontract with the listed DBE(s) for the work described and dollar/percentage amount(s) set forth in the bid submission. Bidder will be required to submit written confirmation from the DBE(s) participating in the contract as provided in the bidder's commitment prior to any award of the contract as a matter of responsibility.

a. Any DBE listed on the Schedule For Participation or the Schedule For Partial Participation accompanying a Request For Good Efforts Review must be certified as of the date of bid opening. Bidders may list on the Schedule only firms that are certified as a DBE by the Pennsylvania Unified Certification Program ("PaUCP"). PaUCP maintains a directory of certified DBEs classified according to NAIC codes ("PaUCP Directory"). The PaUCP Directory is accessible online at www.paucp.com. Bidder is cautioned that some PaUCP certified DBEs may not appear in the PaUCP online Directory. Bidders are therefore advised to verify the certification status of DBE(s) prior to the date of bid submission by telephoning the Office of Economic Opportunity at 215-686-6232. Bidder shall not receive credit towards the DBE Goal or good faith efforts by using other certification directories (e.g., City of Philadelphia OEO Directory of Certified Firms, Pennsylvania Department of General Services BMWBO Directory).

b. If a firm is determined to be an eligible DBE, the total dollar value of the contract awarded to the DBE is counted toward the applicable DBE goal to the extent provided below:

i. Count toward the DBE goal only that portion of the total dollar value of a contract with a joint venture equal to the percentage of DBE ownership and control in the joint venture. The DBE joint venture partner must be responsible for a clearly defined portion of the work and must share in the risks and profits of the joint venture commensurate with its ownership interest in the joint venture.

ii. Count toward the DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, and other relevant factors. Where a DBE does not perform or exercise responsibility for at

least 30% of the total cost of its contract with its own work force or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE shall be presumed not to be performing a commercially useful function. 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 DBE goal.

iii. Count toward the DBE goal sixty percent (60%) of expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer and count towards the DBE goal one hundred percent (100%) of expenditures to a DBE manufacturer:

1) A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

2) A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock and regularly sold to the public in the usual course of business. A DBE regular dealer is a firm that engages in, as its principal business and in its own name, the purchase and sale of the products in question. A DBE regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. DBE brokers and DBE packagers shall not be regarded as DBE manufacturers or DBE regular dealers within the meaning of this paragraph.

iv. Count services performed by a DBE that are readily identifiable to the project. Count toward the DBE goal the following expenditures to DBE firms that are not DBE manufacturers or DBE regular dealers:

1) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the DBE hauler, DBE trucker, or DBE delivery service is not also the DBE manufacturer of or a DBE regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The following factors are used in determining DBE credit for DBE Trucking Firms:

- 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.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- 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.
- 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.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE 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.
- For purposes above, a 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.

5. **Good Faith Efforts Review and Bidder Appeal.**

a. If the bidder fails to achieve the DBE Goal, it must file a Request For Good Faith Efforts Review as indicated above, documenting its good faith efforts to meet the goal. Good faith efforts are those efforts taken by bidder which, by their scope, intensity and appropriateness, can reasonably be expected to achieve the DBE goal. Factors to be considered shall include, but not be limited to, soliciting interest of DBEs at pre-bid meetings; negotiating in good faith with interested DBEs; providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in an expeditious manner; and, selecting portions of work or material needs consistent with the available DBE subcontractors and suppliers. Appendix A to 49 C.F.R. Part 26 "Guidance Concerning Good Faith Efforts" contains additional information for bidders.

b. If the City determines that the bidder has actually failed to achieve the DBE Goal, notwithstanding the bidder's submission, with its bid, of a Schedule For Participation certifying that the bidder has fully achieved the

DBE Goal, the City shall notify the bidder and shall permit the bidder to submit a Request For Good Faith Efforts Review for evaluation by the City.

c. If the City determines that the bidder failed to make good faith efforts to achieve the DBE Goal, the bidder, in conformity with 49 C.F.R. Section 26.53 (d), will be notified and may file a written appeal for administrative reconsideration to the City within forty-eight (48) hours of the date of notification. Reconsideration will be made by a City official who did not participate in the original determination that bidder failed to meet the DBE goal or make adequate good faith efforts. The result of the reconsideration process is final and is not administratively appealable to the U.S. Department of Transportation.

6. **Post Award Obligation**. All contractors and subcontractors are advised that their compliance with the requirements for participation by DBEs is material to the contract. Failure to carry out the requirements herein constitutes a substantial breach of contract and, after notification to the U.S. DOT, may result in termination of the contract, suspension, being barred from bidding on and/or participating in City and U.S. DOT funded contracts for up to three (3) years, and/or any other remedy available in law or equity.

a. The successful bidder is required to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. All such substitutions require the prior written approval of the City. Similarly, in the event the successful bidder's contract is increased by change order (sometimes referred to as a modification) and/or amendment, the successful bidder is required to make good faith efforts to meet the contract goal on such change order or amendment or to subcontract other work items in order to achieve the DBE goal on the total dollar amount of the contract at the time of contract completion.

b. The successful bidder is required to make prompt payment to each subcontractor for satisfactory performance of its contract no later than five (5) days from the successful bidder's receipt of payment from the City. The successful bidder will return any retainage payments to each subcontractor within five (5) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from this time frame may occur only for good cause following written approval of the awarding City department. This provision applies to both DBE and non-DBE subcontractors. In the event that successful bidder is found to be in noncompliance with this directive, 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 Liaison Officer and/or OEO in situations involving DBE subcontractors, before a state of noncompliance is reached.

7. **Post Award Compliance Monitoring**. The City reserves the right to conduct post-award compliance reviews to ensure that contractors are in compliance

with the contract requirements for DBE participation. The successful bidder agrees to cooperate with the City in its compliance monitoring efforts and 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, purchase orders, monthly DBE reports, canceled checks, etc. Unreasonable failure or refusal to furnish information or to cooperate in the compliance review shall constitute a substantial breach of contract.

DUPLICATE THIS FORM AS NEEDED

DUPLICATE THIS FORM AS NEEDED

SCHEDULE FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Bid Number: _____ Name of Bidder _____

DBE	Detailed Description of Work or Supply Effort	DBE Participation	
		Dollar Amount $	Percentage of Prime Contract (calculate Regular Dealer 60% rule if applicable)
Name Address Contact Person / Phone			
Name Address Contact Person / Phone			

PLEASE NOTE:

1. If the bidder is a DBE, it is still required to complete this form and must describe, in detail, 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 detailed 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.

REQUEST FOR GOOD FAITH EFFORTS REVIEW

Name of Bidder: _____ Bid Number:_____

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 bid opening 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)

Bid Number:_____ Name of Bidder _____

DBE	Detailed Description of Work or Supply Effort	DBE Participation	
		Dollar Amount $	Percentage of Prime Contract (calculate Regular Dealer 60% rule if applicable)
Name Address Contact Person / Phone			
Name Address Contact Person / Phone			

PLEASE NOTE:

1. If the bidder is a DBE, it is still required to complete this form and must describe, in detail, 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 detailed 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.

Name of Bidder: _____ Bid Number:_____

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.

Name of Bidder: _____ Bid Number:_____

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:

DUPLICATE AS NECESSARY

Name of Bidder: _____ Bid Number:_____

CERTIFICATION OF UNAVAILABILITY OF DISADVANTAGED BUSINESS ENTERPRISES

I, _____

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

bid for _____
(Describe Work or Supply Effort Solicited)

by _____
(Name of Prime Bidder'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://www.paucp.com/DownloadForms.aspx.

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 <u>all</u> 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

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

*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 CERTIFYNG 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 RECIPENTS/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-JURISDICATIONAL 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.

ATTEST

_____

Title: DATE

DOT Recipient

BY_____

Title: DATE

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

Exhibit B – PA UCP Initial Certification and Recertification Process

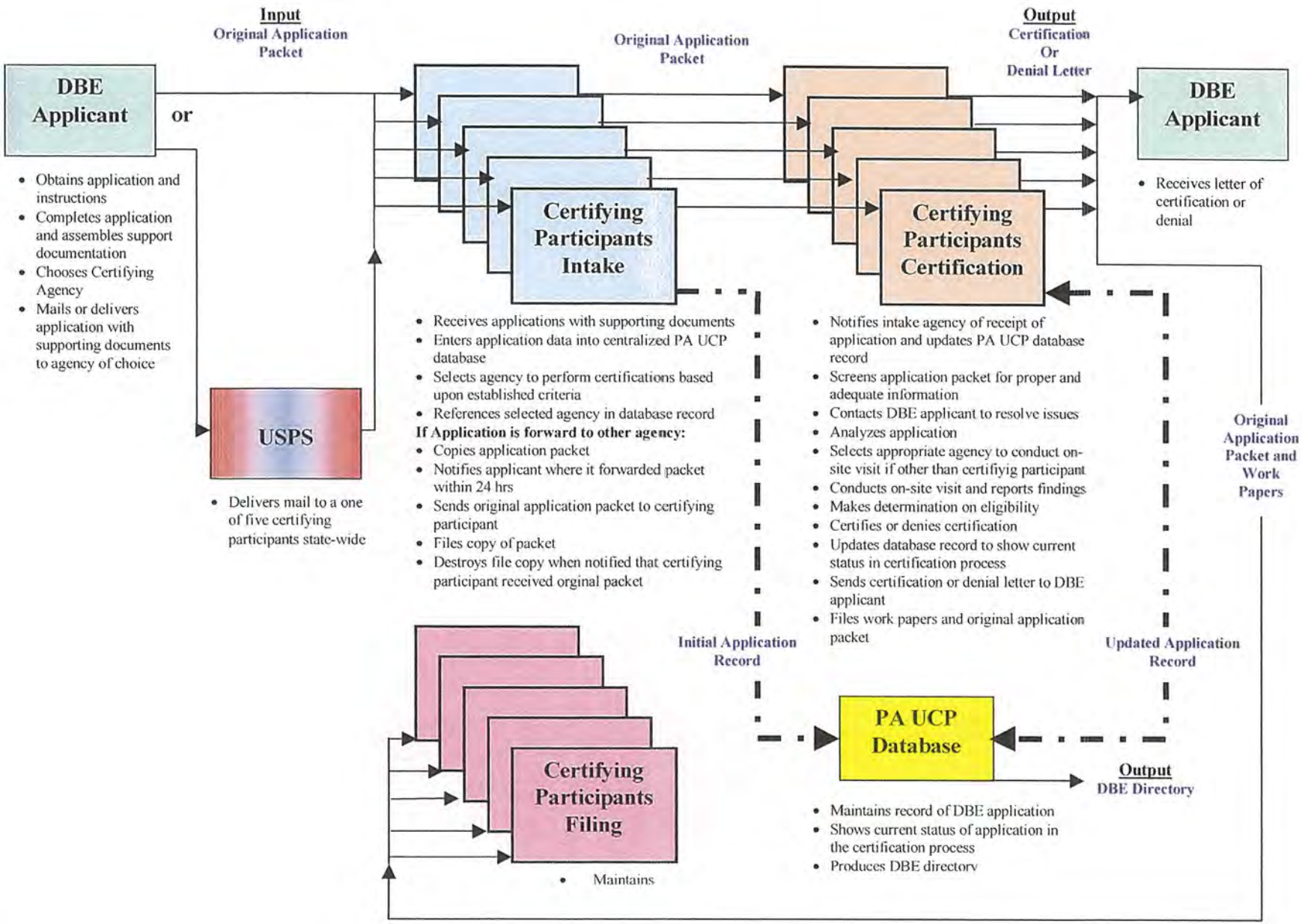

Exhibit C – PA UCP Code of Ethics

The PA UCP Code of Ethics is intended to serve as a guide to provide a level playing field for Disadvantaged Business Enterprises to participate in contracts with Pennsylvania agencies that expend federal monies provided by the US Department of Transportation (USDOT). DBE firms, contractors, federal funding recipients, and certifying agencies use one standard, user-friendly process to identify and certify eligible firms.

We hereby commit ourselves to the highest professional conduct and agree to the following principles:

I. Serve the Public Interest

A. Oppose all forms of discrimination and harassment, and promote affirmative action.
B. Recognize and support the public's right to know the public's business.
C. Assist citizens in their dealings with government.
D. Be prepared to make decisions that may not be popular.

II. Respect the New Regulations and Historical Intent

A. Understand and apply legislation and regulations.
B. Treat fairly all persons regardless of such factors as race, religion, gender, disability, age, or national origin.
C. Respect and protect privileged information.
D. Accept as a personal duty the responsibility to keep up to date on emerging issues and potential problems.
E. Maintain and improve our competence.
F. Seek, accept, and offer honest criticism of work, acknowledge/correct error, and credit properly the contributions of others.

III. Demonstrate Personal and Organizational Integrity

A. Demonstrate the highest standards in all activities to inspire public confidence and trust in public service.
B. Maintain truthfulness and honesty and not compromise them for advancement, honor, or personal gain.
C. Zealously guard against conflict of interest or its appearance, e.g. misuse of public resources or the acceptance of gifts.
D. Conduct official acts professionally and without partisanship.
E. Establish procedures that promote ethical behavior and hold individuals and organizations accountable for their conduct.
F. Provide organization members with an administrative means for dissent, assurance of due process, and safeguards against reprisal.
G. Promote organizational accountability through appropriate controls and procedures.
H. Promote principles that protect against arbitrary and capricious actions.
I. Assist colleagues and co-workers in their professional development and support them in following this code of ethics.

Exhibit D – PA UCP Implementation Schedule

NOTE: This is saved as an Excel file – "Exhibit D Implementation Plan Rev 1 11-21-01

Exhibit D – PA UCP Implementation Schedule

NOTE: This is saved as an Excel file – "Exhibit D Implementation Plan Rev 1 11-21-01

Exhibit E – PA UCP FUNCTIONAL RELATIONSHIPS

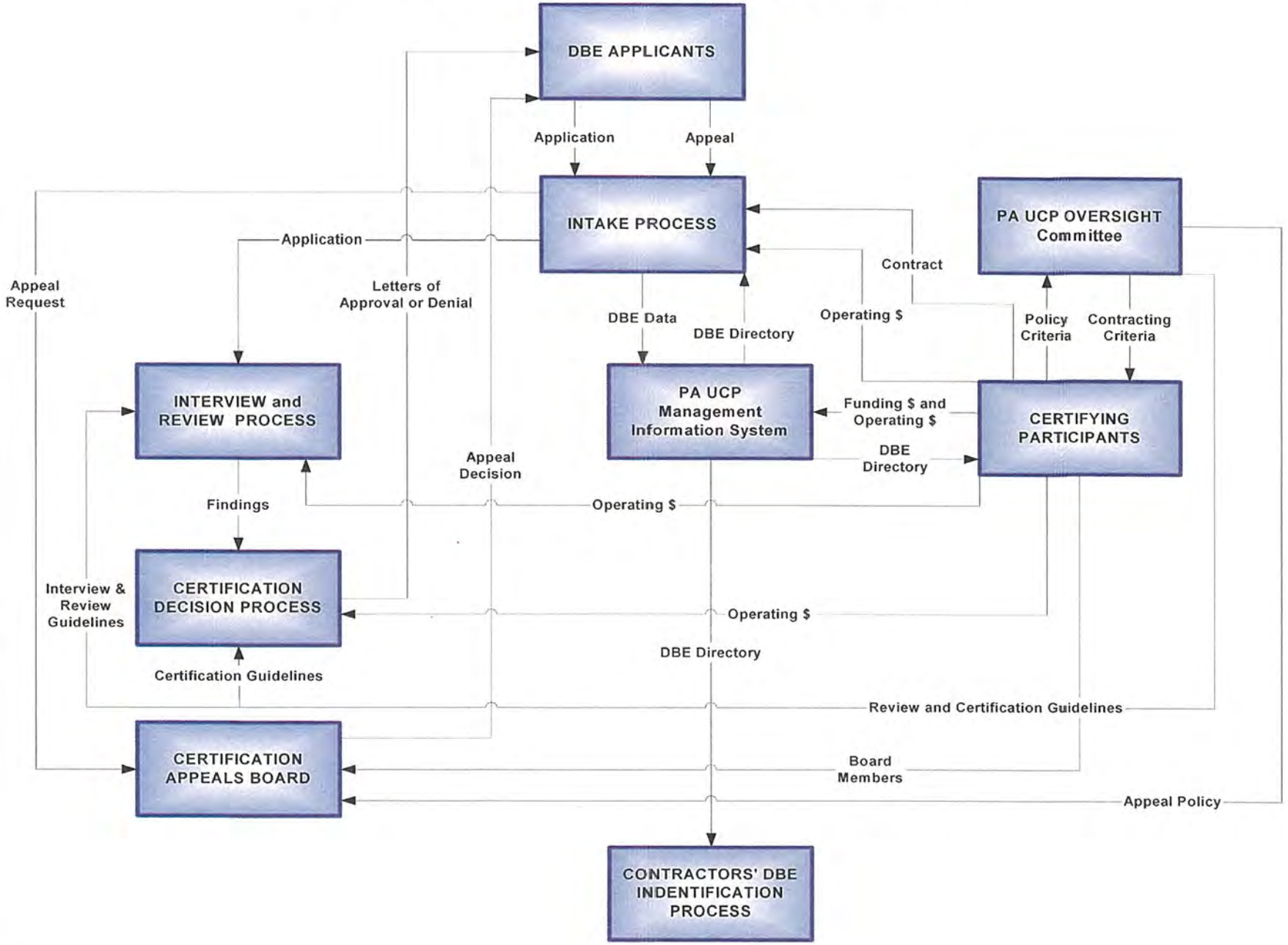

Exhibit F – "PROVISIONS CONCERNING THE AMERICANS WITH DISABILTITIES ACT" and "CONTRACTOR INTEGRITY PROVISIONS"

Part A:

PROVISIONS CONCERNING *THE AMERICANS WITH DISABILITIES ACT*

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, *28 C.F.R. § 35.101 et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "*General Prohibitions Against Discrimination," 28 C.F.R. § 35.130*, and all other regulations promulgated under *Title II* of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1.

Part B:

CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of this clause only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.

    a. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

    b. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have

been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.

c. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.

d. **Financial interest** means:

1) Ownership of more than a five percent interest in any business; or

2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

5. The Contractor shall not, in connection with this or any other agreement with the

Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

10. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an

amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

(12/20/91)

Attachment 9

Regulations: 49 CFR Part 26

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