



City of
Philadelphia

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

Philadelphia, Pennsylvania

June 2022 (October 2024 Revision)



TABLE of CONTENTS

POLICY STATEMENT	1
GENERAL REQUIREMENTS	2
SECTION 26.1 OBJECTIVES.....	2
SECTION 26.3 APPLICABILITY	2
SECTION 26.5 DEFINITIONS	2
SECTION 26.7 NON-DISCRIMINATION REQUIREMENTS	2
SECTION 26.11 DATA COLLECTION AND REPORTING REQUIREMENTS.....	2
SECTION 26.13 FEDERAL FINANCIAL ASSISTANCE AGREEMENT	3
ADMINISTRATIVE REQUIREMENTS	4
SECTION 26.21 DBE PROGRAM UPDATES.....	4
SECTION 26.23 POLICY STATEMENT	4
SECTION 26.25 DBE LIAISON OFFICER (DBELO)	5
SECTION 26.27 DBE FINANCIAL INSTITUTIONS	5
SECTION 26.29 PROMPT PAYMENT MECHANISMS	6
SECTION 26.31 DIRECTORY OF CERTIFIED FIRMS.....	8
SECTION 26.33 OVERCONCENTRATION	8
SECTION 26.35 BUSINESS DEVELOPMENT PROGRAMS	8
SECTION 26.37 MONITORING AND ENFORCEMENT MECHANISMS	9
SECTION 26.39 FOSTERING SMALL BUSINESS PARTICIPATION	10
GOALS, GOOD FAITH EFFORTS, AND COUNTING	10
SECTION 26.43 SET-ASIDES OR QUOTAS	10
SECTION 26.45 OVERALL GOALS	10
SECTION 26.47 FAILURE TO MEET OVERALL GOALS	12
SECTION 26.49 TRANSIT VEHICLE MANUFACTURERS GOALS	12
SECTION 26.51	12
MEANS TO MEET OVERALL GOALS	12
SECTION 26.53 GOOD FAITH EFFORTS PROCEDURES	13
SECTION 26.55 COUNTING DBE PARTICIPATION	17
CERTIFICATION STANDARDS	19
SECTION 26.61- 26.73 CERTIFICATION PROCESS	19
CERTIFICATION PROCEDURES	19
COMPLIANCE AND ENFORCEMENT	23
ATTACHMENTS	26

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

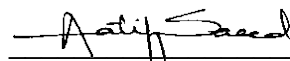
The City (hereafter 'the City'), through its Division of Aviation, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT) 49 CFR Part 26. The City has received federal financial assistance from USDOT, and as a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

Donna Jackson Stephans, Vice President of Diversity, Equity and Inclusion, City of Philadelphia, Philadelphia International Airport, International Plaza 2, Suite 400, Philadelphia, PA 19113 (215) 937-6870, Donna.Stephans@phl.org has been designated as the DBE Liaison Officer (DBELO). In that capacity, she is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the airport in their financial assistance agreements with the USDOT.

This policy statement will be placed under the 'Business with PHL' section of the Airport's website making the City's policy available throughout the internal organization and to the DBE and non-DBE business communities that perform work on our DOT-assisted contracts. Copies of the policy statement will also be made available to the agencies/organizations consulted during the development of the DBE goal methodology



Atif Saeed, CEO
City of Philadelphia Department of Aviation

10/4/2024

Date

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 Data Collection and Reporting Requirements

Reporting to USDOT: 26.11(b)

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

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

The City will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Part 26. The City will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

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

The City will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

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

The City will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements. **Attachment 3** contains a copy of the Bidders List Collection Form that the City is utilizing.

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

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

The City will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the City's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

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

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

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 DOT-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 DOT-assisted contracts. The City DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: 26.13b

The City will ensure that the following clause is placed in every USDOT-assisted contract and each subcontract the prime contractor signs with a subcontractor :

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Donna Jackson Stephans
Vice President for Diversity, Equity, and Inclusion
City of Philadelphia, Department of Aviation
Philadelphia International Airport
International Plaza 2; Suite 400
Philadelphia, PA 19113
(215) 937-6870
<mailto:Donna.Stephans@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 2** to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of five to assist in the administration of the program, as well as the City's legal counsel to assist in the administration of the program. The duties and responsibilities include the following

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process. [
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the firms certified by the City in the updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

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

“Business with PHL” section of the Airport’s website.

The City has identified the following minority-owned financial institutions within the greater Philadelphia area and reviews this information annually in advance of submitting our annual DBE report:

Asian Bank

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

Tioga-Franklin Savings Bank

320 E Girard Ave
Philadelphia, PA 19125
(215) 423-8012

United Bank of Philadelphia

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

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR § 26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 business days from the prime contractor’s receipt of each payment from the City.

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

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

reference to “30 days” will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

The City clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor’s failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the City undertakes proactive monitoring and oversight of prime contractors’ compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities is accomplished through the use of B2Gnow payment monitoring system, where the City posts payments to the prime, automatically notifying them to provide information on payments to all subcontractors. This in turn notifies subcontractors to verify timeliness and amount of payments. The City reviews payment history with primes and subcontractors during monitoring reviews and in any instance where the subcontractor cannot verify prompt receipt of payment or retainage.

The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City’s financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Prompt Payment Dispute Resolution

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

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. Meetings between prime and sub, with resident project representative and/or project manager presence as appropriate. Any such meeting will include individuals authorized to bind each interested party, including City representatives with authority to take any necessary enforcement action.]
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 may also include the following mechanisms in each USDOT-assisted prime contract:

- a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- b. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- c. Other mechanisms, consistent with this part and applicable state and local law, to ensure that all DBEs and other contractors are fully and promptly paid.

Section 26.31 Directory of Certified Firms

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

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

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

Attachment 4 shows the web address to the PA UCP DBE directory.

Section 26.33 Overconcentration

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

Section 26.35 Business Development Programs

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

services programs, which are also available to the DBEs:

1. 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:](http://www.phila.gov/commerce/businessSupport/)

www.phila.gov/commerce/businessSupport/.

Section 26.37 Monitoring and Enforcement Mechanisms

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

The City actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by data contained in the City's B2Gnow system. This mechanism to maintain a running tally of overall goal attainment will be used to inform the City's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

The City actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by data contained in the City's B2Gnow system. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor to address to meet the contract commitment pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

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

Contracting records are reviewed by the Office of Business Diversity. The City requires prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in

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

Section 26.39 Fostering Small Business Participation

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 small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation. The City acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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 of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City will use DBE Directory information and Census Bureau Data, supported by bidders' list information as a method to determine the base figure. The City understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information

from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The City will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the City will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the City to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how the City considered and responded to any comments and information received before finalizing the goal.

The City will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

The City understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the

method employed by the City for calculating goals is inadequate, FAA may, after consulting with the City, adjust the overall goal or require that the goal be adjusted by the City. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program.

Section 26.47 Failure to Meet Overall Goals

The City cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the City fails to administer its DBE program in good faith.

The City understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The City will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA for approval.

Section 26.49 Transit Vehicle Manufacturers Goals

N/A

Section 26.51 Means to Meet Overall Goals

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means

- such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
 3. Providing technical assistance and other services;
 4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
 5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
 6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
 7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be

awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

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

For each DBE listed as a regular dealer or distributor the City will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE

supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the City will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which the City solicits proposals to design and build a project with minimal project details at time of letting, the City may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the City will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The City and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

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

Administrative Reconsideration of Good Faith Efforts determinations

Within 10 days of being informed by the City that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: *Api Appulingam, P.E., A.A.E., 2 International Plaza, Suite 400, Philadelphia, PA 19113, 215-937-7847, api.appulingam@phl.org*. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

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

The City will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

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

The City will include in each prime contract a provision stating that:

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

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

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

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

- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- (10) Other documented good cause that the City determines compels the termination of the DBE subcontractor;

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

The prime contractor's written notice must give the DBE five (5) days to respond, advising the City and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the City should not approve the prime contractor's request. 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 (5) days.

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

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

Section 26.55 Counting DBE Participation

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

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in § 26.87(j).

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

CERTIFICATION STANDARDS

Section 26.61- 26.73 Certification Process

The City is a certifying member of the Pennsylvania Unified Certification Program (UCP). The City will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The City makes all certification decisions based on the facts as a whole. Detailed certification processes are described in the Pennsylvania UCP agreement. The full UCP agreement can be found at: **Attachment 9**.

For information about the certification process or to apply for certification, firms should contact:

Deneen Wilson
DBE Manager
City of Philadelphia, Department of Aviation
International Plaza 2
Suite 400
Philadelphia, PA 19113
215-937-5421
obd@phl.org

[PAUCP - DBE Certification Management System \(dbesystem.com\)](http://dbesystem.com)

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

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Pennsylvania UCP agreement. The full, current UCP agreement can be found at: **Attachment 9**. Please note that at the time of this plan submission, the UCP Agreement and procedures were under revision and recipient signature to be in compliance with the modernized regulations.

Section 26.81 Unified Certification Programs

The City is a member of a Unified Certification Program (UCP) administered by Allegheny County. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.83 Procedures for Certification Decisions

The City will take all required steps outlined in § 26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26. In the case of a denial of certification, the City will make an entry in DOCR's Online Portal within five (5) days of the denial. The City will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for the decision.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification

has been removed, in whole or in part (*i.e.*, NAICS code removal), through the procedures of § 26.87.

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, 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.

Notices of Change and Annual Declarations of Eligibility

The UCP requires all DBEs to submit every year, on the anniversary of the date they were certified in their Jurisdiction of Original Certification (JOC), a new Declaration of Eligibility (DOE) along with documentation verifying the gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation may vary by business type, size, history, resources, and overall circumstances. However, the UCP will generally consider the following documents to be "safe harbors," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. The UCP will treat non-compliance, whether full or partial, as a § 26.109(c) failure to cooperate.

The UCP also requires all DBEs to provide written notice of any change in circumstances affecting their 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 DBEs' applications for certification. DBEs must provide the UCP with written notice of material changes affecting their continued eligibility within 30 days of the occurrence, explain the change fully, and include a duly executed DOE with the notice.

Section 26.85 Interstate Certification

The City complies with certification procedures requirements of Subpart E of Part 26 in all matters related to interstate certification. Any procedures included here are highlights only. Detailed interstate certification procedures are enumerated in the full Pennsylvania UCP agreement.

When a DBE certified in any UCP applies to the City for certification, the City will accept the DBE's certification from its jurisdiction of original certification (JOC). To obtain interstate certification, the DBE must provide:

- (1) A cover letter with its application that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)
- (2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
- (3) A new DOE.

Within ten (10) business days of receiving the documents required above, the City will confirm the certification of the DBE by reference to the UCP directory of the JOC. If the DBE fulfills the requirements of this section and the City confirms the DBE's certification, the City will certify the

DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

The City will require DBEs to provide an annual DOE with documentation of gross receipts, under [§ 26.83\(j\)](#), on the anniversary date of the DBE's original certification by its JOC.

If the City has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), the City will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain the City's reasons for believing the DBE's certification should be removed.

If the City receives such a notification from another UCP, within 30 days of receiving the notice the City will email the UCP contemplating decertification a concurrence or non-concurrence with the proposed action. The City's responses may provide written arguments and evidence and may propose additional reasons to remove certification. The City understands a failure to timely respond to the reasonable cause notice from another UCP will be deemed to be a concurrence.

If the City finds a DBE firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. The City will email a copy of its decision to the other jurisdictions within 3 business days.

Section 26.86 Decision Letters

When the City denies a firm's request for certification or decertifies the firm, the City will provide the firm a notice of decision (NOD) explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. The City will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply for at least 12 months. The waiting period begins to run the day after the date the decision letter is emailed to the firm. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. The City will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

Section 26.87 Decertification

The City complies with all decertification procedures requirements of Subpart E of Part 26 in all decertification proceedings. The procedures included here are highlights only. Detailed decertification procedures are enumerated in the full Pennsylvania UCP agreement.

The City first step in any decertification proceeding will be to email a notice of intent (NOI) to the DBE. The NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both. The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, the City will issue a notice of decision (NOD) decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

The City has determined that the PA UCP Appeals Committee will serve as the hearing officer for informal hearings provided pursuant to §§ 26.87(c)-(e). The hearing is an informal proceeding with rules set by the hearing officer. To ensure separation of functions 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).

The City will send the firm a NOD no later than 30 days from the date of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD will conform in all respects to the requirements of § 26.87(g). The City will make an entry in DOCR's Online Portal within 5 days of the action, entering the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. DBEs will remain certified until [the City issues a NOD.

Once a firm is decertified the City will take appropriate actions related to contract and overall goals and DBE participation as described in § 26.87(j).

Section 26.88 Summary Suspension of Certification

The City will follow procedures consistent with § 26.88 regarding the suspension of a DBE's certification.

The City will mandatorily and immediately suspend a DBE's certification when the City has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, or when directed to suspend the firm by the Operating Administration with oversight responsibility.

The City may elect to suspend a DBE's certification when the City has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity, or when an owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that § 26.83(j) requires.

The City will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which the City relies. Elective SSNs will not cite more than one reason for the action. Mandatory SSNs may state multiple reasons. Regardless of whether it is elective or mandatory, the SSN will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the City should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments lieu of or in addition to attending the hearing.

After sending the SSN to the suspended firm, the City will follow all procedures required under §§ 26.88(d)(2)-(6).

Attachment 10

Small Business Element

I. Purpose and Objective of the Small Business Element

Pursuant to 49 CFR § 26.39, this small business element, hereinafter referred to as the Small Business Participation Plan (SBPP), is presented to the Federal Aviation Administration as an amendment to the City of Philadelphia's DBE Program. Section 26.39 requires the inclusion of an element to "structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors." The City of Philadelphia, acting through the Philadelphia International Airport (Airport), hereby establishes the Airport's plan to implement these requirements.

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

II. Small Business Participation Strategies

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

A. Use of Race-Neutral "Subcontracting Goal"

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

B. Reduction in Size of Prime Contracts

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

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

C. Reducing Contract Requirements

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

D. Making Contracting Opportunities More Accessible

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

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

E. Definitions and Assumptions for this Element

1. Small Business Enterprise

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

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

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

2. Race-Neutral DBE Participation in the SBPP

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

assisted contracts in this program.

F. Verification Standards and Procedures

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

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

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

- 2. Pennsylvania Department of Transportation Small Business Enterprise Certification**

- 3. A non-DBE certified potential small business concern** will be verified by Office of Business Diversity staff using the form attached.

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

G. Supportive Services

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

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

H. Implementation Plan and Timetable

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

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

I. Principal Responsible Person

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

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

Small Business Enterprise Verification Application

49 CFR 26.39 and 49 CFR 23.26

A firm wishing to verify its status as a Small Business Enterprise (SBE) or Airport Concession Small Business Enterprise (ACSBE) must complete this application and submit it to the Philadelphia International Airport (PHL) for review and determination of its eligibility.

Forward completed applications and required documents to

OBD@PHL.org

Should I apply?

- Is the firm at least 51%-owned by an economically disadvantaged individual(s) who also controls the firm? An economically disadvantaged owner is one whose personal net worth is less than \$2.047 million (equity in a person's principal residence, a person's equity in the applicant firm, and their retirement accounts do not count towards assets for this calculation).
- Is the economically disadvantaged owner(s) a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is the firm a small business that meets the Small Business Administration's (SBA's) size standard related to its North American Standard Classification Code(s) **and** does not exceed USDOT's overall size standard (\$30.72 million in average annual gross receipts for SBEs or \$56.42 million in average annual gross receipts for ACSBEs)?
- Is the firm organized as a for-profit business?

⇒ If you answered Yes to all of the questions above, you may be eligible to participate in PHL's SBE or ACSBE program.

If your firm is currently certified as a Disadvantaged Business Enterprise (DBE) or Airport Concession DBE (ACDBE) by the Pennsylvania UCP (<https://paucp.dbesystem.com>), you do not have to complete this application. All Pennsylvania UCP DBEs and ACDBEs are automatically considered SBEs and migrated into PHL's SBE database.

Verification is **free**. There is no fee for applying for SBE verification with PHL. Under Sec. 26.107 of 49 CFR Part 26, if at any time, PHL has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, PHL may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: Certification and Contact Information

A: Certification Requested (check all that apply):

Small Business Enterprise (SBE) _____ Airport Concession Small Business Enterprise (ACSBE) _____

B: Basic Contact Information

(1) Contact person's name and title:

(2) Legal name of firm: _____

(3) Business Phone #: _____

(4) Other Phone #: _____

(5) Fax#: _____

(6) E-mail: _____

(7) Firm Website: _____

(8) Street address of firm (No P.O. Box):

(9) City: _____ State: _____ Zip: _____

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. This description may be used in databases and directories of small businesses.

(2) NAICS Codes ([SBA NAICS Codes and Table of Size Standards](#)) for this line of work include:

_____, _____, _____, _____, _____, _____

(3) This firm was established on (month/year): _____

(4) Is the firm "for profit"? ☐ Yes Federal Tax ID# _____
NO? STOP! If the firm is NOT for profit, it does NOT qualify for this program and should not fill out this application.

(5) Type of Legal Business Structure:

- ☐ Sole Proprietorship
☐ Limited Liability Partnership
☐ Partnership
☐ Corporation
☐ Limited Liability Company
☐ Other (describe): _____

(6) Number of employees: _____ Full-time _____ Part-time _____ Seasonal _____ Total

B: Business Size: Specify the firm's gross receipts for the last 5 years. (Submit complete copies of the firm's federal tax returns for each year for the applicant firm and any affiliates.)

Year _____ Applicant Firm Gross Receipts \$ _____ Affiliate Firms Gross Receipts \$ _____
 Year _____ Applicant Firm Gross Receipts \$ _____ Affiliate Firms Gross Receipts \$ _____
 Year _____ Applicant Firm Gross Receipts \$ _____ Affiliate Firms Gross Receipts \$ _____
 Year _____ Applicant Firm Gross Receipts \$ _____ Affiliate Firms Gross Receipts \$ _____
 Year _____ Applicant Firm Gross Receipts \$ _____ Affiliate Firms Gross Receipts \$ _____

C: Ownership: Identify all individuals or holding companies with any ownership interest in the firm, providing the information requested below. (**Attach additional sheets if there are more than two owners**).

Owner #1

- (1) Name: _____ (2) Title: _____
 (3) Home Phone#: _____
 (4) Home Address: _____
 (5) U.S. Citizen? **Yes**___ **No**___ or Lawfully Admitted Permanent Resident? **Yes**___ **No**___
 (6) Number of Years as Owner: _____
 (7) Percentage Owned: _____

Owner #2 (if applicable)

- (1) Name: _____ (2) Title: _____
 (3) Home Phone#: _____
 (4) Home Address: _____
 (5) U.S. Citizen? **Yes**___ **No**___ or Lawfully Admitted Permanent Resident? **Yes**___ **No**___
 (6) Number of Years as Owner: _____
 (7) Percentage Owned: _____

At least 51% of the firm must be owned by an economically disadvantaged individual or individuals. Those individuals must have a Personal Net Worth less than \$2.047 Million and complete a Personal Net Worth form (attached).

AFFIDAVIT OF VERIFICATION

This form must be signed for each owner upon which economic disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF SBE/ACSBE STATUS, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I recognize that the information submitted in this application is for the purpose of inducing SBE/ACSBE status approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of SBE status.

I agree to provide written notice to the Philadelphia Department of Aviation of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.). I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of SBE/ACSBE status; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that my personal net worth does not exceed \$2.047 Million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not economically disadvantaged. I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

(Signature of Affiant)

Date

(Printed Name of Affiant)

(Title)

(Applicant Firm Name)

SBE VERIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for SBE/ACSBE status, you must attach copies of all of the following documents as they apply to you and the applicant firm.

All Applicants

- ☐ Personal Net Worth (PNW) Statement (form included with this application) for each owner on whose economic disadvantage the SBE/ACSBE certification is relied upon
- ☐ Federal Personal tax returns (including all schedules) for the past five years, for each owner noted above
- ☐ Firm's Federal tax returns (gross receipts), including all related schedules, for the past five years
- ☐ Affiliate firm's Federal tax returns (gross receipts), including all related schedules, for the past five years

Personal Net Worth Statement

As of _____

Name			
Residence (As reported to the IRS) Address, City, State, and Zip Code			
Company's Legal Name		Phone:	
Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married/Domestic Partnership		Business Phone:	
Assets	(Omit Cents)	Liabilities	(Omit Cents)
1. Cash and Cash Equivalents (checking and savings accounts, CDs etc.) (Complete Worksheet 1)		10. Mortgages on Real Estate Other Than Primary Residence (Complete Worksheet 10)	
2. Investment Accounts and Individual Securities (Complete Worksheet 2)		11. Loans on Life Insurance (Complete Worksheet 11)	
3. Value of Your Ownership Interest in Real Estate, Excluding Primary Residence (Complete Worksheet 3)		12. Other Liabilities (Complete Worksheet 12)	
4. Personal Property and Other Assets (Complete Worksheet 4)			
5. Ownership in Other Businesses (Complete Worksheet 5)			
6. Life Insurance (Cash Surrender Value) (Complete Worksheet 6)			
7. Amounts Owed to You (Complete Worksheet 7)			
8. Assets Held in Trust (Complete Worksheet 8)			
9. Assets Transferred to Related Parties Within the Past Two Years (Complete Worksheet 9)			
<u>Total Assets:</u>	\$	<u>Total Liabilities:</u>	\$

Personal Net Worth: \$

Worksheets

Worksheet 1—List Cash and Cash Equivalents (checking or savings accounts CDs etc.) (Attach additional sheets as necessary)

Cash/Account	Balance

Total _____

Worksheet 2—Investment Accounts and Individual Securities (e.g., Brokerage and Custodial accounts, stocks, bonds) (Full Value) (Attach additional sheets as necessary)

Account or Security Name and Number	Value

Total _____

Worksheet 3—Real Estate Other than Primary Residence (Attach additional sheets as necessary)

	Property 1	Property 2	Property 3
Type of Property			
Address			
Date Acquired			
Purchase Price			
Present Market Value			
Source of Market Valuation			

Total _____

Worksheet 4—Personal Property and Other Assets (Attach additional sheets as necessary)

Type of Property or Asset	Is this asset insured?	Value
Vehicles (e.g., cars, trucks, recreational vehicles, motorcycles, boats, etc.) and titled in your name or of which you are the primary operator. (Itemize)		
Household Property (total value)		
Artwork (total value)		
Jewelry (total value)		
Other collectables (total value)		
Amounts owed to you (e.g., loans to others, including companies) (Itemize)		
Other (e.g., livestock, farm equipment, greenhouse)		

Total _____

Worksheet 5—Ownership in Other Business Investments (excluding applicant firm) Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations. (Attach additional sheets as necessary)

	Business 1	Business 2	Business 3	Business 4
Business name				
Address				
Value				

Total _____

Worksheet 6— Life Insurance (do not list term life insurance) (Attach additional sheets as necessary)

Policy	Insurance Company	Cash Surrender Amount

Total _____

Worksheet 7—Amounts Owed to You (loans to other individuals and entities including applicant firm) (Attach additional sheets as necessary)

Debtor	Description	Balance

Total _____

Worksheet 8—Assets Held in Trust (Attach additional sheets as necessary)

Trust Name	Description/Additional Information	Value

Total _____

Worksheet 9— Assets Transferred to Related Parties Within the Past Two Years (Attach additional sheets as necessary.

Asset	Description	Value

Total _____

Worksheet 10—Mortgages on Real Estate Other Than Primary Residence (Itemize by loan, attaching additional sheets if necessary)

	Property 1	Property 2	Property 3
Type of Property			
Address			
Name of all Mortgage Holders			
Loan Balance			

Total _____

Worksheet 11— Loan on Life Insurance (do not list term life insurance) (Attach additional sheets as necessary)

Policy	Insurance Company	Loan Amount

Total _____

Worksheet 12—Other Liabilities (Attach additional sheets as necessary)

Type of Debt	Creditor	Amount of Liability (Balance)
Loans on Motor Vehicles (itemize)		
Loans Secured by Property Other Than Real Estate or Vehicles		
Loans Secured by Property Other Than Real Estate or Vehicles		
Unpaid Taxes (fixed in amount and currently due)		
Any Other Amount, Not Reported Above, That You Currently Owe (itemize and describe)		

Total _____

Worksheet 13—Retirement Accounts (Attach additional sheets as necessary)

Account Name	Value

Total _____

Worksheet 14--Primary Residence

Address	
Date Acquired	
Purchase Price	
Market Value	
Source of Market Valuation	

Declaration

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I declare that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

Signature (SBE/ACSBE Owner)

Date

INSTRUCTIONS

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes assets and liabilities that she or he owns or is deemed to own without regard to community property or equitable distribution laws.

If the personal net worth of the majority owner(s) of the firm exceeds the PNW cap posted online at <https://www.Transportation.gov/DBEPNW>, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for SBE or ACSBE certification.

Provide all Worksheets. Provide documents to support each entry. If you have any questions about completing this form, contact the certifying agency.

Assets

Report assets at their current fair market values as of the date of your PNW form. In cases of joint ownership, report only the value of your ownership unless Worksheet directs otherwise. Do not report the value of the applicant firm.

Cash and Cash Equivalents: Enter total from Worksheet 1.

Investment Accounts and Individual Securities: Enter total from Worksheet 2.

Real Estate: Enter total from Worksheet 3.

Personal Property and Other Assets: Enter total from Worksheet 4.

Ownership in Other Businesses: Enter total from Worksheet 5.

Life Insurance: Enter total from Worksheet 6.

Amounts Owed to You: Enter total from Worksheet 7.

Assets Held in Trust: Enter total from Worksheet 8.

Transfers Within Preceding Two Years: If you transferred assets worth at least \$20,000 in aggregate to related parties within the last two years, enter total from Worksheet 9. *Exclude transfers to applicant or DBE.*

Relatives include your spouse or domestic partner, children (whether biological, adopted, or stepchildren), siblings (including stepsiblings and those of the spouse or domestic partner), and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other trusts of which you or any relative is grantor, trustee, or beneficiary, except when the transfer is irrevocable. See 49 C.F.R. 26.68(c)(7)-(9).

Liabilities

Report current balances. Report only your own, direct liabilities. *Do not report* guarantees or other contingent liabilities. *Do not report* business debt, debt secured by retirement assets, or any amount you owe, directly or indirectly, to the applicant or DBE.

Mortgages: Enter total from Worksheet 10.

Loans on Life Insurance: Enter total from Worksheet 11.

Other Liabilities: Enter total from Worksheet 12.

Other Information

Retirement Assets. Complete Worksheet 13 but *do not* enter value on PNW Statement.

Primary Residence. Complete Worksheet 14 but *do not* enter value on PNW Statement.

Declaration

You must sign and date the statement.