

## **POLICY STATEMENT**

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

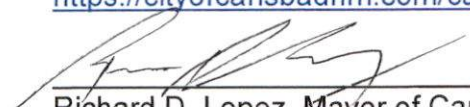
The City of Carlsbad, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Carlsbad has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, The City of Carlsbad has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the City of Carlsbad to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also The City of Carlsbad policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to The City of Carlsbad of Federal financial assistance in establishing and providing opportunities for DBEs.

Cari Pickens has been delegated as the DBE Liaison Officer. In that capacity, Cari Pickens, Airport Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Carlsbad in its financial assistance agreements with the Department of Transportation.

The City of Carlsbad has disseminated this policy statement to the City Council of The City of Carlsbad and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on The City of Carlsbad DOT-assisted contracts. The distribution was accomplished by <https://cityofcarlsbadnm.com/cavern-city-air-terminal/>

  
Richard D. Lopez, Mayor of Carlsbad

3-12-2024  
Date

## **GENERAL REQUIREMENT**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The City of Carlsbad will use terms in this program that have their meanings defined in Part 26, §26.5.

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

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

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

#### **Reporting to DOT**

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

DBE participation will be reported to FAA as follows:

The City of Carlsbad 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 Appendix B to Part 26. The City of Carlsbad will similarly report the required information about participating DBE firms. All reporting will be

done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

### Bidders List

The City of Carlsbad will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on The City of Carlsbad DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s) The method used by the City of Carlsbad is a standard bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts for that airport. The method used by the City is a standard bidder's list form in all of their contract documents. On this form, all contractors bidding on the project must list all of their subcontractors including if they are DBE or Non-DBE. This form can be seen in Attachment 3.

### Records retention and reporting:

The City of Carlsbad will maintain records documenting a firm's compliance with the requirements of this part. 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 of Carlsbad has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement The City of Carlsbad signs with a DOT operating administration, The City of Carlsbad will include the following assurance:

The City of Carlsbad 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 of Carlsbad 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 of Carlsbad 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 Carlsbad 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:** The City of Carlsbad will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The City of Carlsbad 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 of Carlsbad 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 of Carlsbad is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and The City of Carlsbad is in compliance with it and Part 26. The City of Carlsbad will continue to carry out this program until all funds from DOT financial assistance have been expended. The City of Carlsbad does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for The City of Carlsbad:

*Cari Pickens  
Airport Manager  
1505 Terminal Drive  
Carlsbad, New Mexico 88220  
(575) 887-3060  
capickens@cityofcarlsbadnm.com*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that The City of Carlsbad complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor of The City of Carlsbad concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has staff 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. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Participates in pre-bid meetings.
6. Determine contractor compliance with good faith efforts.
7. Maintain copies of the New Mexico Department of Transportation (NMDOT) DBE contractor listing. Actual certification of the contractors will be the responsibility of the NMDOT EEO office.

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

The City has investigated services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and has



identified one financial institution in the State of New Mexico as being owned by socially and economically disadvantaged individuals. Those institutions are:

**CENTINEL BANK OF TAOS**

512 Paseo del Pueblo Sur

P.O. Box 818

Taos, NM 87571

Phone: 575-758-6770

Fax: 575-758-6708

This information is provided to contractors for their consideration in conducting business in the City of Carlsbad. Additional Information on financial institutions owned and controlled by socially and economically disadvantaged individuals in the community can be obtained from the Minority Bank Deposit Program at 202-874-7055 or <http://www.fms.treas.gov/mbdp/participants.html>.

**Section 26.29 Prompt Payment Mechanisms**

The City of Carlsbad 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.

In accordance with 49 CFR §26.29, The City of Carlsbad established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from The City of Carlsbad.

The City of Carlsbad 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 of Carlsbad has selected the following method to comply with this requirement:

The City will include the following clause in each DOT-assisted prime contract:

Pursuant to 57-28-5 NMSA 1978, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Carlsbad. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Carlsbad. This clause applies to both DBE and non-DBE subcontractors.

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City shall impose sanctions as stated under the Monitoring and Enforcement Mechanisms paragraph.

1. 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. You may specify the nature of such mechanisms.
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
3. Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

#### **Section 26.31      Directory**

The City utilizes a directory maintained by the NMDOT, identifying all firms eligible to participate as DBE's. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The NMDOT revises the Directory at least annually. The Directory is available from the NMDOT: P.O. Box 1149, Santa Fe, NM 87504-1149, 505-827-1774, <http://nmshtd.state.nm.us/dbed-public/dbed.asp>

#### **Section 26.33      Over-concentration**

The City of Carlsbad has not identified that over-concentration exists in the types of work that DBEs perform.

#### **Section 26.35      Business Development Programs**

The City of Carlsbad has not established a Business Development Program.

#### **Section 26.37      Monitoring Responsibilities**

The City of Carlsbad implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in The City of Carlsbad's DBE program.

The City of Carlsbad actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

##### Monitoring Payments to DBEs and Non-DBEs

The City of Carlsbad undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

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

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

#### Prompt Payment Dispute Resolution

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

Pursuant to 57-28-5 NMSA 1978, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Carlsbad. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Carlsbad. This clause applies to both DBE and non-DBE subcontractors.

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City shall impose sanctions as stated under the Monitoring and Enforcement Mechanisms paragraph.

Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

#### Prompt Payment Complaints

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

Pursuant to 57-28-5 NMSA 1978, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Carlsbad. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after subcontractor's work is satisfactorily completed. Any delay or postponement of



payment from the above referenced time frame may occur only for good cause following written approval of the City of Carlsbad. This clause applies to both DBE and non-DBE subcontractors.

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City shall impose sanctions as stated under the Monitoring and Enforcement Mechanisms paragraph.

#### Enforcement Actions for Noncompliance of Participants

The City of Carlsbad will provide appropriate means to enforce the requirements of §26.29. These means include:

Pursuant to 57-28-5 NMSA 1978, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City of Carlsbad. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Carlsbad. This clause applies to both DBE and non-DBE subcontractors.

The City of Carlsbad will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The City of Carlsbad 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. Work site monitoring is performed by Project Managers and consultants. The City of Carlsbad will maintain written certifications that contracting records have been reviewed and work sites have been monitored for this purpose.

#### **Section 26.39      Fostering Small Business Participation**

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

The small business element is incorporated as Attachment 4 to this DBE Program. The program elements will be actively implemented to foster small business participation.

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

### **Section 26.43 Set-asides or Quotas**

The City of Carlsbad does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The City of Carlsbad will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), The City of Carlsbad will submit its Overall Three-year DBE Goal to operating administration by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA:

[https://www.faa.gov/about/office org/headquarters offices/acr/bus ent program/media/Schedule of DBE and ACDBE Reporting Requirements Dec 2017 Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If The City of Carlsbad 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 of Carlsbad 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 of Carlsbad will use a DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. The City of Carlsbad 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 City of Carlsbad 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 of Carlsbad 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 of Carlsbad market.

In establishing the overall goal, The City of Carlsbad 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 of Carlsbad 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 of Carlsbad 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 of Carlsbad 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 of Carlsbad will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on The City of Carlsbad 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 official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of The City of Carlsbad. This notice will provide that the City of Carlsbad and FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed

The Overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during this public participation process and The City of Carlsbad responses.

The City of Carlsbad 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 Administrator, 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 must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal 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.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### Prior Operating Administration Concurrence

The City of Carlsbad 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 of Carlsbad for calculating goals is inadequate, FAA may, after consulting with The City of Carlsbad, adjust the overall goal or require that the goal be adjusted by The City of Carlsbad. 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 of Carlsbad 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 of Carlsbad fails to administer its DBE program in good faith.

The City of Carlsbad 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 of Carlsbad 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.

#### **Section 26.51 Means the City of Carlsbad Use to Meet Overall Goals**

##### **Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The City of Carlsbad will meet the maximum feasible portion of its overall goal by using race-conscious means of facilitating DBE participation.

The breakout of estimated race-neutral and race-conscious participation can be found in



Attachment 5 to this program.

The City of Carlsbad 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 §26.3

### Contract Goals

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

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

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

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

#### Demonstration of good faith efforts (pre-award)

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

DBELO 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 of Carlsbad 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 City of Carlsbad, at the time provided in paragraph (3) of this section:

- (i) The names and addresses of DBE firms that will participate in the contract;
- (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- (iii) The dollar amount of the participation of each DBE firm participating;
- (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- (vi) If the contract goal is not met, evidence of good faith efforts (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; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

#### Administrative reconsideration

Within 14 days of being informed by The City of Carlsbad 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:

Wendy Austin, City Administrator, 101 N. Halagueno, Carlsbad, New Mexico 88221, 575-887-1191, [wdaustin@cityofcarlsbadnm.com](mailto:wdaustin@cityofcarlsbadnm.com). 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)

The awarded contractor will be required 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.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of The City of Carlsbad. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if The City of Carlsbad agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise The City of Carlsbad and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of

public necessity (e.g., safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of The City of Carlsbad as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

## **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).

### ***FAA Funding The City of Carlsbad Only***

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit 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.



## **SUBPART D – CERTIFICATION STANDARDS**

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

The City of Carlsbad Aviation Department is a non-certifying member of the State of New Mexico Unified Certification Program (NMUCP). The New Mexico Department of Transportation Office of Equal Opportunity Programs is the lead for this program. To be certified as a DBE by NMUCP, a firm must meet all certification standards set forth by 49 CFR Part 26. The NMUCP will make certification decisions based on the facts as a whole.

For more information about the certification process or to apply for certification, firms should contact: DBE Supportive Services, 1120 Cerrillos Road, Room 111, Santa Fe, NM, 87504, 505-670-3294, E-Mail: [DBE.SS@state.nm.us](mailto:DBE.SS@state.nm.us).

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The City of Carlsbad is the member of a Unified Certification Program (UCP) administered by NMDOT. The UCP will meet all of the requirements of this section.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101      Compliance Procedures Applicable to The City of Carlsbad**

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

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties. The Inspection of Public Record Act is a series of laws under Chapter 14 of the New Mexico Statutes. The Act is designed to guarantee that the public has access to public records of governmental bodies in New Mexico. See more at:

<http://freedomofinformationacts.uslegal.com/state-freedom-of-information-acts/new-mexico/#sthash.V4Ji3lmo.dpuf>

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

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

The City of Carlsbad, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The City of Carlsbad understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENTS**

Attachment 1	Regulations: 49 CFR Part 26 or website link
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory or link to DBE Directory
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1& 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form
Attachment 9	State's UCP Agreement
Attachment 10	Small Business Element Program

**ATTACHMENT 1**

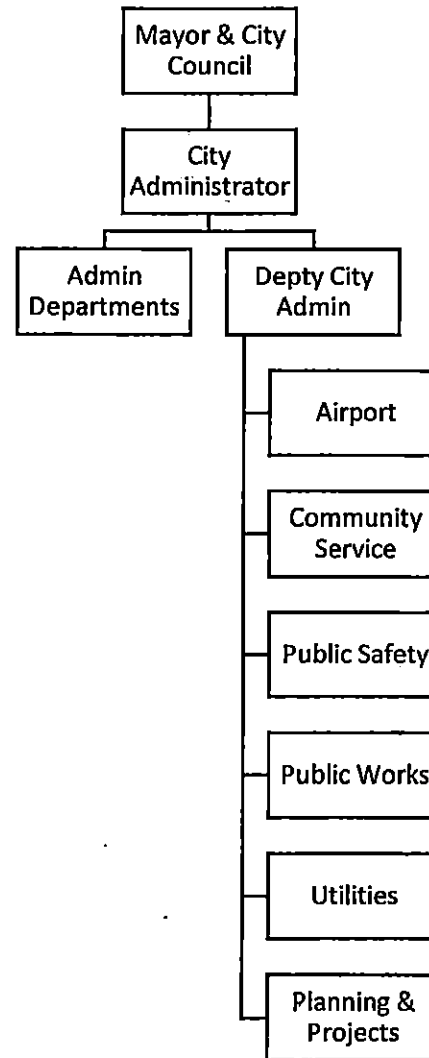
Regulations: 49 CFR Part 26, or link to website

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



## Attachment 2

### CITY OF CARLSBAD, NEW MEXICO ORGANIZATIONAL CHART



**Attachment 3  
Bidder's List Collection Form**

**CITY OF CARLSBAD  
CARLSBAD MUNICIPAL  
AIRPORT  
AIP PROJECT NO. 3-35-<aip number>**

**LIST OF PROJECT SUBCONTRACTORS**

---

Subcontract Category	_____
DBE/Non DBE	_____
Estimated Value of Work	_____
Subcontractor's Name	_____
Business Address	_____ _____
Phone Number	_____
E-mail Address	_____
Federal Identification No. (FEIN #)	_____
New Mexico Contractor's License No.	_____
License Categories	_____
New Mexico Dept. of Workforce Solutions Registration No.	_____
(list only if value of work is in excess of \$60,000)	

---

---

Subcontract Category	_____
DBE/Non DBE	_____
Estimated Value of Work	_____
Subcontractor's Name	_____
Business Address	_____ _____
Phone Number	_____
E-mail Address	_____
Federal Identification No. (FEIN #)	_____
New Mexico Contractor's License No.	_____
License Categories	_____
New Mexico Dept. of Workforce Solutions Registration No.	_____
(list only if value of work is in excess of \$60,000)	

---

**Attachment 3**  
**Bidder's List Collection Form**

---

Subcontract Category \_\_\_\_\_  
Estimated Value of Work \_\_\_\_\_  
Subcontractor's Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_  
Federal Identification No. (FEIN #) \_\_\_\_\_  
New Mexico Contractor's License No. \_\_\_\_\_  
License Categories \_\_\_\_\_  
New Mexico Dept. of Workforce Solutions Registration No. \_\_\_\_\_  
(list only if value of work is in excess of \$60,000)

---

Subcontract Category \_\_\_\_\_  
Estimated Value of Work \_\_\_\_\_  
Subcontractor's Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_  
Federal Identification No. (FEIN #) \_\_\_\_\_  
New Mexico Contractor's License No. \_\_\_\_\_  
License Categories \_\_\_\_\_  
New Mexico Dept. of Workforce Solutions Registration No. \_\_\_\_\_  
(list only if value of work is in excess of \$60,000)

---

**Signature of Authorized Representative for BIDDER:**

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

---

*Duplicate, complete, and submit additional sheets as required.*

**ATTACHMENT 4**

New Mexico DBE Directory web link to DBE directory

<https://nmdot.dbesystem.com>



## Attachment 5

**FAA Overall Goals (§26.45)**

**Name of Recipient: Carlsbad Municipal Airport**

**Goal Period:** Fiscal Year 2022 – October 1, 2021 through September 30, 2022  
 Fiscal Year 2023 – October 1, 2022 through September 30, 2023  
 Fiscal Year 2024 – October 1, 2023 through September 30, 2024

**DOT-Assisted Contract Amount: \$ 500,000.00**

**DBE Goal: 2.7%**

**Market Area:** The market area was determined to be both Geographical Areas One and Four; combined, these two Geographical Areas make up Market Area Four. Geographical Area Four is located in the southeastern portion of New Mexico and is comprised of the following counties: Torrance, Lincoln, De Baca, Curry, Otero, Chavez, Roosevelt, Eddy, and Lea. Geographical Area One is located in central New Mexico and is comprised of the following counties: Sandoval, Santa Fe, Bernalillo, Valencia, and Los Alamos. A substantial majority of contractors that perform work at the Carlsbad Municipal Airport are from the counties that make up Geographical Area One, as it is with the rest of New Mexico. As with all New Mexico communities, the substantial majority of contractors and subcontractors come from Geographical Area One. Due to the majority of contractors and subcontractors coming from Geographical Area One, the City, like other New Mexico communities, spends the majority of their contracting dollars within Geographical Area One as well. This was determined based on information within the contract documents from past projects showing locations of contractors and subcontractors that have performed work for the Carlsbad Municipal Airport in the past. Information regarding locations of the DBE businesses was found on the New Mexico Department of Transportation website. This information also shows that the substantial majority of all DBEs are based within the Geographical Area One boundary. A map and breakout of the Geographical Areas is enclosed as an attachment.

**Step One:** The method used to calculate the relative availability of the DBEs for Step One in this process utilizes 26.45(c)(1) DBE Directories and Census Bureau Data. The base figure was determined by dividing the total number of DBE firms in the local market area by the total of all firms in the market area.

**Number and Types of Projects for FY 2022:**

**1. No projects in FY2022**

**Number and Types of Projects for FY 2023:**

**1. Taxiway A Seal Marking**

**Project:** Taxiway A Seal Marking  
**Amount:** \$360,000.00

**Analysis**

**TABLE 1  
PROJECT ONE: TAXIWAY A SEAL MARKING**

NAICS Code	Work Item	DBE's in Market Area	All Available Firms	Total Amount	Weight Factor
23899	Markings/Specialty Contractors	2	198	\$310,000.00	86.11%
54138	Engineering Services	7	283	\$20,000.00	5.56%
54162	Inspection/Testing	3	71	\$30,000.00	8.33%
	<b>Total</b>	<b>12</b>	<b>552</b>	<b>\$360,000.00</b>	<b>100.00%</b>

*Source: County Business Patterns and NMDOT DBE Directory*

The construction estimate for this project is \$360,000.00. Of that amount, \$310,000.00 or 86.11% is anticipated for Markings/Specialty Contractors; \$20,000.00 or 5.56% is anticipated for Engineering and \$30,000.00 or 8.33% is anticipated for Inspection/Testing.

Therefore, the baseline DBE goal for this contract was weighed so that it would more accurately reflect the potential DBE participation as shown below.

M= Marking/Specialty  
E=Engineering  
I=Inspection/Testing

**Project One Base Figure =**

$$\begin{aligned}
 &M(\%) \times \frac{\# \text{ DBE in Local Market (M)}}{\# \text{ All Firms (M)}} + E(\%) \times \frac{\# \text{ DBE in Local Market (E)}}{\# \text{ All Firms (E)}} + \\
 &I(\%) \times \frac{\# \text{ DBE in Local Market (I)}}{\# \text{ All Firms (I)}}
 \end{aligned}$$

**Project One Base Figure = .861 (2/198) + .0556(7/283) + .0833(3/71)**

**Project One Base Figure = 1.36%**

**Number and Types of Projects for FY 2024:**

**1. East Parking Apron Environmental and Design**

**Project: East Parking Apron Environmental and Design**  
**Amount: \$140,000.00**

**Analysis**

**TABLE 1**  
**PROJECT ONE: EAST PARKING APRON**  
**ENVIRONMENTAL AND DESIGN**

NAICS Code	Work Item	DBE's in Market Area	All Available Firms	Total Amount	Weight Factor
54138	Engineering Services	7	283	\$80,000.00	57.14%
54162	Geotechnical/Environmental	3	74	\$60,000.00	42.86%
	<b>Total</b>	<b>10</b>	<b>357</b>	<b>\$140,000.00</b>	<b>100.00%</b>

*Source: County Business Patterns and NMDOT DBE Directory*

The construction estimate for this project is \$140,000.00. Of that amount, \$80,000.00 or 57.14% is anticipated for Engineering and \$60,000.00 or 42.86% is anticipated for Geotechnical/Environmental.

Therefore, the baseline DBE goal for this contract was weighed so that it would more accurately reflect the potential DBE participation as shown below.

$$E(\%) \times \frac{\# \text{ DBE in Local Market (E)}}{\# \text{ All Firms (E)}} + G(\%) \times \frac{\# \text{ DBE in Local Market (G)}}{\# \text{ All Firms (G)}} +$$

$$\text{Project One Base Figure} = .5714 (7/283) + .4286 (3/74)$$

$$\text{Project One Base Figure} = 3.15\%$$

**Step Two:** This step is intended to adjust the base figure percentage calculated in Step One to reflect as accurately as possible the DBE participation that the Carlsbad Municipal Airports would expect in the absence of discrimination.

We have considered all of the other factors, which include the current capacity of DBEs to perform work in the DOT-assisted program. We also considered the available evidence from related fields that affect the opportunities for DBE firms to form, grow, and compete. In our research, none of the previously mentioned factors require an adjustment to the base figure.

Our base figure is not the goal of another recipient and therefore was not considered as an adjustment factor.

There have been two similar projects at the Carlsbad Municipal Airport. Table 2 reflects the overall and achieved goals for each project.

**TABLE 1**  
**CARLSBAD MUNICIPAL AIRPORT PAST PARTICIPATION**

<b>Fiscal Year</b>	<b>Description</b>	<b>Overall Goal</b>	<b>Achieved Goal</b>
FY 2009	Runway Rehabilitation	8.20%	1.74%
FY 2010	Taxiway Reconstruction Phase I	3.20%	3.90%
3-35-0029-0012	R/W 18-36 Construction	4.59%	4.40%

Due to the similarity of the subcontracting possibilities between the past projects, past participation is going to be considered as an adjustment factor.

Past participation will be accounted for by taking the historical average (3.35%) of the achieved goals, adding it to the average base figure for FY 2022-2024 (2.00 %), and dividing by two.

$$\text{Overall Adjusted Goal} = \frac{2.00\% (\text{Base Figure}) + 3.35\% (\text{Achieved Goal})}{2}$$

Overall Adjusted Goal = 2.7%

The proposed overall goal for the Carlsbad Municipal Airport can be seen below.

**Carlsbad Municipal Airports Proposed Overall Goal = 2.7%**

Breakout of Estimated Race-Neutral and Race-Conscious Participation (§26.51 (b) (1-9))

The Carlsbad Municipal Airport will meet the maximum feasible portion of its overall goal by using race-conscious means of facilitating DBE participation. The Carlsbad Municipal Airport uses the following race-conscious means to increase DBE participation: By arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in a way to facilitate DBE and other small businesses' participation (e.g., requiring and/or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation. As can be seen from Table 1, the DBE goal was not achieved for similar projects and subcontracting opportunities, or was achieved but not substantially. Therefore, the Carlsbad Municipal Airport estimates that in meeting its overall goal of 3.00%, we will obtain 0% from race-neutral participation and 3.00% from race-conscious participation.

The Carlsbad Municipal Airport will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation and track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

## Public Participation

DBE's in Geographic Area One and Four were notified of a public meeting to be held on February 15, 2024 at 5:30 pm to discuss the projects that are planned for the next three years. The DBE goals and methodology for arriving at the goals for the project were discussed. A list of the projects, goals and methodology was also made available to them for review.

### Sample Public Notice Language:

Disadvantaged Business Enterprise (DBE) Goals for Federal Fiscal Years 2022-2024

The City of Carlsbad hereby announces its fiscal years 2022-2024 DBE Goal Setting Meeting for airport construction projects. **A public meeting will be held at 5:30pm, February 15, 2024 at the Cavern City Air Terminal, Conference Room, 1505 Terminal Drive, Carlsbad, NM 88220.**

The goal and goal-setting methodology will be available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday, for a period of 30 days following the meeting at **The Cavern City Air Terminal, Airport Managers Office, 1505 Terminal Drive, Carlsbad, New Mexico, 88220.**

The Cavern City Air Terminal will accept comments on the DBE goals for 30 days from the date of this notice. Comments can be sent to either of the following:

DBELO  
Cari Pickens  
capickens@cityofcarlsbadnm.com  
Airport Manager  
City of Carlsbad  
P.O. Box 1569  
Carlsbad, NM 88221

Federal Aviation Administration  
Civil Rights Staff, AWP-9  
P.O. Box 92007  
Los Angeles, CA 90009-2007

## Contract Goals

The Carlsbad Municipal Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Carlsbad Municipal Airport uses the following race-neutral means to increase DBE participation: By arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in a way to facilitate DBE and other small businesses' participation (e.g., requiring and/or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation. The Carlsbad Municipal Airport estimates that in meeting its overall goal for FY 2022-2024 of 3.00%, we will obtain 3.00% from race-conscious participation and 0% from race-neutral participation.

The Carlsbad Municipal Airport will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation and track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.



**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

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

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

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

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

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

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

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

**FORM 2: LETTER OF INTENT**

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

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

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

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

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

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

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

Description of work to be performed by DBE firm:

-----  
-----  
-----  
-----

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

**Affirmation**

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

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

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

(Submit this page for each DBE subcontractor.)

## ATTACHMENT 7

### **DBE Monitoring and Enforcement Mechanisms**

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to New Mexico Statutes and Codes; Section 13-4-41 Penalties, Section 13-4-36 Substitution of subcontractor.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 8**  
DBE Certification Application Form

<https://nmdot.dbesystem.com>

Welcome!

Please login or create an account to apply for certification, and/or provide annual updates and renewal information to us. If you have questions about certifications, please contact us at [dbe.cert@state.nm.us](mailto:dbe.cert@state.nm.us). For more information on NMDOT Certification programs and requirements, please visit Construction and Civil Rights Publications ([state.nm.us](http://state.nm.us))

Attachment 9

FILE COPY

AGREEMENT

FOR

2002 JAN 30 PM 3:50

NEW MEXICO UNIFIED CERTIFICATION PROGRAM (NMUCP)

THIS AGREEMENT is made and entered into this 22nd day of January, 2002, by and between the undersigned, authorized representatives of the New Mexico State Highway and Transportation Department (NMSHTD), and City of Carlsbad, New Mexico, a current or future recipient of United States Department of Transportation (USDOT) funds (USDOT Recipient) from Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA).

WHEREAS, a final rule revising the USDOT's regulations for its Disadvantaged Business Enterprise (DBE) Program was published in the *Federal Register* on *February 2, 1999*.

WHEREAS, these regulations contained in 49 CFR Part 26, as amended, became effective on March 4, 1999.

WHEREAS, 49 CFR Part 26, Subpart E, as amended, of the Regulation details the requirements for a Unified Certification Program (UCP) including a "one-stop shopping" certification provision intended to enable DBEs, once certified by any one recipient of USDOT funds, to participate in the programs of other recipients.

WHEREAS, all USDOT recipients within each state must sign an agreement establishing a UCP, said agreement is to be submitted by March 3, 2002, for approval by the Secretary of the USDOT, and

WHEREAS, USDOT Recipient wishes to participate in the NMUCP.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. The New Mexico Unified Certification Program (NMUCP) is established for all USDOT Recipients within the State of New Mexico. The NMUCP is detailed in Attachment A to this Agreement. The purpose of the NMUCP is to comply with the requirements contained in 49 CFR Part 26, Subpart E, as amended.

2. NMSHTD, through its Office of Equal Opportunity Programs (OEOP), will take the lead and be responsible for:

a. The certification of DBEs, the removal of DBE eligibility, and the suspension or debarment of DBEs consistent with 49 CFR Part 26, as amended,

b. Administering the requisite procedures for full cooperation with the oversight, review and monitoring activities of USDOT and its Operating Administrations (OA),



c. The maintenance of the NMUCP's DBE Directory (electronic and hard copy), listing certified DBEs, and

d. The implementation of USDOT directives and guidance concerning certification matters.

3. USDOT Recipient agrees to:

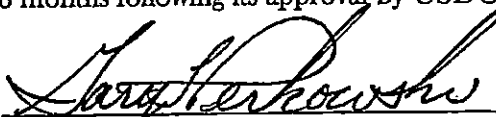
a. Be bound by the decisions or actions of the NMUCP concerning this program,

b. Use the Uniform Certification Application as published in the *Federal Register* on Tuesday, May 8<sup>th</sup> 2001 (Attachment B), and

c. Commit to ensure that the NMUCP has sufficient resources and expertise to carry out the requirements contained in 49 CFR Part 26 Subpart E, as amended.

4. Upon approval of New Mexico's Uniform Certification Program, the NMSHTD, through the OEOP, will immediately assume and consolidate all certification functions and responsibilities. The NMUCP will be operational not later than 18 months following its approval by USDOT.

USDOT RECIPIENT

By: 

Title: Mayor

Agency: City of Carlsbad

Recipient: City  
(city, town, county, etc.)

NMSHTD

By: 

Title: Chief, OEOP

New Mexico State Highway and Transportation  
Department (NMSHTD)

## Attachment 10

### Fostering Small Business Participation (§26.39)

Cavern City Air Terminal is taking steps to foster competition by small business concerns with the limits of the Procurement Code of the State of New Mexico (New Mexico State Annotated (NMSA) 13-1-1 *et. seq.*, and the Federal and State grant obligations and requirements by taking the following steps with the approval of DOT and FAA to eliminate obstacles to their participation including, but not limited to:

- Will not practice unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- Establishing a race-neutral small business goal for prime contracts under a stated amount (e.g. \$1million). The goal will be established following the procedure in this program, but will not be submitted to the FAA for approval. Set asides are not allowed in New Mexico.
- In multi-year design build contracts (e.g. mega projects); requiring bidders on the prime contract to specify elements of the contract or specific subcontract that are of a size that small businesses, including DBE's, can reasonably perform.
- On prime contracts not having DBE contract goals, requiring prime contractor to provide subcontracting opportunities of a size that small businesses, including DBE, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBE's, to complete for and perform prime contracts.
- If implementing the overall goal wholly through race/gender-neutral measures, ensure that a reasonable number of prime contracts are of a size that small businesses, including DBE's, can reasonably perform.
- Cavern City Air Terminal will partner with NMDOT who will dedicate staff within its Office of Equal Opportunity Programs to conduct outreach to DBE's and small business concerns, including providing assistance in obtaining bonding and financing; providing technical assistance, widely distributing information on contract opportunities and available firms, implementing a program to enhance business management of small businesses, providing assistance to start-up firms, and assisting DBE's in utilizing emerging technology.
- Cavern City Air Terminal will include the following in invitations to bid on federal-aid projects, "regardless of whether a DBE goal is set on a contract, and in accordance with NMSA 1978 Section 13-1-184, "Assistance to Small Business Policy," Cavern City Air Terminal encourages Contractors to use small businesses, including DBE's, on it's projects."
- Implementing the New Mexico State Procurement Ordinance 13-1-185, Assistance to small business; Duties of the State Purchasing Agent;
  - The State Purchasing Agent shall issue publications designed to assist businesses in learning how to do business with the state agencies and local public bodies.

- The State Purchasing Agent shall compile, maintain and make available source lists of small businesses for the purpose of encouraging procurement by the state agencies and local public bodies from small businesses.
  - The State Purchasing Agent and central purchasing offices shall take all reasonable action to ensure that small businesses are solicited on each procurement for which they appear to be qualified.
  - The State Purchasing Agent shall develop training programs to assist small businesses in learning how to do business with the state agencies and local public bodies.
  - The State Purchasing Agent or a central purchasing office may make special provisions for progress payments as such office or officer may deem reasonably necessary to encourage procurement from small businesses in accordance with regulations promulgated by the secretary or a central purchasing office with authority to issue regulations.
- “Small Business” means a personal net worth of under 1.32 million and average annual gross receipts over the past three years of under 22.4 million.
  - NMDOT annually obtains information required in 49 CFR 26.11 through an Annual Profile Registration that included business size (annual gross receipts) information for its bidders and quoters to identify small businesses and identifies prior year small business participation on federally-assisted contracts. Cavern City Air Terminal will reference this information.
  - Contractor and Subcontractor awards to Small Businesses will be documented on the projects bid and subcontracts awarded. Actual participation of small businesses will be reported by Cavern City Air Terminal from data provided by the contractors as required in the project contract documents.
  - The plan will be implemented nine months after approval.